

## NRU PNGC Load Following Contract Issues

Based on the 8/18/08 Version

### A. Priority Substantive Issues

#### 1. Limitations on adding Specified Resources after Notice Deadline are too stringent

Page 17 and 18, Section 3.5.1.2(2): The text reads: *“The shape of such resources shall either be in the shape selected in section 3.1.1 of Exhibit A for any Unspecified Resource amounts for the applicable Purchase Period, or <<Customer Name>> may purchase DFS from BPA to support the Specified Resource pursuant to section 2.2 of Exhibit D.”* The language is too limiting. For example, if a customer adds a Specified Resource after the September 30, 2011 Notice Deadline, BPA’s language requires the customer to use one of the two shapes it selected for Unspecified Resources in 2011 until 2020. This means we cannot dedicate a Specified Resource after a Notice Deadline and select what shape to use; also excludes option of using the generating resource shape. (Next opportunity to reshape is effective FY2020.)

The Text should read:

*“The shape of such resources shall ~~either~~ be in the shape selected in section 3.1.1 of Exhibit A for any Unspecified Resource amounts for the ~~applicable Purchase Period~~, first Rate Period following <<Customer Names>>’s notification pursuant to 3.5.1.2. For subsequent Rate Periods following <<Customer Names>>’s notification, <<Customer Names>> may elect to shape the Specified Resource in any shape permitted for Specified Resources described §3.4. <<Customer Name>> may also purchase DFS from BPA to support the Specified Resource pursuant to section 2.2 of Exhibit D.”*

#### 2. PURPA language too restrictive

Page 20, Section 3.5.8: *“If «Customer Name» is required by the Public Utility Regulatory Policies Act (PURPA) to acquire output from a Generating Resource, then such output shall be added as a Specified Resource pursuant to Exhibit A. «Customer Name» shall purchase DFS from BPA (or equivalent service if DFS is unavailable) to support such resources for the term of this Agreement.”*

It should be an *option* as to whether the customer adds the PURPA resource as a specified resource and whether the customer has to purchase DFS from BPA. For example, a customer may be required to purchase PURPA but may resell the output or may manage as part of a larger portfolio as an Unspecified Resource.

Suggestion: this paragraph should be deleted.

#### 3. 8760 megawatt-hour issue

Page 27, Section 9.1: The Text reads: “*Customer Name*» shall determine and provide notice, as described below, to BPA whether «*Customer Name*» shall serve its Above-RHWM Load that is greater than or equal to 8,760 megawatt-hours with either: (1) Firm Requirements Power purchased from BPA at a Tier 2 Rate or rates, (2) Dedicated Resources, or (3) a specific combination of both (1) and (2)”. This language has BPA as the sole supplier of the first 8,760 megawatt-hours of above RHWM load, and is inconsistent with exhibit C, 2.1, p1, which states that the “utility may serve above RHWM load that is less than 8760 MWh with power other than firm requirements power.” The text in the body of the contract should be conformed to what is allowed in the Exhibit. Also, language needs to be clarified so BPA is not the provider of the first 8,760 MWh after the 8,760 MWh limit is exceeded.

PNGC, PPC and NRU suggest the following changes to section 9.1:

*“«Customer Name» shall determine and provide notice, as described below, to BPA whether «Customer Name» shall serve its Above-RHWM Load ~~that is greater than or equal to 8,760 megawatt-hours~~ with either: (1) Firm Requirements Power purchased from BPA at a Tier 2 Rate or rates, (2) Dedicated Resources, or (3) a specific combination of both (1) and (2). When the Customer’s Above-RHWM Load is greater than zero but less than 8,760 megawatt-hours per year, the Customer may give notice to BPA that it will serve this load with Dedicated Resources, but if <<Customer Name>> does not provide such notice then BPA shall serve Above-RHWM Load that is greater than zero but less than 8,760 megawatt-hours per year with load shaping at rates generally available from BPA.”*

#### **4. Ratemaking and ASC treatment does not belong in this contract**

Page 4, Exhibit H, Section 9, contains text that should be removed in its entirety. The text governs a ratemaking and ASC issue, not a contract issue.

##### **9. RATEMAKING TREATMENT**

*Notwithstanding the transfer, sharing, management, conveyance, marketing or crediting of RECs and Carbon Credits, or the value of any or all of them, pursuant to this Exhibit H, BPA reserves any ratemaking authority it otherwise possesses to determine and factor in a share of the value and/or cost of any or all of the RECs and Carbon Credits for the purpose of: (1) determining applicable wholesale rates pursuant to section 7(c)(2) of the Northwest Power Act; and (2) establishing the rate(s) applicable to BPA sales pursuant to section 5(c) of the Northwest Power Act in a manner that BPA determines provides an appropriate sharing of the benefits and/or costs of the federal system and comparably reflects treatment of RECs and Carbon Credits in the calculation of a utility’s average system cost of resources. BPA further reserves its ratemaking authority to recover any costs resulting from such ratemaking actions through rates, including rates applicable to «Customer Name». This paragraph does not constitute «Customer Name»’s agreement to statutory ratemaking authority BPA does not otherwise have.*

## **B. Clean-up and Clarification Issues**

6. Page 2, the entities listed do not include a provision for cooperative utilities (non-profit corporation does not cover cooperatives).
7. Page 49, section 18.2.2: the Text reads: *“This section 18.2.2 does not apply if utility’s TRL is 25 aMW or less[.]”* At what point in time are we measuring the utility’s TRL? Suggestion: The text should be revised to read: *“This section 18.2.2 does not apply if utility’s TRL from the most recent prior Fiscal Year is 25 aMW or less[.]”*
8. Page 57, Section 23.3.5, *“in which case «Customer Name» shall be billed and pay in accordance with the last two sentences of the preceding paragraph”*. Shouldn’t this be the last three sentences, not two?

The text should read: *“in which case «Customer Name» shall be billed and pay in accordance with the last ~~two~~ three sentences of the preceding paragraph”*

9. Page 4, Exhibit C, 2.2.4.3: The text reads: *“then for the remainder of the effective Purchase Period and all the next Purchase Period <<Customer Name>> shall apply Dedicated Resources to serve all of its above RHWL load that is in excess of its commitment to purchase at LGR pursuant to 2.2.4.2.”* However, if a customer had been taking the partial LGR and was also purchasing at another BPA Tier 2 rate for those other MWs (ie, short term or vintage), then this text does not permit the customer to continue its obligation.

This paragraph should read:

*“then for the remainder of the effective Purchase Period and all the next Purchase Period <<Customer Name>> shall apply Dedicated Resources to serve all of its above RHWL load that is in excess of the sum of all Tier 2 commitments. ~~its commitment to purchase at LGR pursuant to 2.2.4.2.~~”*

10. Page 8, Exhibit C, 2.4.1.1(2) table: The table is identified for “non-federal resources” but should be edited to say “Dedicated Resources.”

11. Page 3, Exhibit D, 2.1 and 2.2: The text reads:

“2.1 ... If «Customer Name» requests that BPA provide such service, then the Parties shall execute a revision to this exhibit by the November 1, 2009, Notice Deadline. By each Notice Deadline thereafter, «Customer Name» may purchase RSS from BPA to support applicable Specified Resources listed in section 2 of Exhibit A for the corresponding Purchase Period.

2.2 If «Customer Name» adds a new Specified Resource within a Purchase Period to meet its obligations to serve Above-RHWM Load with Dedicated Resources, consistent with section 3.5.1 of the body of this Agreement, «Customer Name» may purchase RSS from BPA to support such resource. ....”

This fails to address that the exhibit will need to be revised if customer requests RSS *after* the first notice deadline.

Text should read:

“2.1 ...If «Customer Name» requests that BPA provide such service, then the Parties shall execute a revision to this exhibit ~~by the November 1, 2009, Notice Deadline~~. By each Notice Deadline ~~thereafter~~, «Customer Name» may purchase RSS from BPA to support applicable Specified Resources listed in section 2 of Exhibit A for the corresponding Purchase Period.

2.2 If «Customer Name» adds a new Specified Resource within a Purchase Period to meet its obligations to serve Above-RHWM Load with Dedicated Resources, consistent with section 3.5.1 of the body of this Agreement, «Customer Name» may purchase RSS from BPA to support such resource. If «Customer Name» requests that BPA provide such service, then the Parties shall execute a revision to this exhibit. ....”

12. Exhibit H, page 2, §4 Tier 2 RECs: §3 states that for Tier 1 RECs that are transferred to customer, BPA shall “provide «Customer Name» with a letter assigning title of such Tier 1 RECs to «Customer Name» .” However, Exhibit H does not reference assigning title of Tier 2 RECs, and such treatment needs to be included.

§4 should be revised to read:

**“4. TIER 2 RECS**

*If «Customer Name» chooses to purchase Firm Requirements Power at a Tier 2 Rate, and there are RECs which BPA has determined are associated with the resources whose costs are allocated to the Tier 2 Cost Pool for such rate, then beginning April 15 of the year*

*immediately following the first Fiscal Year in which «Customer Name»'s Tier 2 purchase obligation commences, and by April 15 every year thereafter for the duration of «Customer Name»'s Tier 2 purchase obligation, BPA shall, based on «Customer Name»'s election pursuant to section 5 of this exhibit, transfer to or manage for «Customer Name» a pro rata share of applicable Tier 2 RECs generated during the previous calendar year. For transferred RECs, BPA shall provide «Customer Name» with a letter assigning title of such Tier 2 RECs to «Customer Name». The pro rata share of Tier 2 RECs BPA transfers to «Customer Name» shall be the ratio of «Customer Name»'s amount of power purchased at the applicable Tier 2 Rate to the total amount of purchases under that Tier 2 Rate.”*

13. Page 3, Exhibit H, 5(1): The text reads: *BPA shall transfer «Customer Name»'s RECs into «Customer Name»'s own WREGIS account, which shall be established by «Customer Name»*

The text should read: *BPA shall transfer «Customer Name»'s RECs into «Customer Name»'s ~~own~~ WREGIS account, which shall be established by «Customer Name»;*