

Regional Dialogue Load Following Contract – Clean-Up Amendments
Customer Draft Proposals with BPA’s approved revisions included
March 13, 2009

Proposed Revisions:

1. Section 3.5.8: **PURPA Resources** (Revision accepted as modified)

If «Customer Name» is required by the Public Utility Regulatory Policies Act (PURPA) to acquire output from a Generating Resource and uses that output to serve its Total Retail Load, 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.

[Explanation: This would prevent the contract from requiring more of the customer than PURPA otherwise requires, *i.e.* PURPA does not require using the resource to serve the customer’s load. However, if the customer does use the output to serve its load, it will have to specify the resource, preventing the customer from later taking the resource to market at the expense of BPA and other customers if the resource becomes cheaper than market.]

2. Section 23.3.6: **Service Election for an NLSL** (Revision accepted as modified)

Before the Parties add an NLSL to Exhibit D, «Customer Name» shall elect, in writing, to:

(1) have BPA serve the NLSL at the NR rate; or

(2) serve the NLSL by adding with a Dedicated Resource to Exhibit A or added to Exhibit A for this purpose, that is not already being used to serve «Customer Name»’s firm consumer load in the region.

[Explanation: This would clarify that the provision *enables* the customer to add a resource to Exhibit A in order to serve a new NLSL. As it was, it limited customer to using a resource that was already listed in Exhibit A.]

3. Page 27, Section 9.1 states: “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).” (Revision accepted as modified)

This language appears to have BPA as the sole supplier of the first 8,760 megawatt-hours of Above-RHWM load, which is inconsistent with Exhibit C, 2.1, ¶1. Suggest that BPA edit the above paragraph to make it consistent with Exhibit C, as follows:

“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). <<Customer Name>> may also provide notice to BPA that it shall use a Dedicated Resource to serve Above-RHWM Load that is less than 8760 MWh ~~with other than firm requirements power~~.

4. Exhibit C, 2.4.1.1(2) table: Replace “non-federal resources” in the Table heading with “Dedicated Resources” (Revision accepted as modified)

5. Exhibit F should be amended to allow for the development of certain Transmission Scheduling Service that would permit customers choosing Unspecified Resource Amounts (rather than Specified Resource) to make use of BPA services that they would otherwise not be eligible to purchase. Suggested edits:

(No change)

“1.2 Parameters of Transmission Scheduling Service

[. . .]

Power Services shall perform all necessary prescheduling and real-time scheduling functions, and make other arrangements and adjustments consistent with any RSS products, or equivalent services developed pursuant to this Exhibit F for Unspecified Resource Amounts, that «Customer Name» is purchasing from Power Services. «Customer Name» shall continue to be responsible for all non-scheduling provisions of its transmission agreement(s) used to serve «Customer Name»’s Total Retail Load including, but not limited to, the designation and undesignation of Network Resources, as defined by the applicable OATT.

“4.3 Transmission Curtailments and Generation Outages

This section 4.3 shall not apply to «Customer Name» if «Customer Name» has acquired Forced Outage Reserve Service or the Transmission Curtailment Management Service, or equivalent services developed pursuant to this Exhibit F for Unspecified Resource Amounts, from Power Services.”

6. Section 10.4: recommend that this section be amended as shown below:

(No change)

“Remarketing of Power Priced at Tier 2 Rates

Consistent with rates established under the TRM, «Customer Name» shall be subject to applicable charges or credits associated with BPA’s remarketing of purchase amounts of Firm Requirements Power at Tier 2 Rates. Except as specified in section 10.5, «Customer Name» shall be responsible for remarketing of any ~~amounts of its Dedicated Resources, Specified Resources or Unspecified~~, that are removed pursuant to section 10.1.”

(Subject to reconciliation with the Slice contract)

7. Section 3.6: Use of “its” when referring to Customer-Owned Resources is incorrect – these Customer-Owned Resources do not belong to the Slice customer. The sentence should be modified to read as follows:

(Revision accepted as is)

“Except for any Consumer-Owned Resources serving an NLSL, which «Customer Name» has applied to load consistent with section 23.3.7, «Customer Name» shall apply the output of ~~theits~~ Consumer-Owned Resources as follows:”

8. Section 3.6.3: Load being served by a Consumer Owned Resource is not load of the BPA customer, and should not be referred to as “«Customer Name»’s Onsite Consumer Load.” The sentence should be modified to read as follows:

(Revision accepted as modified)

“Power generated from Consumer-Owned Resources listed in section 7.1 of Exhibit A shall serve ~~the~~ «Customer Name»’s Onsite Consumer Load. «Customer Name» shall receive no compensation from BPA for excess power generated on any hour from such resources.”

9. Section 16.1: This section could be erroneously read to include the costs of all products and services provided to the customer by BPA under all contracts, not just the CHWM contract. The ambit of this language should be narrowed to read as follows:

(No change)

“BPA shall bill «Customer Name» monthly for all products and services provided under this Agreement during the preceding month(s). BPA may send «Customer Name» an estimated bill followed by a final bill. The Issue Date is the date BPA electronically sends the bill to «Customer Name». If electronic transmittal of the entire bill is not practical, then BPA shall transmit a summary electronically, and send the entire bill by United States mail.”

10. Section 22.1: The language in the last sentence of this section appears to place an unwarranted limit on the question that a customer can pose to a court in the circumstance where BPA has determined that no arbitration (neither binding nor non-

binding) is available under this section. There appears to no reason for such a limitation, since the purpose is to find out from a court what type of arbitration (whether binding or non-binding) is available under the circumstances presented. There are two possible fixes to this problem, both of which are listed below:

(No change)

Option 1

“If BPA determines that a dispute is excluded from arbitration under this section 22, then «Customer Name» may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to ~~nonbinding~~ arbitration under this section 22.”

Option 2

~~“If BPA determines that a dispute is excluded from arbitration under this section 22, then «Customer Name» may apply to the federal court having jurisdiction for an order determining whether such dispute is subject to nonbinding arbitration under this section 22.”~~

Issues / potential revisions that need further discussion:

- Section 3.5.1.2(2) should allow customers to reshape newly specified resources after the first Rate Period following notification of adding the resource. (No change)
- BPA should change the definition of Small Non-Dispatchable Resources to be ones less than 3 MWs, rather than 1MW. (No change)
- Exhibit E should be modified to ensure that Transmission Services and Power Services agree on any change to a Point of Delivery, or at least point to the process where this will be done. (No change)