

**COMMENTS OF THE WESTERN PUBLIC AGENCIES GROUP
REGARDING BPA’s PHASE 1 WORKSHOP ON CONTRACT HIGH WATER MARKS**

Date Submitted: August 26, 2022

The utilities that comprise the Western Public Agencies Group (“WPAG”) appreciate this opportunity to submit comments in response to select topics from the Bonneville Power Administration’s (“BPA”) Provider of Choice Phase 1 Workshop on Contract High Water Marks (“CHWM(s)”) held August 16, 2022 (the “CHWM Phase 1 Workshop”).

WPAG continues to work with other preference customer groups and utilities on a system size and allocation proposal that we intend to present together to BPA for its consideration. Like BPA’s CHWM proposal, we expect public power’s alternative proposal to address New Large Single Loads, recalculation years, weather normalization, resource treatment, conservation, provisional load and/or CFCT related adjustments to address specified load loss, the relationship between CWHMs and Tier 1 System Size, and other matters related to the calculation of the Provider of Choice CHWMs. For this reason, at this time, we reserve comment on the specific treatment for most of the CHWM issues addressed during the CWHM Phase 1 Workshop.

That being said, we do offer the following recommendations in response to BPA’s proposal to consider any non-federal resources dedicated to serve load as of September 30, 2026 (including both Specified Resources and Unspecified Resource Amounts) as “Existing Resources” for purposes of calculating CHWMs for the Provider of Choice Contracts:

1. **Treatment of Unspecified Resource Amounts dedicated to serve load as of September 30, 2026.** BPA indicated during the CHWM Phase 1 Workshop that its proposal is to treat all non-federal resources dedicated to serve load as of September 30, 2026 as Existing Resources for purposes of calculating the Provider of Choice CHWMs, including Unspecified Resource Amounts listed for the final Purchase Period (i.e., for the Purchase Period for FY 2025 through FY 2028) in Section 3 of Exhibit A of a customer’s Regional Dialogue Contract (“RD Contract”). In effect, BPA is proposing to treat such Unspecified Resource Amounts like Specified Resources, which continue to be dedicated for §5(b)(1) purposes from BPA power contract to BPA power contract until one of the conditions for removal under §5(b)(1) of the Northwest Power Act and BPA’s Revised 5(b)/9(c) Policy are met.

However, BPA’s proposed treatment of Unspecified Resource Amounts is not supported by its RD Contracts, Revised 5(b)/9(c) Policy, or associated Records of Decision, which collectively provide that Unspecified Resource Amounts expire upon expiration of the specific Purchase Period during which the customer agreed to use them.¹ In this instance, the Unspecified Resource Amounts dedicated for the final Purchase Period under the Regional Dialogue Contract expire pursuant to the express

¹ See, e.g., Slice/Block, Load Following, and Block Regional Dialogue Templates at §3.3.2 stating that “[t]o serve Above-RHWM Load that «Customer Name» commits to meet with Dedicated Resources in Exhibit C, «Customer Name» shall provide and use Unspecified Resource Amounts to meet any amounts not met with its Specified Resources *during each Purchase Period.*” (italics added).

terms of the RD Contract on September 30, 2028.² This interpretation is consistent with the Administrator’s Record of Decision in support of the original 5(b)/9(c) Policy, stating in relevant part:

This provision of the policy allows customers to contractually commit to serve their loads with unspecified market purchases. This commitment is to make market purchases for the term that BPA establishes rates of general application. The amount of the market purchase commitments may be specified for the rate period or calculated annually in accordance with the contract terms. The customer does not have to provide resources for loads served by unspecified market purchase commitments at the end of a rate period when BPA has established rates of general application. The commitment of market purchase resources may be shorter than the term of a customer’s contract.

Use of market purchase commitments does not create an obligation for continuing use under section 5(b). Such use may create an obligation under section 9(c) if the customer later exports the resource it was using to serve its load.³

It is also consistent with the Revised 5(b)/9(c) Policy, which provides that “Market purchases [a.k.a. Unspecified Resource Amounts] used to serve retail firm power load shall be used for the *entire rate period* for which BPA establishes rates of general application.”⁴ This is in contrast to the treatment of Specified Resources under the Revised 5(b)/9(c) Policy, which are to “be used for load for the useful life of the resource, or the term of the contract” unless they are deemed lost pursuant to the policy or BPA consents to their removal.⁵

BPA’s position also unfairly punishes customers who elected to use Unspecified Resource Amounts rather than Tier 2 to serve their Above-RHWM load for the final Purchase Period under their RD Contract. Such customers had no forewarning that BPA would take such a position when they made their election before September 30, 2021, and they may have made another election if they had known BPA’s intentions.

Finally, we note that the current definition of Existing Resources under BPA’s RD Contracts, Revised 5(b)/9(c) Policy, and Tiered Rate Methodology only includes Specified Resources rather than both Specified Resources and Unspecified Resource

² Slice/Block, Load Following, and Block Regional Dialogue Templates at §3.3.2 and §9 of the main body of agreements and Exhibit A, §3.

³ Administrator’s Record of Decision: Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act at 44 (May 2000).

⁴ Revised 5(b)/9(c) Policy at §III.A.1(d)(ii) (March 2009) (italics added); *see also* Clarifications Issued on BPA’s Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act at §§1-3 (May 23, 2000).

⁵ Revised 5(b)/9(c) Policy at §III.A.1(d)(i).

Amounts.⁶ This is likely not because there were no Unspecified Resource Amounts dedicated to serve preference customer loads effective September 30, 2006, but instead to reflect, as detailed above, that a commitment to use Unspecified Resource Amounts is only for the duration of the specific Purchase Period committed to under the relevant BPA power purchase agreement. It does not extend beyond such time into the next Purchase Period under the same contract or the start of the next contract without an additional express commitment by the customer. Accordingly, excluding Unspecified Resource Amounts from the current definition of Existing Resources for purposes of calculating CHWMs under the RD Contracts was appropriate because, at the time, there was no statutory, contractual, or other obligation for customers to serve their RD Contracts loads beginning in 2012 with the Unspecified Resource Amounts dedicated as of September 30, 2006 under their Subscription Contracts. Similar treatment must be given for Unspecified Resource Amounts dedicated as of September 30, 2026 for the same reasons as we prepare to transition from the RD to the Provider of Choice Contracts.

For the reasons above, BPA must reconsider its proposal to treat Unspecified Resource Amounts as Existing Resources for purposes of calculating the Provider of Choice CHWMs.

2. **Process for “known and certain” resources.** BPA held a process under the Regional Dialogue Process for customers to petition to have resources that were dedicated to serve their load as of September 30, 2006 to nonetheless be excluded from the calculation of their Regional Dialogue CHWM when it was “known and certain” that the resource(s) would be unavailable to serve the customer’s load during the term of the RD Contracts.⁷ BPA and customers should consider a similar process to identify and exclude resources from the Provider of Choice CHWM calculations that will be dedicated effective September 30, 2026 but “known and certain” to not be available to serve a customer’s load during the Provider of Choice Contracts (e.g., when a dedicated Power Purchase Agreement is set to expire after September 30, 2026 but before October 1, 2028). This would both track the treatment of such resources under the prior contract and mirror BPA’s §5(b)(1) obligations to customers in the circumstance where their dedicated resource is lost and/or their dedicated contract expires.

Thank you for the opportunity to comment.

⁶ Revised 5(b)/9(c) Policy at 3; Slice/Block, Load Following, and Block Regional Dialogue Templates at §2.23; Tiered Rate Methodology at xiii (BP-12-A-03).

⁷ Bonneville Power Administration Long-Term Regional Dialogue Final Policy at 13-14 (July 2007).