

COMMENTS OF THE WESTERN PUBLIC AGENCIES GROUP REGARDING SELECT PROVIDER OF CHOICE TOPICS

Date Submitted: December 29, 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 Process.

- 1. Provider of Choice Product Offerings.** WPAG is supportive of BPA’s proposal to continue offering the Load Following, Slice/Block and Block products for the Provider of Choice Contracts and looks forward to working with BPA to identify and develop enhancements to the products so that BPA’s customers can better meet the challenges they will face during the post-2028 period. While some of WPAG’s members are likely to continue with BPA’s Load Following product for post-2028, others are likely to seriously consider both the Load Following and Slice/Block products as potential options and will not make a final election until 2025 when the Provider of Choice contracts are to be signed. For this reason, WPAG seeks to work with BPA and other customers to ensure that BPA offers (i) a balanced suite of products that offers approximate equivalent value between products; (ii) clear definitions of the risks, benefits, and responsibilities for each product; (iii) products designed to help preference customers meet the resource adequacy, carbon compliance, and other challenges they will face in the post-2028 operating environment; and (iv) transparency as to how proposed changes to one or more of BPA’s products will impact both the product that is proposed to be changed and BPA’s other products. WPAG also encourages BPA to consider whether and how its post-2028 products might interface with future market opportunities that BPA may consider participating in. CAISO’s extended day-ahead market and SPP’s Markets+ are both voluntary day-ahead market offerings that, while still under design, are far enough along in their development to begin mapping how BPA’s products may function within these markets. WPAG believes a proactive approach to considering potential product interactions and impacts within future market opportunities would benefit both BPA and its customers.
- 2. RSO Test.** To the ends identified under Section 1 above, WPAG is supportive of BPA’s proposal to reexamine how it implements the Requirements Slice Output (“RSO”) test under the Slice/Block product. Slice is allocated based on the annual amount of critical Slice energy necessary to meet a customer’s forecasted annual Net Requirement. However, as currently implemented, the RSO test is used to ensure that the critical component of Slice energy is being used to serve Net Requirement load on a monthly basis. Due to the inherent uncertainty during any given month around the amount of Slice output and load, the disconnect between the allocation of critical Slice based on an annual forecast and the implementation of the RSO test on a monthly basis has created a situation where it is mathematically impossible to pass the monthly RSO test. This impossibility has resulted in (i) the need to create a deeming requirement for Slice/Block customers just to pass the test; and (ii) a disincentive for Slice/Block customers to use non-federal power (including other carbon-free resources) to serve

their loads in order to meet the test and/or the deeming requirements. For the above reasons, WPAG is supportive of recommendations made by Slice/Block customers to restructure the RSO test so that it is mathematically possible to pass or, at a minimum, to revisit the current deeming criteria. One potential option to explore, for example, is whether the RSO test should instead be conducted on an annual or rate period basis rather than the current, unworkable, monthly basis.

3. **Tier 2 Options.** The combination of the continued use of a tiered rate construct for post-2028, the expectation of increasing electrification and other load growth in the region, a limited Tier 1 System size, and expanding non-carbon requirements will require a robust set of Tier 2 options for the next contracts. WPAG shares the concerns of other preference customers that BPA’s proposal in its Concept Paper to offer a single Tier 2 option with a one-time election falls well short of what will be required and needed by its customers. For this reason, we join the recommendation of the AHWM Group that BPA revisit the Tier 2 options under the Regional Dialogue Contracts as the starting point for developing Tier 2 options under the Provider of Choice Contracts.¹ At a minimum, the Provider of Choice Contracts should include short-term, long-term, and vintage Tier 2 options with each different product offering striking the appropriate balance between election notifications, cost certainty, allowing for customers to adapt to their evolving regulatory needs and reasonable revenue certainty for BPA.
4. **Process for “Known and Certain” Resources.** BPA held a process under the Regional Dialogue 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.² BPA should conduct 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.
5. **Conservation.** BPA and its preference customers have reached the point where we need to revisit what qualifies for reimbursement under BPA’s Energy Efficiency Incentive (“EEI”) program to better capture projects that enhance the management and control of load, demand, and shaping. Specifically, we recommend utility scale battery storage be eligible for EEI funding post-2028. This would be consistent with recent trends in the industry, including the Federal Energy Regulatory Commission’s (“FERC”) recent determination that battery storage is not generation and can be used for load management as either demand-response or demand-side management. *North*

¹ Above High-Water Mark Post-2028 Considerations, [20221214-ahwm-provider-of-choice.pdf \(bpa.gov\)](https://www.bpa.gov/20221214-ahwm-provider-of-choice.pdf) at 15.

² Bonneville Power Administration Long-Term Regional Dialogue Final Policy at 13-14 (July 2007).

Carolina Eastern Municipal Power Agency (“NCEMPA”), 172 FERC P 61249 (2020). In that case, NCEMPA filed a petition for declaratory order requesting that FERC interpret NCEMPA’s Power Purchase Agreement (“PPA”) with Duke Energy so as to permit NCEMPA to utilize battery storage technology on its systems on the basis that such technology qualified as both demand-response and demand-side management as defined under the PPA, which defined “demand-side management” as “energy and load-shape modifying activities ... designed to encourage consumers to modify patterns of electricity usage, including the timing and level of electricity demand.”³ FERC determined that battery storage technology met this definition stating in relevant part:

We find that NCEMPA's proposed use of battery storage technology to modify the timing of the peak may be considered [demand-side management]. Battery storage technology by its very nature does not generate electricity, but rather withdraws energy at one point in time and discharges energy at a later point. Thus, when used as NCEMPA proposes, battery storage technology is inherently a load-shape modifying device, designed not to reduce a customer's overall load but to shift the incidence of such load, i.e., to manage the customer's demands.

Furthermore, we note that section 9.4 of the [PPA] does not limit the kinds of technology that may be used as Demand-Side Management. Rather, the language of section 9.4 appears to be drafted so as to capture a broad range of technologies, including those existing, nascent, and even those that do not yet exist, all of which are capable of providing Demand-Side Management products and services. We find that a range of storage technologies may generally fit within this definition, including battery storage technology when used as NCEMPA proposes to do so here. As discussed above, battery storage technology does not independently generate energy, but rather charges and discharges in different time intervals. Similar to other demand-side management activities, such as pre-cooling buildings overnight or midday to avoid withdrawing energy to provide air conditioning during afternoon peak load conditions, NCEMPA's proposed use of battery storage technology simply determines *when* energy is consumed.⁴

The definition of “conservation” under the Northwest Power Act (the “NWPA” or the “Act”) can be reasonably read to include demand-side management activities as contemplated by FERC in the above discussion. This is because the NWPA defines “conservation” to mean “any reduction in electric power consumption as a result of increases in the efficiency of energy use, production, or distribution.”⁵ Further, the NWPA defines “electric power” to mean “electric peaking capacity, or electric energy,

³ *NCEMPA*, 172 FERC P 61249 at ¶ 33.

⁴ *Id.* at ¶¶ 33-34.

⁵ 16 U.S.C.A. § 839a(3) (emphasis added).

or both.”⁶ Accordingly, to qualify as conservation under the NWPA, an increase in the efficiency of energy use must only reduce either the consumption of electric peaking capacity or the consumption of electric energy. It need not do both. Demand-side management, including the use of battery storage technology for demand-side management purposes, as acknowledged by FERC, would meet this definition because it would result in a reduction of a BPA customer’s consumption of electric peaking capacity from an increase in the efficiency of energy use, i.e., by shifting such customer’s consumption of energy from periods of peak demand to off-peak periods. This is all it needs to do to qualify as conservation under the Act.⁷

While FERC precedent is not binding on BPA, it can be persuasive and is indicative of how energy efficiency is evolving within the industry to include battery storage. Utility sized battery storage projects could be located within preference customer substations or at large customer sites and our recommendation is that, because their potential use for demand-side management purposes brings them reasonably within the definition of conservation under the NWPA, they could be funded, at least in part, with redirected post-2028 EEI budgets. Potentially, these utility-scale storage projects could help (i) address the capacity concerns BPA identified in its Concept Paper by reducing peak demand loads (and thus the consumption of electric peaking capacity), providing daily and monthly shaping, enhancing frequency control, and mitigating transmission constraints; and (ii) provide customers with a way to limit their exposure to BPA’s proposed changes to how it will price capacity. WPAG respectfully renews its request to make a presentation on the potential qualification of battery storage for EEI funding in the Provider of Choice workshops.

6. **Transfer Service.** WPAG supports BPA’s proposal to continue to provide transfer service for federal power deliveries. However, we believe that there is still much to discuss regarding the future of the service, including more discussion regarding BPA’s proposal to stop rolling-in the cost of transfer service for non-federal deliveries. The former proposal could undermine the principle to help facilitate non-federal resource development by preference customers.
7. **Low Density and Irrigation Discounts.** WPAG supports BPA’s proposal to continue to provide the low density and irrigation discounts. With respect to the LDD, WPAG recommends that BPA and customers review the existing LDD eligibility criteria to determine whether adjustments should be made to account for the fact that BPA’s rural, low density preference customers are increasingly locating their distribution facilities underground due to a number of reliability and other concerns, including wildfire mitigation and increasing the useful life of such facilities. Although locating distribution facilities underground rather than overhead is more expensive by a factor of five or more per line mile, it does have the benefit of allowing utilities to create more efficient distribution systems with less total line miles compared to systems that rely primarily on overhead facilities. This is because, whereas overhead facilities must

⁶ 16 U.S.C.A. § 839a(9) (emphasis added).

⁷ We further note that the definition of conservation under the NWPA does not limit the kinds of technology that may be used as conservation.

largely follow public rights-of-way when moving from point A to point B, underground facilities do not. Unfortunately, such efficiencies can be disqualifying under BPA's current application of the LDD criteria, even when they occur in the service territories of some of BPA's most rural and sparsely populated preference customers. Accordingly, WPAG recommends that BPA and customers revisit the LDD eligibility criteria to determine whether changes are warranted to account for the increasing use of underground distribution facilities by BPA's rural customers.

In addition, WPAG is interested in further exploring ideas regarding the application of the LDD criteria that would encourage more stable rates and gradual rate changes for LDD utilities. Specifically, WPAG encourages BPA to consider an idea shared by some customers at the Provider of Choice Workshop on December 14th to potentially make it so a customer need only qualify under the K/I ratio test or the C/M ratio test, rather than both, to qualify for the discount. This would create more stable rates for LDD utilities, which can face sudden and significant increases in their BPA power bills in the event a somewhat modest change in circumstances results in the failure of one of the tests notwithstanding their continued compliance with the other. In addition, WPAG recommends BPA reconsider the need for the application of the existing test on an annual basis and consider an approach to phase out the LDD discount in situations where an LDD utility had received the LDD discount in a given year, but the following year is no longer eligible. The LDD phase in adjustment is a helpful tool that allows for more gradual increases and decreases to the LDD discount, however, a similar gradualism concept is not currently applied in instances where a customer who had previously received a discount, is no longer eligible for the LDD discount.

With respect to the IRD, WPAG understands that this is an important seasonal discount to traditionally agriculturally dependent service areas that filled an important role in rural electrification. It is important that the application of the discount in Post-2028 not upset the careful balance of the existing policy.

Thank you for the opportunity to comment.