

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

Date Submitted: March 3, 2023

The utilities that comprise the Western Public Agencies Group (“WPAG”)<sup>1</sup> appreciate this opportunity to submit comments in response to the proposals presented by the Bonneville Power Administration (“BPA”) at its February 21<sup>st</sup> and 22<sup>nd</sup> Provider of Choice Workshops regarding Post-2028 Products, Above High Water Mark (“AHWM”) Load Service, and Peak Net Requirements.

1. **Provider of Choice Product Offerings.** WPAG is supportive of BPA’s policy proposal to continue offering the Load Following, Slice/Block and Block products for the Provider of Choice Contracts. While some of WPAG’s members are likely to continue with BPA’s Load Following product for post-2028, others will also consider the Slice/Block and 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, and following the Provider of Choice Policy Record of Decision (“Policy ROD”), WPAG is looking forward to digging into the details of product design with BPA and other customers to ensure that BPA offers:

- A balanced suite of products that provides approximate equivalent value between products;
- Clear definitions of the risks, benefits, and responsibilities for each product;
- Product enhancements to help preference customers meet the resource adequacy, carbon compliance, (potential) organized market/RTO, and other challenges and opportunities they will face in the post-2028 operating environment; and
- 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.

That being said, and as further discussed below, WPAG has deep concerns and many questions regarding the possible impacts BPA’s proposed peak net requirements calculation would have not only on the Slice/Block product but also on the Block and Load Following products. BPA’s February 21<sup>st</sup> and 22<sup>nd</sup> presentation outlined how it proposes to calculate peak net requirements for the next contract for its base products, but contained no information on how BPA would then apply or use that methodology. Without such information, it is impossible for BPA’s

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<sup>1</sup> WPAG includes the following utilities: Benton Rural Electric Association, Eugene Water and Electric Board, Umatilla Electric Cooperative, the Cities of Port Angeles, Ellensburg and Milton, Washington, the Towns of Eatonville and Steilacoom, Washington, Elmhurst Mutual Power and Light Company, Lakeview Light & Power, Ohop Mutual Light Company, Parkland Light and Water Company, Public Utility Districts No. 1 of Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Kittitas, Lewis, Mason and Skamania Counties, Washington, Public Utility District No. 3 of Mason County, Washington and Public Utility District No. 2 of Pacific County, Washington.

customers to make even a threshold determination as to whether BPA's proposed product offerings will or even could meet the objectives identified above.

For example, for the Slice/Block product, customers need to know right now, as we are evaluating BPA's proposed peak net requirement calculation, whether BPA still intends to implement its Concept Paper proposal to claw-back capacity from Slice/Block customers when BPA determines such customers have capacity in excess of their calculated peak net requirement. BPA's February 21<sup>st</sup> and 22<sup>nd</sup> presentation made no mention of the claw-back proposal. If BPA still intends to move forward with the claw-back, then to evaluate the proposed calculation customers further need to know (i) what exact circumstances would trigger the claw-back, (ii) how much prior notice will they receive before "excess" capacity is recalled by BPA, and (iii) whether they will be compensated when the claw-back is triggered and how. Absent such information, it is not feasible to evaluate the prudence of BPA's proposal as it relates to the Slice/Block product or whether the Slice/Block product would even be a viable product moving forward if BPA's proposed calculation is implemented.

Upfront transparency as to how BPA intends to use the peak net requirement calculation with respect to the Load Following product is also needed. Specifically, we respectfully request that BPA clarify as soon as possible, and before issuing the draft Policy ROD, whether it intends to use the proposed peak net requirements methodology to tier capacity based on 1:2 forecasted monthly peak loads for purposes of applying the demand rate and, if so, how. Absent such timely clarification, a decision in the Policy ROD establishing a peak net requirements methodology based on 1:2 forecasted monthly peak loads could have unforeseen and deleterious rate and other impacts on many of BPA's Load Following customers. In addition, there is a real possibility that such impacts will only become apparent to customers after we start the product development and rates discussions in the subsequent phases of the Provider of Choice process. Under such circumstances, there would likely be significant demand from BPA's Load Following customers to revisit the peak net requirement methodology adopted in the Policy ROD. This undesirable scenario is avoidable if BPA changes course to adopt "an absolutely no surprises" approach to the peak net requirement discussion for all products moving forward.

2. **AHWM Load Service.** WPAG is supportive of the AHWM load service options proposed by BPA at the February 21<sup>st</sup> and 22<sup>nd</sup> workshops. These options are a considerable improvement over the single option initially proposed by BPA in its Concept Paper, and we appreciate BPA listening and being responsive to customer demands for more and better options.

WPAG also continues its support of the "before above-RHWM load service options" including BPA's proposals to:

- Increase the minimum threshold required for a customer's non-federal resource to be included and tracked in the power sales contract from 200 kW to 1 MW;
- Retain the ability of customers to apply BPA and customer funded energy efficiency without limit; and

- Allow customers to dedicate generating resources of 1 MW or more, up to an aggregate nameplate of the lower of 5 MW or 50% of a utility’s CHWM load, to serve load that would otherwise be eligible to be served by federal power priced at the PF Tier 1 rate and without requiring Resource Support Services (“RSS”).

However, with respect to the last listed option, we recommend that BPA consider removing the requirement that the resource(s) be sited in the customer’s service territory. Not only would this increase the value of this option to customers, but it would also recognize that not all customers are similarly situated in their feasibility of locating renewable generating resources of more than 1 MW in their respective service territories (e.g., when the service territory is in an area with low solar potential) and/or that customers may own such resources jointly with other preference customers.

3. **Peak Net Requirements and the Load Following Product.** In its Provider of Choice Concept Paper, BPA proposed to include a new peak net requirement calculation for the Slice/Block and Block products based on a customer’s forecasted average (P50) peak load, the forecasted peaking capability of the customer’s dedicated resources using the value assigned to the resource under the Western Resource Adequacy Program’s (“WRAP”) Qualified Capacity Contribution methodology, and the forecasted peaking capability of the federal system.<sup>2</sup> BPA’s Concept Paper did not make a similar proposal for the Load Following product. Instead, BPA proposed to continue to offer a Load Following product that meets all of a customer’s energy and peak net requirements on an hourly basis.<sup>3</sup> Accordingly, BPA’s Concept Paper stated that “Bonneville intends to maintain the distinction between the Load Following product, which meets a customer’s hourly energy and peak net requirements, and the Slice/Block and Block products, which are provided on an annual planned basis but provide no guarantee of meeting the customer’s actual hourly needs.”<sup>4</sup>

The different treatment between how BPA determines and plans to serve the peak net requirements of its Load Following product and planned product customers, like Slice/Block and Block customers, has a long history. For example, in both the original 5(b)/9(c) Policy from 2000 and the Revised 5(b)/9(c) Policy from 2009, BPA interpreted §5(b)(1) to allow the use of “**either the actual measured load of the customer or the customer’s own actual load forecast**” to calculate net requirements depending on the type of product selected.<sup>5</sup> The use of “actual measured load” under the various iterations of BPA’s 5(b)/9(c) Policy is consistent with the legislative history on §5(b)(1), which states that the term “firm power load” under §5(b)(1) is “intended to mean the power the [BPA] customer is obligated to make **continuously available** to its purchasers (subject to the effect of force majeure or uncontrollable events clauses).”<sup>6</sup> It is also consistent with the Administrator’s determination in the original 5(b)/9(c) Record of Decision issued in 2000, which in relevant part states:

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<sup>2</sup> BPA Provider of Choice Concept Paper at 13, 15-16, 29-31 (July 2022).

<sup>3</sup> *Id.* at 15 and 29.

<sup>4</sup> *Id.* at 29.

<sup>5</sup> Revised 5(b)/9(c) Policy at § III.A.1(a) (March 2009) (emphasis added); see also, original 5(b)/9(c) Policy at III.A.1(a) (May 2000).

<sup>6</sup> S. Rep. No. 96-272, 96th Cong. 1st Sess., 26 (1979) (emphasis added).

However, BPA believes the [§5(b)(1)] sets a minimum and a maximum obligation for power sold to public and private utilities for service to their retail firm power loads in the region. The maximum amount of power which may be sold as section 5(b)(1) requirements is delineated by the regional retail consumer load of the customer on any hour for which a customer has no resources. This type of obligation is exemplified by BPA's full service product. Further, BPA must balance its total load service obligations to all customers so as to meet those loads. BPA may use a different basis for calculating the planned retail load of a customer which is net of its resources if the customer is not taking a load following product from BPA. A requirements product of this type is BPA's firm block product which is based on an annual amount of retail load, net of the customer's planned firm nonfederal resources. BPA's load obligation to this customer does not exceed the fixed amount of the block in an hour or for a year because the customer provides the remainder of the resources necessary on a planned basis to meet load and provides its own load following service. There are other variations between these two bookend products. In no instance, however, does BPA sell requirements power above an amount of net firm load for the year to the customer . . .

**BPA believes that any sales under section 5(b)(1) for any purpose must be reasonably based upon a customer's actual hourly or planned net loads and related to serving those loads . . . BPA offered products in its initial power sales contracts based on both types of service, planned and actual loads.**<sup>7</sup>

Notwithstanding (i) the careful distinction BPA made in its Concept Paper regarding how energy and peak net requirements would be determined under the Provider of Choice Contracts for the Load Following product vis-à-vis the energy and peak net requirements for its planned products (i.e., Slice/Block and Block products), and (ii) BPA's prior practices regarding the same since the initial power contracts under the Northwest Power Act ("NWPA" or "Act"), BPA's presentation from February 21<sup>st</sup> and 22<sup>nd</sup> indicates that "Peak Net Requirement should be agnostic of BPA product" and that the "[p]roducts offered by BPA do not define net requirement calculations (energy or peak)."<sup>8</sup> Indeed, the peak net requirement section of BPA's February 21<sup>st</sup> and 22<sup>nd</sup> presentation makes no mention of meeting a Load Following customer's net requirement on an hourly basis. Taking that section of BPA's presentation at face value, it appears that the historic use of hourly load to determine the net requirements of Load Following customers may have fallen to the wayside, and BPA now proposes to calculate the energy net requirements for each of the Load Following, Slice/Block, and Block products using a customer's "1:2 **forecasted**

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<sup>7</sup> Administrator's Record of Decision for Policy on Determining Net Requirements of Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act at 77-78 (May 2000) (emphasis added).

<sup>8</sup> Provider of Choice Workshop: Firm Power Products Presentation at 13 (February 21 and 22, 2023).

energy load on an annual basis”<sup>9</sup> and peak net requirements for each of the three products using a customer’s “1:2 **forecasted** peak hour load on a monthly basis.”<sup>10</sup>

WPAG assumes that this is merely an oversight. Later slides in the February 21<sup>st</sup> and 22<sup>nd</sup> presentation indicate that the Load Following product will “meet a customer’s net requirement on an hourly basis.”<sup>11</sup> Assuming best of intentions, WPAG respectfully requests that BPA clarify that, notwithstanding BPA’s new proposed planning based methodology, the peak and energy net requirements of Load Following customers will continue to be determined based on the actual hourly measured load of such customers, as has been done since BPA’s initial 1981 power contracts under the Act. On the other hand, if this is no longer intended to be the case, it is a staggering and alarming change in BPA’s interpretation and application of §5(b)(1) as it relates to the Load Following product because it converts what is currently a statutory and contractual right of Load Following customers to have BPA meet their hour to hour loads to a mere contractual one. This is of enormous concern. Contractual rights expire, statutory ones do not. If this is indeed BPA’s intent, BPA’s Load Following customers need to know, and soon, as it is a substantial degradation of their rights under the statute and one that, unlike BPA’s planning product customers, they have not consented to.

4. **Peak Net Requirements Generally.** For the above reasons, WPAG, as a group, is not yet prepared to take a position on BPA’s proposed peak net requirements methodology, but instead believes it needs the following additional information to evaluate BPA’s proposal:

- (i) Assuming BP-24 product elections and no growth of the federal system, analysis prepared by BPA and provided to the peak net requirements task force shows that it does not expect capacity constraints on its system through the 2043 time frame.<sup>12</sup> Given this analysis, why does BPA believe that it needs to establish a peak net requirement methodology now? We note that BPA took a wait and see approach under the Regional Dialogue Contracts and, to date, it has not been necessary to develop a peak net requirement methodology for the current contracts and, based on BPA’s own projections, it appears it may not be needed for another 20 years. Under these circumstances, why would it not be appropriate take another wait and see approach this time around?
- (ii) BPA’s Concept Paper indicates that in months where a Slice/Block customer receives firm capacity from BPA in excess of its calculated peak net requirement for the month, BPA would have the right to claw-back the excess firm capacity.<sup>13</sup> Is this still BPA’s proposal? If so, (i) what exact circumstances would trigger the claw-back, (ii) how much prior notice will customers receive before “excess” capacity is recalled by BPA, and (iii) will customers subject to the claw-back will be compensated and how?

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<sup>9</sup> *Id.* at 15, 17, 18 (emphasis added).

<sup>10</sup> *Id.* at 19 (emphasis added).

<sup>11</sup> *Id.* at 30, 56-57.

<sup>12</sup> Peak Net Requirement Development Presentation at 6 (Jan. 23, 2023).

<sup>13</sup> BPA Provider of Choice Concept Paper at 31.

- (iii) It appears that BPA intends to use its proposed peak net requirements calculation to only establish a maximum amount of capacity it is required to provide a Slice/Block customer for any given month. However, net requirements under §5(b)(1) acts to establish both a maximum amount that BPA is required to provide and minimum amount that BPA must provide if requested. Accordingly, in those months where a customer's calculated peak net requirement exceeds the firm capacity amount obligated to be sold to such customer under its Slice/Block contract, does BPA believe that the customer should be able to request that BPA provide capacity on a planning basis pursuant to §5(b)(1) up to the customer's forecasted peak net requirement for the month? Why or why not? This would better comply with the balanced duality of BPA's obligation to serve and the customer's right to request under §5(b)(1) by mirroring BPA's proposal to reduce excess firm capacity when a customer is forecasted to be long on capacity with a countervailing obligation to serve when a customer is forecasted to be short.
- (iv) Does BPA intend to use its proposed peak net requirements methodology to tier capacity for purposes of applying the demand rate and, if so, how?
- (v) Please explain/provide additional information as to why BPA proposes to use 50% of the monthly WRAP Planning Reserve Margin ("PRM") rather than 100% as the basis for the reduction to a dedicated resource's QCC value under the proposed peak net requirement calculation.
- (vi) Will BPA provide Slice/Block customers an option to purchase a PF product above their peak net requirement calculation so they can comply with WRAP? Why or why not?
- (vii) Finally, WPAG notes that the language "adjust WRAP QCC" could easily be misinterpreted as adjusting QCC values for WRAP compliance, which we do not believe is BPA's intent but should be expressly noted in future presentations.

Thank you for the opportunity to comment.