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Via email

U.S. Department of Energy
Bonneville Power Administration
techforum@bpa.gov

RE: Comments on Proposed Changes to Transmission Business Practice on Site Control

NewSun Energy Transmission Company LLC ("NewSun"), and the Pacific Northwest Renewable Interconnection & Transmission Customer Advocates ("PRITCA") provide the following comments on the BPA's proposed changes to its Transmission Business Practice on Site Control.

About Us

NewSun and PRITCA (the "Commenting Parties") together represent more than 100 BPA Interconnection Customers. Collectively, the Commenting Parties comprise more than a quarter of the current BPA interconnection queue. The Commenting Parties are signatories to well over 100 study agreements, and have participated in hundreds of BPA scoping and study report meetings involving wind, solar, geothermal, battery storage and pumped storage projects ranging in size from 20 to 600 MW. PRITCA also includes BPA Transmission Customers with thousands of MW of confirmed long-term firm transmission rights on the BPA transmission system and many thousands of MW more of transmission requests for future long-term firm service. Collectively, the Commenting Parties have provided tens of millions of dollars to BPA over the past ten years for environmental studies, engineering and procurement of network upgrades, deposits for Large Generation Interconnection Agreements ("LGIAs"), and other study agreements. The Commenting Parties' members have successfully developed hundreds of megawatts of generation that are provided to both public power and IOU loads.

Summary

The Commenting Parties are deeply concerned about a number of changes proposed in BPA's Site Control Business Practice, which would impose numerous additional strictures on how Interconnection Customers can demonstrate Site Control, provides no recourse if BPA errs in its determination about whether the demonstration of Site Control is adequate, and provides no flexibility for Interconnection Customers to remedy problems related to Site Control that may crop up during the project development process. The proposed changes in the Site Control Business Practice go well beyond day-to-day administrative practices that should be included in Business Practices and, along with the other Business Practice changes proposed by BPA, fundamentally alter how BPA handles Transmission Requests in a manner that threatens to undermine investment in renewable generation that is desperately needed to meet the Northwest's aggressive goals for decarbonization of its electricity sector.

Comments

Initially, we believe many of the changes proposed in this and other BPA Business Practices belong in BPA's OATT and not in its Business Practices. The determination of what must be included in a tariff is governed by the "rule of reason," which "requires that tariffs include practices that "affect rates and service significantly," "are realistically susceptible of specification," and "are not so generally understood in any contractual arrangement as to render recitation superfluous."[1] Many of the provisions included in the Business Practice, notably including changed deadlines, limitations on access to dispute resolution, and heightened requirements for demonstrating site control, belong in BPA's OATT and not in its Business Practices, because those changes will significantly affect access to transmission service, and are also "susceptible of specification," not "generally understood in any contractual arrangement" and are "not clearly implied by the existing Tariff."[2]

Accordingly, these changes should be adopted only after careful consideration in a ratemaking process that results in a Record of Decision and amendments to BPA's OATT. We are concerned that the many changes proposed by BPA in its Business Practices, particularly when their combined effects are considered, will create substantial and unintended barriers to regional transmission access, and the abbreviated process for adopting BPA's proposed changes is inadequate to allow careful consideration of all of these effects.

In addition, BPA's current Phase I cluster study is not due to be completed until January 30, 2026, the first date on which the proposed Business Practice changes would come into

[1] *Cometa Energia, S.A. De C.V.*, 191 FERC ¶ 61,089 at P 19 (2025).
[2] *Id.*; *see Bonneville Power Admin.*, 145 FERC ¶ 61,150, P 56 & n. 66 (2013) (applying rule of reason to BPA tariffs).

practical effect. BPA should therefore extend the comment deadline and hold additional workshops to ensure that its proposed changes will not upset settled investment expectations or otherwise create unintended consequences.

PRITCA's specific concerns are:

1. *No Mechanism for Resolving Unexpected Problems with Site Control.*

   Proposed Section A(1) requires, without exception, that the Interconnection Customer maintain evidence of Site Control "throughout the interconnection process." BPA's apparent intent is to create a hair trigger, so that any problem with site control that crops up, no matter how unexpected or minor, requires BPA to eject the Interconnection Customer from the queue. That approach creates needless and unpredictable risk for project development, discouraging needed investment in the region. BPA should include in this Business Practice a clear mechanism to allow the Interconnection Customer to remedy any problems with site control and should not eject the Customer from the queue as long as that customer is making reasonable efforts to resolve the Site Control problem expeditiously. At a minimum, BPA must allow a sufficient period of time for the Interconnection Customer to correct any problems that arise before its queue position is terminated.

   On this score, we note that BPA's approach is far more stringent than the FERC OATT, which allows the Interconnection Customer to post a deposit in lieu of site control where an Interconnection Customer demonstrates that site control cannot be obtained because of regulatory limitations.[3] We urge BPA to adopt FERC's approach in this instance, particularly because the predominance of federal lands in the Pacific Northwest creates regulatory limitations that often limit the ability to obtain full control of sites on those lands unless the developer is willing to go through lengthy environmental review and other administrative processes.

2. *The List of Unacceptable Documents Makes No Sense.*

   Section A(3)(c) sets forth a list of documents that "will not establish evidence of Site Control," which includes a "License," a "Purchase Agreement," a "Document Purporting to provide Interconnection Customer with land right granted from an individual/entity with an Option Agreement with the titled landowner," and a "Document granting a person, in that person's individual capacity, a land right." Each of these categories of documents, however, *does establish* a land right for the Interconnection

[3] Order No. 2023, *Improvements to Generator Interconnection Procs. & Agreements*, 184 FERC ¶ 61,054, at PP 605-610 (2023).

Customer to construct its project, and it therefore makes no sense to list these as documents that *do not establish* a land right. In fact, the proposed approach makes so little sense, the Commenting Parties suspect it reflects a typographical error. The Commenting Parties therefore urge BPA to add the above categories of documents to the list of documents that will be considered to demonstrate site control.

3. *Requirements for Governmental Land Leases Should Reflect Realities of Development on Those Lands.*

At least for the specific provisions governing offshore wind leases and Bureau of Land Management ("BLM") leases, the Business Practice recognizes that leases and easements on lands administered by governmental agencies have unique characteristics and the leasing process is substantially different than leasing on private land. BPA should expand the proposed language concerning BLM leases to cover all types of government-administered lands and should make clear that a developer who commits substantial resources to obtaining a governmental lease, as occurs when a developer executes a BLM Cost Reimbursement Agreement, has a sufficient commitment to seeing the governmental leasing process through and should be permitted to proceed with the interconnection process. This approach will permit time-consuming interconnection and governmental land acquisition processes to move forward at the same time. BPA's proposed approach, which addresses only the special characteristics of the BOEM and BLM leasing processes, and by implication therefore requires a lease from any other governmental agency to proceed all the way through the process to obtain binding lease rights before the interconnection process even begins Such processes often last several years, which means that the years-long delays currently associated with the BPA interconnection process will be piled on top of the years-long effort generally required to lease government lands.

At best, stacking lengthy processes in this way will unreasonably delay development on governmental lands. At worst, it will render energy development on governmental lands infeasible, thus removing many of the best renewable resources from the table at a time when the region has set renewable energy goals that require development of extremely large quantities of generation on an expedited timeline. BPA should therefore, at a minimum, address the specific leasing practices of governmental agencies administering large land holdings in the Pacific Northwest, including the U.S. Forest Service, the Washington Department of Natural Resources, and the land management agencies of other states in the region. The Business Practice should also address how leases on Tribal lands, which contain a substantial portion of the region's highest-quality renewable resources, are handled for purposes of demonstrating site control.

4. *Meaning of "Exclusive" Land Right Should be Clarified.*

The Business Practice would require "exclusive" site control, but the meaning of "exclusive" is not defined, either in the OATT or in the Business Practice. This is problematic for several reasons. First, the Business Practice recognizes that generation resources may be co-located, which means that those resources do not have "exclusive" development rights on the land where the resources are co-located. Second, the Business Practice should clarify that "exclusive" does not mean that other uses, such as agrivoltaics, are prohibited so long as those uses do not constrain how a property may be developed for purposes of energy generation. Third, the Business Practice should clarify that "exclusive" does not bar developers from, for example, entering into cooperative agreements to, for example, share transmission rights of way or to jointly construct and operate tie lines or substations.

5. *Change in Land Requirements for Hybrid Resources is Unjustified.*

BPA proposes, without explanation, to change the acreage requirements for hybrid projects, and would require developers to demonstrate control over extra acreage if their development includes a battery storage system. But there is no reason to believe that the small footprint of a battery storage system – BPA requires only 0.1 acres per MW for a battery storage system – could not be integrated into a solar or wind project without expanding the project's footprint. For example, this small footprint could easily be added to a substation without a substantial increase in the project's overall acreage. At a minimum, this change should be applied on a prospective basis only. Otherwise, as FERC has found, such a "change to site control requirements would present a significant hardship for existing interconnection customers" because "obtaining additional land needed to satisfy" new site control requirements "would be an undue burden on these interconnection customers" and such "deviations are not consistent with or superior to the pro forma LGIP."[4]

6. *Dispute Process for Acreage Disputes Should be Modified.*

The question of whether a developer has control over acreage adequate to accommodate its project is of great importance because renewable technology is continually improving, resulting in more efficient technologies that require fewer acres to produce the same amount of power. Hence, the acreage minimums specified in the Business Practice are, over time, likely to become outdated. The dispute resolution process for resolving disputes about whether a project controls adequate acreage is therefore critical because it is the only way the Business Practice can accommodate these

[4] *El Paso Elec. Co*., 191 FERC ¶ 61,120 (2025).

kinds of technological changes. PRITCA has two concerns about the new language proposed by BPA:

First, BPA should commit to resolving any dispute about adequate acreage within a timeline that will allow the project to maintain its queue position. Otherwise, delays in the dispute resolution process could force the developer to, for example, miss the decision date for advancing to the next stage of the interconnection process, forcing delays for the most technologically-advanced projects of a year or more.

Second, BPA proposes to strike language in the existing Business Practice specifying that, if the Interconnection Customer is dissatisfied with the outcome of the process specified in Section D of the Business Practice, it may invoke the dispute resolution process contained in Section 13.5 of the LGIA and the LGIP dispute resolution process. This implies that the process of Section D is the final word, and that the Interconnection Customer has no recourse if the Section D process is unsatisfactory. BPA should clarify that this deletion is not intended to bar access to the LGIA/LGIP dispute resolution processes, and that an Interconnection Customer that is dissatisfied with the outcome of any process contained in this or other transmission-related Business Practices can invoke the LGIA/LGIP dispute resolution process as a matter of right.

Conclusion

We urge BPA to revisit and revise the provisions of its Site Control Business Practice proposal discussed above. Because many of the proposals will create substantial barriers to access to interconnection service on the BPA system, they belong in BPA's OATT, not in Business Practices. Accordingly, we urge BPA to consider those provisions in formal process that will allow full consideration of the unintended consequences of the changes it proposes, and to place any resulting changes in its OATT and LGIP, not in Business Practices.

Sincerely yours,

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Attorney for Commenting Parties