



Comments on BPA TC-20

The Northwest and Intermountain Independent Power Producers Coalition (NIPPC) offers the following comments to the BPA proposals presented during the 2018 Transmission Business Model/Pro Forma Gap Analysis workshops.

General Comments on BPA proposal to align with the Pro Forma

In introducing this proposal for an updated transmission business model, BPA described its value proposition as: 1) operating a high performing grid; 2) enabling economic growth in the region; and 3) providing access to Federal and non-Federal resources. BPA would achieve this value proposition through “excellence in offering and managing” a portfolio of standardized products, infrastructure and “long term viability.” BPA also committed to being a “dependable and responsive business partner.” To achieve these goals, BPA has outlined a series of reforms to its transmission tariff that it will develop and implement over the next four to five years.

NIPPC agrees that BPA’s existing transmission tariff and the services BPA offers can be improved. Updating BPA’s transmission tariff, if done correctly, could yield significant benefits to the region. But NIPPC perceives inconsistency in BPA’s approach exemplified by the irony of BPA’s claim that its transmission tariff reforms signify a renewed commitment to the FERC *pro forma* just as it is poised to eliminate FERC’s review and approval of tariff changes. Similarly, while BPA is reverting to *pro forma* language, BPA’s neighbors throughout the Western Interconnection seek new non-*pro forma* products and services to participate in the markets, e.g., the Energy Imbalance Market. Indeed, BPA itself is working with the CAISO to create new categories of Power products which, in order to be successfully marketed, will need transmission products that do not exist in the *pro forma*.

The energy market landscape in the West is in a period of transition; Western policy makers are currently considering a host of options for the energy market of the future from a market operated by Peak/PJM, to extension of the energy Imbalance Market into Day Ahead, to actual geographic expansion of the CAISO. NIPPC believes that until regulators and public policy coalesce to support a west wide market structure, BPA should continue to be subject to FERC oversight and review.

NIPPC does not agree that BPA needs to modify its tariff to reflect BPA's status as a federal agency and non-jurisdictional entity as outlined in its April 30, 2018 "Tariff Proposal" document – in fact, a number of the proposed modifications are incomplete and confusing. NIPPC also believes that BPA has not fully evaluated its proposal to maintain two separate tariffs - with separate terms, conditions and products - at the same time. Finally, NIPPC remains perplexed in terms of what is truly motivating BPA's interest in removing FERC's review. In short, we do not believe that BPA has adequately justified its proposal.

Section 9

In addition to opposing BPA's reliance upon Section 212 procedures to modify its tariff in the future, NIPPC disagrees with BPA's conclusion that it does not need to include a substantive standard in Section 9.

BPA underestimates the value customers place on FERC review of BPA's decisions. Bonneville staff seems to believe that the agency has the ability to fairly and impartially administer its own tariff. Customer experience, however, is to the contrary. For example, when BPA unilaterally imposed its Environmental Redispatch policy on customers several years ago, transmission customers exercised their rights under Section 211 to prevent Bonneville from abusing its authority. More recently, BPA unilaterally changed its business practices related to real power loss returns without following its own policies related to changes to business practices and in direct contravention of the Administrator's stated policy regarding the steps BPA would take to mitigate oversupply events. To be clear: transmission customers are uncomfortable with BPA seeking to limit customers' options for redress to Section 211.

In previous comments, BPA has urged BPA to include in its revised tariff the substantive standard from the Federal Power Act; specifically § 211A, (16 U.S.C. § 824j-1(b)) which provides that FERC;

may, by rule or order, require an unregulated transmitting utility to provide transmission services-- (1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and (2) on terms and conditions (not relating to rates) that are comparable to those under which the unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

This statute is the most specific statutory statement regarding the terms and conditions under which BPA is expected to provide transmission services. Accordingly, the terms and conditions of BPA's transmission service - and any deviations from FERC's *pro forma* Open Access Transmission Tariff - must not be "unduly discriminatory or preferential." Accordingly, NIPPC again urges BPA to incorporate this substantive standard into its OATT.

In rejecting customer requests to include a substantive standard in Section 9, BPA staff assumes that the relevant statutes are static. While there may be no pending bills to modify BPA's statutes, it is unrealistic to expect that statutes adopted 15 (or more) years ago will not be changed in the future. BPA notes that under its proposal, all applicable statutory requirements continue to apply even though they are not specifically referenced. (The statutes include - and are not limited to - the Bonneville Project Act; Pacific Northwest Power Preference Act; Transmission System Act; the Northwest Power Act; and the Federal Power Act.) But if parallel language is not set forth in the contract those provisions (and protections) would be lost if (when) the statutes are changed. BPA staff is correct that incorporating the statutory standards into the contract provides a more robust remedy than the statute alone. This more robust and certain remedy is precisely what provides customers with sufficient contractual certainty to make \$100 million investments in the region.

Sec. 1.11 Direct Assignment

BPA proposes to remove the requirement that Service Agreements which directly assign the costs of certain facilities to a particular transmission customer must be approved by FERC. The original purpose of this provision was to allow FERC to review and approve a transmission provider's determination that facilities should be directly assigned. However, under BPA's proposal, it appears BPA staff would simply insert direct assignment provisions into Service Agreements with no additional review. As a result, there is no mechanism for a customer to challenge the decision to directly assign the costs of facilities; there is no assurance that BPA will conform to any industry standard in making direct assignment determinations; and there is no assurance that the direct assignment criteria adopted by BPA will be consistently applied. BPA has not made clear whether decisions on direct assignment will be incorporated into the Section 212 tariff revisions process; whether customers would be required to challenge direct assignment of costs through a Section 211 action; or whether decisions on direct assignment would be subject to dispute resolution.

This proposal is particularly troubling given BPA's parallel ongoing processes on financial policies, including its proposals to preserve adequate funding for future capital investments. To the extent direct assignment of facilities proves to be a useful option for BPA to shift capital financing of transmission investments from BPA to customers, it is critical to ensure independent oversight and consistent application among customer classes.

Sec. 12.1 Dispute Resolution

BPA proposes to eliminate direct oversight by FERC in the dispute resolution mechanisms under the tariff. BPA has suggested that the *pro forma* language conflicts with BPA's status as a Federal Agency and non-jurisdictional entity. But BPA has not identified why its status as a Federal Agency precludes it from FERC oversight of the dispute resolution process. NIPPC believes that BPA should offer customers more analysis of why specific provisions of the *pro forma* OATT are inconsistent with BPA's

other statutory obligations. Merely including a list of tariff provisions on a document with the broad heading of “Tariff proposals for sections that differ from FERC Pro Forma tariff due to Bonneville’s statutory and legal obligations, authorities, and responsibilities” is not sufficient analysis.

NIPPC urges BPA to retain FERC review of tariff changes and changes to any Service Agreement. BPA’s proposal is confusing. At the same time BPA proposes to eliminate FERC’s direct involvement in disputes, it also proposes that external arbitration procedures be conducted “in accordance with the Commercial Arbitration Rules of the American Arbitration Association and *any applicable Commission regulations or Regional Transmission Group rules.*” Moreover, BPA’s proposed language on arbitration decisions is that “the final decision of the arbitrator must also be filed with the Commission if it affects jurisdictional rates, terms and conditions of service or facilities.” In short, BPA claims to eliminate Commission oversight, but retains it at the same time.

Sec. 15.3 Initiating Service in the Absence of an Executed Service Agreement

Similar to the inconsistent language in Section 12.1 which both eliminates and depends upon on Commission regulations reflected in BPA’s proposed Dispute Resolution provisions, this provision eliminates the customer’s right to file with the Commission and then brings the Commission’s influence back into the process through the Dispute Resolution process in order to resolve complaints of unacceptable terms and conditions. BPA should retain the obligation to file with the Commission an unexecuted PTP Service Agreement, after receiving written notifications from a Transmission Customer.

Sec. 19.9 Study Metrics (Penalties for Failure to Meet Study Deadlines)

BPA proposes to include in its tariff an obligation to track its compliance with study deadlines, but eliminate any obligation to report that compliance. NIPPC opposes this proposal because it makes no sense to inject discipline into BPA’s study processes on one hand, but not to report that performance. BPA has already removed the *pro forma* 60-day target from its current tariff, but agrees to use due diligence to meet study completion deadlines. Why not file compliance reports with the Commission? How does BPA’s alternative tariff proposal reflect the agency’s status as a federal agency and non-jurisdictional entity?

Ancillary Services — Schedule 10

NIPPC is concerned about the proposal to relegate important questions related to BPA’s provision of ancillary services to a business practice. Customers need certainty regarding the processes that BPA and market participants have available when BPA considers changes to its provision of services. Such protection is necessary to ensure that BPA cannot unilaterally change its business practice in ways that could increase the rates customers must pay under Schedule 10. NIPPC urges BPA to identify a suitable location in either the Tariff Revision or the Rate Setting process to house all questions related to balancing reserves.

Conclusion

NIPPC believes that it is not timely for BPA to eliminate FERC oversight. The Western Interconnection is undergoing significant changes that will require increased coordination throughout the West, most likely with the CAISO, a FERC-jurisdictional entity. NIPPC believes BPA, as vital as it is to the western interconnection, should not under any circumstances go out on its own.

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