

## COMMENTS OF THE NETWORK CUSTOMER GROUP

Submitted: May 30, 2018

These comments on the Bonneville Power Administration's ("BPA") proposed Open Access Transmission Tariff ("Tariff") terms and conditions are submitted on behalf of Cowlitz PUD, Eugene Water and Electric Board ("EWEB"), Mason PUD No. 3, Northwest Requirements Utilities ("NRU"), PNGC Power, and Western Public Agencies Group ("WPAG") (collectively, the "Network Customer Group"). The Network Customer Group represents over 85 customers located in 8 states (OR, CA, WA, ID, MT, UT, WY, NV) that use BPA's Network Integration Transmission Service ("NT") to bring power to their respective loads and are dependent on BPA to provide the vast majority of their high-voltage transmission service.

### A. General Comment on BPA's Proposed Tariff Modifications.

First, we commend BPA for providing red-lined versions of the Tariff that lay out the proposed modifications that will be considered in the TC-20 process. With that said, the Network Customer Group finds it difficult to provide meaningful comments on many of BPA's proposed modifications because many of the deleted sections were replaced only with an "Under Review" placeholder. In particular, many of the Tariff sections that are the most critical for the Network Customer Group to have assurance that BPA is adequately addressing our concerns and will reliably serve NT load are "Under Review."

This approach has created confusion regarding what BPA intends to include in the TC-20 process and what may be delayed until the TC-22 process or later. We are concerned that if BPA includes some modifications but not others, it will not give the full picture of how BPA will address our concerns. For this reason, BPA needs to holistically consider the needs of its transmission customers and provide us with all the proposed Tariff modifications to be addressed in the TC-20 proceeding. Separate BPA decisions for TC-20 and TC-22 are highly correlated. How one term or condition is decided may impact how we respond to other terms or conditions. Without a full picture of NT service terms and conditions, it is impossible for us to determine whether or not BPA's new Tariff will adequately address the needs of its NT customers.

Furthermore, while we understand the practical need to push some issues into a TC-22 proceeding, the result of such practicality is that transmission customers will not have a complete picture of BPA's new Tariff until the conclusion of the TC-22 process, which is likely more than three years from now. Due to the uncertainty surrounding the topics BPA intends to reserve for the TC-22 process, existing transmission customers may be reluctant to transition to the new Tariff following the TC-20 process and instead reserve that determination until after the TC-22 process.

## B. Alignment with Pro-Forma.

The NT Customer Group is generally supportive of moving toward the FERC *pro-forma* tariff except in instances where it must deviate in order to meet its statutory and other legal obligations. We also believe that BPA should be able to propose deviations from the *pro-forma* where the *pro-forma* language is unnecessary or harmful or where the deviation would provide a substantial benefit. However, in no case should any such deviations cause undue hardship to any customer class or cause any customer class to forgo a substantial benefit that would otherwise be available to them. Accordingly, the Network Customer Group proposes to modify BPA's proposed *TC-20 Guiding Principles to deviate from the FERC pro forma tariff* as follows:

1. Implement BPA's statutory and legal obligations, authorities, or responsibilities;
2. Maintain the reliable operation of the federal system; or
3. Prevent a significant harm or provide a significant benefit to BPA's mission or the region, including BPA's customers and stakeholders, where it can be demonstrated that such deviation would not (i) cause undue hardship on another customer class, (ii) advantage one customer class at the expense of another, or (iii) cause any customer class to forgo a substantial benefit as compared to the FERC *pro-forma tariff*.

## C. Hourly Firm.

BPA requested that no comments be made regarding the details of removing Hourly Firm from BPA's Tariff, however certain statements were made during the April 23, 2018 meeting with which we strongly disagree and would like to formally address. Specifically, a statement was made that nearly all customer comments submitted during the PFGA process supported the inclusion of the Hourly Firm product in BPA's new Tariff. This is inaccurate. In fact, the Network Customer Group, which collectively represents approximately 85 customers, has previously filed comments that *strongly oppose* the inclusion of Hourly Firm in BPA's new Tariff.<sup>1</sup>

Furthermore, a statement was made at the TC-20 workshop on April 23, 2018 suggesting that the inclusion of Hourly Firm was a superior product to the *pro-forma tariff*, and therefore BPA should continue to implement it in its new Tariff because FERC allows superior levels of service from the *pro-forma tariff*. This comment is inconsistent with FERC Order 890, which explicitly stated that "the downsides associated with requiring transmission providers to offer hourly firm service outweigh the benefits of the proposal" to offer Hourly Firm service.<sup>2</sup> FERC noted that there were "a number of legitimate concerns with respect to the service's potential to adversely affect reliability and create additional complexity and inefficiency in scheduling and administering the right of first refusal," and that those that supported Hourly Firm service failed

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<sup>1</sup> Available at <https://www.bpa.gov/transmission/CustomerInvolvement/TransmissionBusinessModel/Documents/NT-Customer-Comments-w-exhibits120817.pdf>.

<sup>2</sup> FERC Order 890 at ¶ 1212.

to “demonstrate a clear need for an hourly firm service product.”<sup>3</sup> As a result, FERC did not require transmission providers to offer Hourly Firm service.<sup>4</sup>

In a way, BPA’s historic implementation of Hourly Firm is emblematic of the concerns FERC has expressed regarding the product. For example, the reliability impacts of Hourly Firm, and its impacts on other firm products, have from time to time caused BPA to reduce its availability on its most constrained pathways, such as the South of Alston. In addition, the complexity and potential expense to determine how much Hourly Firm inventory is reasonably available for any given scheduling period has, paradoxically, caused BPA to throw its hands in the air and offer the product on an unlimited basis.

Consistent with FERC’s determination, BPA should remove the Hourly Firm product from its new Tariff. In previous PFGA workshops, BPA had committed to providing an analysis that would examine reliability concerns and other complexities as described in FERC Order 890. Several customer groups supported this collaborative analytical review given the importance of the Hourly Firm issue. The Network Customer Group looks forward to working with BPA and other customer groups during the TC-20 workshops to fully vet the analysis that BPA has committed to undertake and work collaboratively with all customers to help make this determination.

#### **D. Network Conditional Firm.**

BPA has communicated that it intends to eliminate the Conditional Firm Network Service product in its new Tariff. However, the redline documents include “[Under Review]” language in section 28.7, which suggests that Network Conditional Firm is under consideration for the new Tariff in some form or another. As we have stated in past comments, the Network Customer Group collectively has an obligation to serve our end-use customers on a firm basis, and we reiterate here that BPA as a Transmission Provider also has an obligation to plan for and serve our current and future Network Load from our current and future Designated Network Resources on a firm basis. Accordingly, a conditional firm network product (or something similar) is not an acceptable long-term substitute for firm NT service, but we understand BPA staff to say that a similar offering may provide an interim pathway to firm service in those instances where firm NT service is not immediately available. We are deeply skeptical of this idea, and concerned that it could be abused to (i) undermine BPA’s obligation to provide NT service on a firm basis, and/or (ii) offer a permanent or extended conditional product in lieu of firm service. This would be unacceptable. Nevertheless, we renew our request that BPA better articulate and define this concept for our consideration.

In a similar vein, BPA has removed some of the fundamental tenets of NT service. Specifically, BPA has deleted almost all of section 28.3 in its entirety, which establishes the most basic elements of NT service. For example, section 28.3 of BPA’s current Tariff requires that the “Transmission Provider will provide firm transmission service over its Transmission System to the Network Customer for the delivery of capacity and energy from its Designated Network Resources to service its Network Loads on a basis that is comparable to the Transmission

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<sup>3</sup> *Id.*

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

Provider's use of the Transmission System to reliably serve its Native Load customers." It is unimaginable that BPA would consider removing this provision from its Tariff, as NT service relies primarily on a customer's ability serve its Network Load over firm transmission. We can only assume that this is an inadvertent editing error or omission by BPA, and we insist that BPA return this language in its proposed modifications prior to the next TC-20 workshop.

**E. Section 9 – Tariff Modifications.**

The NT Customer Group supports BPA's proposal that would require a section 212 process to make Tariff modifications. As we have stated previously, the section 212 process strikes the right balance between providing procedural due process to BPA's transmission customers but does not create an unattainable standard for BPA to make changes to its Tariff. The section 212 process is explicitly provided for in the Federal Power Act and is a familiar one for BPA and most of BPA's customers because it follows procedures similar to BPA rate cases.

The NT Customer Group also supports excluding any statutory standard in section 9. BPA has numerous statutory standards to which it must adhere, regardless of whether they are included in the Tariff. If BPA were to include any statutory standard, it would need to include a comprehensive list, or risk giving the appearance that BPA was elevating one statutory standard over another. Statutory rights and obligations exist regardless of what is included in a contract. At best, the inclusion of statutory standards would be duplicative and could lead to confusion and conflicting legal interpretations.

For reasons similar to the exclusion of a statutory standard, the NT customers urge BPA to remove the reference to the Federal Power Act contained in the second paragraph of the proposed section 9. If BPA is going to reference parties' rights under the Federal Power Act, BPA should also include parties' rights under other applicable law. For example, we assume that by excluding the Northwest Power Act, BPA does not mean to imply that its Tariff will affect a party's ability to exercise its right to appeal the Administrator's final actions to the Ninth Circuit Court of Appeals. *See* 16 U.S.C. 839f(e)(5). However, some parties may make such an inference if BPA chooses to reference one applicable statute but not all applicable statutes.

In addition, BPA should amend the title of section 9 from "Regulatory Filings" to "Tariff Modification" or something similar. The term "Regulatory Filings" is applicable to transmission providers that are subject to the filings requirements of sections 205 and 206 of the Federal Power Act, which BPA is not.

In general, it seems as though in BPA's effort to adopt language as close to the *pro forma* tariff as possible, it has made the language more awkward and complicated than what is needed. BPA should recognize that the *pro forma* section 9 simply does not apply to it because it is not required to file its Tariff with FERC and adopt precise language that clearly articulates what is required to modify the Tariff. For example, section 9 could state:

The Transmission Provider shall not make changes to the terms and conditions, classification of service, or Service Agreement contained in the Tariff without first conducting a hearing pursuant

to section 212 (i)(2)(A) of the Federal Power Act. The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the rates that apply to transmission service pursuant to applicable law.

This paragraph would explicitly provide what is required for BPA to modify the Tariff without including confusing or superfluous language.

**F. Schedule 9.**

BPA is proposing to adopt the obligation under Schedule 9 of the *pro forma* to offer Generator Imbalance Service (“GI Service”) “to the extent it is physically feasible to do so from its resources or from resources available to it, when transmission service is used to deliver energy from a generator located within its Control Area.” The requirement under the *pro forma* to provide GI Service to the extent physically feasible is one that BPA has struggled with in the past.<sup>5</sup> This is due, in part, to the lack of clear guidance as to what “physically feasible” under the *pro forma* means and how a transmission provider is to go about determining how to implement it.

As BPA preference customers, one of the chief concerns the Network Customer Group has regarding the physically feasible language BPA is proposing to adopt is how BPA reconciles that commitment under Schedule 9 with its statutory and contractual obligations to give preference customers priority access to the energy and capacity of the FCRPS in those instances where such energy and/or capacity is constrained—i.e., in the situation where BPA cannot meet both the needs of its preference customers and the balancing needs of generators in its Control Area. There is nothing in Schedule 9 clarifying that BPA’s legal obligations to its preference customers shapes the extent of its obligation to generators under Schedule 9. This should be remedied.

If it is not, BPA will leave itself exposed to either statutory/contractual claims from its preference customers or potential contractual claims from generators in its Control Area (or both). The latter claims could, for example, arise where it is physically feasible for BPA to meet the needs of its preference customers or generators under Schedule 9, but not both, and BPA uses such limited feasibility to meet the needs of its preference customers first (as it must). Under such circumstances, generators could argue that BPA breached its contractual obligation to provide GI Service to the extent it was physically feasible<sup>6</sup> and, therefore, should pay for the damages they incurred by BPA’s failure to do so. In such a case, the fact that BPA served preference customers first in accordance with its statutory obligations may not be sufficient to insulate BPA from such claims. The argument could be made that because BPA contractually overcommitted its system, and that this risk was foreseeable at the time BPA adopted Schedule

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<sup>5</sup> See Bonneville Power Admin., 145 FERC 61,150, ¶¶ 17-56.

<sup>6</sup> The terms and conditions of BPA’s tariff are expressly incorporated into its transmission service agreements with its transmission customers. Accordingly, a breach by BPA of a Tariff obligation is effectively a breach by BPA under the transmission service agreements it maintains with its transmission customers.

9, that BPA, rather than generators, should bear the financial implications of such over-commitment.

Accordingly, and consistent with BPA's first guiding principle for deviations from the *pro forma*, BPA should qualify its obligation to provide GI Service under Schedule 9 to reflect its statutory obligations to its preference customers. In order to achieve this objective, we recommend that BPA amend the second sentence of the first paragraph of BPA's proposed Schedule 9 as follows:

*To the extent permitted by law, the Transmission Provider must offer this service to the extent it is physically feasible to do so from its resources or from resources available to it, when transmission service is used to deliver energy from a generator located within its Control Area.*

#### **G. Schedules 9 and 10.**

Another concern we have with BPA's proposed Schedule 9 is that it potentially conflicts with its proposal for Schedule 10 and the underlying draft Balancing Reserve Business Practice (the "Draft Business Practice") incorporated therein. The Draft Business Practice states that "BPA will use reasonable efforts to supply sufficient Balancing Reserve capacity to cover a 99.7 percent planning standard of balancing error events." However, under Schedule 9, BPA would promise to provide GI Service "to the extent it is physically feasible to do so from its resources or from resources available to it, when transmission service is used to deliver energy from a generator located within its Control Area."

This raises the question of whether it would be physically feasible for BPA to provide the GI Service from either its own resources, or from resources available to it, to meet a planning standard above the 99.7 percent proposed under the Draft Business Practice. If the answer is or ever becomes yes, then, arguably, BPA would be in violation of Schedule 9 of the Tariff if it were to establish or hold a reserve requirement below what it is physically feasible for BPA to achieve, even if such reserve requirement met the 99.7 percent planning standard under the Draft Business Practice.

To address these concerns, BPA should further shape its obligation to provide the GI Service to the lower of the amount it determines it is physically feasible to provide or the amount established under Schedule 10. This could be achieved by further amending the second sentence of the first paragraph of BPA's proposed Schedule 9 as follows:

*To the extent permitted by law and otherwise established under Schedule 10 of this Tariff, the Transmission Provider must offer this service to the extent it is physically feasible to do so from its resources or from resources available to it, when transmission service is used to deliver energy from a generator located within its Control Area.*

We appreciate this opportunity comment and look forward to participating in the TC-20 workshops this summer.