January 11, 2013

VIA EMAIL
Tech Forum
Bonneville Power Administration – TPP2
Transmission Services
PO Box 491
Vancouver, WA 98666
techforum@bpa.gov

Re: Comments of Public Power Council, Northwest Requirements Utilities, PNGC Power and Public Utility District No. 1 of Snohomish County, Wash., on BPA's Proposed NOS Reform Structure Alternatives and Construction Phase Options

Public Power Council, Northwest Requirements Utilities, PNGC Power and Public Utility District No. 1 of Snohomish County, Wash., (collectively the Parties) provide these comments on the Network Open Season (NOS) reform options and alternatives that BPA staff proposed on December 14, 2012. We appreciate the opportunity to comment and the efforts of staff to develop these proposals.

The Parties have two principal concerns regarding the current NOS process: the financial risks to which BPA has been exposed by the current process and the need to provide a commercially viable process for the construction of new transmission. The financial risks that the current NOS process exposes BPA to are several. Risks include –

- default by PTSA counterparties and the loss of revenue, which we have seen demonstrated by the recent requests for PTSA termination and modification in lieu of default;
- commitment of scarce borrowing authority or other capital to transmission projects to support the integration of generation plants that may not be built, which may impact BPA's other capital programs and its bond ratings; and
- potentially building transmission projects on right-of-ways that are either not needed or are the wrong size.

In regard to the need for a commercially viable process, the Parties believe that BPA has to provide a process that produces the right transmission plan and that occurs often enough to satisfy the majority of, but not necessarily all, needs.

Financial Commitments by NOS Participants

With regard to the two financial commitment options for the construction phase that BPA staff provided in December, we believe that either is workable with some modifications, but that Option B is preferable. Option B provides greater financial protection to BPA by ensuring that customers causing BPA to invest millions of dollars in

new transmission facilities are sufficiently committed to taking and paying for transmission service when construction is commenced and BPA's final decisions have been made. Option B's exemption of Transmission Service Requests (TSRs) associated with attested Designated Network Resources (DNRs) is appropriate; it is consistent with BPA's Open-Access Transmission Tariff (OATT) requirements and obligations. The requirement that TSRs not associated with attested DNRs and PTP TSRs provide security is similarly in line with the OATT; the security requirements are less than those required under the *pro forma* OATT and in line with other rights and obligations.

In addition to being consistent with the BPA OATT, and more accommodating than the *pro forma* OATT, Option B most importantly takes a significant step towards addressing the first two financial concerns set out above. At the point when BPA has decided to go forward with construction, BPA needs concrete and reliable assurances that customers, whose needs are causing the construction, will make good on their obligations under the PTSAs. As BPA staff noted, Option B "[r]educes the risks of strategic default."[1] Without adequate protection from default, BPA and its transmission customers become the recipients of the defaulting customer's commercial risks. We think that Option B, coupled with changes to the NOS process, goes some way towards reducing that possibility.

That said, the Parties believe that BPA should modify Option B somewhat. BPA should adjust the criteria and discount for "Existing Rate Base with Rate-Setting ability that is . . . not subject to regulatory approval."[2] We suggest that BPA replace "Existing Rate Base" with "Utility responsibility to serve established service territory and retail customer base." Rate Base is a term that applies to investor-owned utility ratemaking; cooperatives, municipal utilities and Public and People's Utility Districts use different financial models to set retail rates. The existing wording might be read to exclude certain segments of public power utilities. We also suggest that BPA replace "not subject to regulatory authority" with "not subject to state PUC retail rate approval."[3] This will put the criteria in terms that are plainly applicable to public power utilities and will help avoid future confusion and conflict over interpretation.

The reason for providing this discount is that load-serving entities with statutory obligations to serve their customers, established service areas and retail customer base rely on BPA transmission service to meet those obligations. These public power utilities cannot leave the region or the BPA system to pursue better commercial opportunities elsewhere in the country or internationally. Public power utilities are here for the long

---

[1] BPA, *Network Open Season Reform: Financial Commitment Proposal*, Dec. 14, 2012 (revised ver. posted Dec. 20, 2012), p. 9.
[2] *Id*., p. 16.
[3] The clarification provided in the revised presentation, *id*. at p. 12, is very helpful but we prefer that BPA revise the criterion itself to reflect that the test is not being subject state PUC approval of retail rates.

haul. Moreover, they have transmission *and* power contracts with BPA and their future long-term relationship with BPA is a very significant curb on defaults. As a result, we believe that BPA should adjust the percentages applied to certain discounts in Option B[4] as follows: the discount for what BPA terms "Rate Base with Rate Setting Ability that is Not Subject to Regulatory Approval" should lead to a discount of 25%. The discount associated with a credit rating, including a BPA-created proxy credit rating, of AA- to AAA should be 20%; the discount associated with a credit rating, including BPA's internal credit rating, of A- to A+ should be 15%; and the discount associated with a credit rating, including BPA's internal credit rating, of BBB- to BPP+ should be 10%. These percentages are more in line with BPA's actual risk exposure presented by customers.[5] If BPA chooses to adopt Option A, we suggest that parallel changes be made in that Option; we suggest that BPA reduce each of the discounts associated with credit ratings by 5% and that the discount for what BPA terms "Rate Base with Rate Setting Ability that is Not Subject to Regulatory Approval" be increased to 40%.[6]

In addition we suggest that BPA should make the following changes to Option A and B –

- If BPA provides a discount to a customer, based on the customer's parent's credit rating, that discount must be expressly conditioned on receipt of a binding and irrevocable guarantee from the parent of the customer's debts. Without that, the parent's credit rating is irrelevant.
- BPA should expressly require that the criteria underlying a discount is continually met throughout the construction period and ensure that BPA can request additional security if a credit rating declines or a condition underlying a discount changes. Without the ability to adjust the security to match the actual financial health of the customer, BPA has no assurance of adequate financial security.
- BPA should review its PTSA to ensure that its right to collect on the security is clear and enforceable and be certain that it in fact has the right to collect on each form of security provided.

In regard to Study costs, the Parties recommend that BPA require that NOS participants provide security equal to their *pro rata* shares of the Cluster Study costs,[7] and subsequently, all NEPA study costs. BPA should hold these securities until the time the PTSA customer begins to take transmission service on the completion of construction so that BPA returns only the deposits to customers who do not drop out of the process prior to that point. This will ensure that BPA does not incur study costs for

---

[4] *Id*., p. 16.
[5] Credit ratings are good indicators due to their availability and standardization but it is also worth noting that as predictors they are not infallible. Enron had a credit rating of Baa+ in 1999.
[6] *Id*., p. 9.
[7] There remains a question of how to calculate *pro rata* shares for NT customers and BPA should define that calculation after discussion with its transmission customers.

participants who drop out of NOS. It will also relieve BPA of having to recalculate each participant's *pro rata* share, and collect the incremental deposit amount, each time a party drops out so that BPA's costs remain fully covered throughout the study process.

Reform of the NOS Process

With regard to the proposed changes to the NOS process, the Parties believe that neither the status quo nor the *pro forma* options are viable. The status quo clearly did not provide BPA with the needed financial protections as demonstrated by (i) the need to modify and terminate some executed PTSAs to avoid default, (ii) the potential for future defaults of other executed PTSAs and (iii) the construction of a 500 kV transmission project that may not generate sufficient revenues to cover its costs for quite some time, if at all. The *pro forma* OATT, while it provides fully adequate protection to the transmission provider from these financial risks, has failed in many circumstances nationally to produce significant new transmission without the additional assistance of financial inducements to transmission providers. The Parties would support the use of either Option 3 or 4, in conjunction with Option 5 to provide an early restart to the process.

The Parties' concern is that 12 months may not be an adequate period for the transmission planners to complete the work needed to produce a supportable and accurate transmission plan that meets the needs of customers with the right facilities in the right places at the lowest reasonable cost. BPA's transmission planning staff has commented throughout the process that 12 months is not sufficient to get that job done. Although BPA staff states that they believe that they will not receive as many NOS TSRs as in previous processes, BPA cannot rely on that assumption in designing its process. The process that is adopted must be able to accommodate larger volumes, as that is as likely in the future as the converse. We would prefer to see a process that is robust enough to function under a wide range of circumstances so that reapplication to FERC for revisions is not required.

If the 12-month period is too short to accomplish thorough and accurate planning, a 24-month process (Alternative 4), with the option of tariff cluster studies (Alternative 5) within that period, seems the better option. Borrowing authority and rights-of-ways are scarce and valuable. It is preferable that BPA and the customers be certain that the transmission projects proposed are the right ones for both immediate and future needs. We think that a 24-month process should be viable for customers. If the process is clearly explained in advance, and if a usable opt-out process is provided, customers should be able to add the new NOS timeline to the tasks and timelines they already have for sourcing or developing generation. Providing tariff cluster studies in between NOS cluster studies will also provide BPA and customers greater flexibility when appropriate and needed. The Parties also support the use of tariff cluster studies (Alternative 5) prior to a NOS process re-start in mid-2013.

Opting-In and Opting-Out

On June 28, 2012, BPA staff presented a proposal to maintain a non-NOS study process. This would allow customers to opt-out of the NOS study process in order to pursue a System Impact Study and System Facilities Study under the *pro forma* OATT provisions, with all study costs being borne by the requesting customer. We strongly encourage BPA to continue to provide such an opt-out process because not all customers will want or need to participate in the NOS process. A customer may need study results sooner than the NOS Cluster Study can provide them. Also, a TSR may reveal the need for sub-grid improvements that are economic to undertake and may be completed on a shorter timeframe and less expensively than a build through NOS.

BPA proposed three non-NOS study windows that link up to different parts of the NOS process. The Parties would like to work with BPA further on development those non-NOS options that would provide cost-effective studies of individual TSRs on a timely basis. As a general matter, we suggest that an opt-out process should be clearly defined and as simple as possible. The approach of the three non-NOS windows, presented in 2012, is somewhat complicated and we would like to explore whether a more streamlined and efficient approach can be constructed. We ask that BPA work with customers to develop an approach that is transparent, easy to understand and request, and meets the needs described above.

Regarding opting into NOS, public power representatives suggested in several NOS meetings that BPA consider allowing customers, which opted out of NOS and requested application of the *pro forma* individual studies, be able to re-enter a NOS process if the result of the individual study is similar to the outcome of the NOS cluster study. For example, if the individual study shows the need of an upgrade to Substation A, and the NOS Cluster Study shows the same need, it is reasonable to merge those requests into one NOS project upon request by the customer opting out. The timeline for this can remain flexible, as there is not a particular timeline for the opt-out studies.

TSR Requirements

BPA proposes to limit participation in NOS exclusively to TSRs with a term of 5 years or longer. We agree that transmission should be built for long-term needs and that the limitation is not, in itself, inappropriate. BPA needs to acknowledge, however, that many of the collective needs of its customers for new transmission facilities cannot be met through NOS given this limitation. Many TSRs with durations of less than 5 years that are in the Long-Term Firm Request Queue (LTFRQ) cannot be granted due to a lack of AFC or due to sub-grid issues. "Shorter-term" (*i.e.*, long-term TSRs with terms of less than 5 years) TSRs, however, will never find their way into the NOS transmission planning process because the proposed limitation excludes them. As a result, the sub-

grid issues are unlikely to be resolved by construction because it will not be economic for one customer to pay for construction pursuant to the tariff, even for recurring shorter-term transactions.

If there are many of these transactions triggering the same or related sub-grid issues, BPA should have some process for taking account of the need and evaluating whether construction is needed and whether these requests should be either handled in a tariff cluster study or some other part of BPA's transmission planning process, such as NOS planning studies or planning studies for reliability and load growth. PPC requests that BPA meet with customers in the next few months to discuss how to address these shorter-term TSRs, which are persistent and evade the current planning, and proposed NOS, processes.

In addition, BPA proposes to require that TSRs eligible for NOS contain source and sink information. We do not disagree with this requirement but wish to acknowledge that enforcement of this requirement is likely to cause difficulties for some parties who cannot know so far in advance either which particular generator is the source or which load is the sink for the power. It will be important for BPA to meet with the customers and propose whether and, if so, how to resolve the interface between transmission planning's very legitimate needs for accurate and complete information needed for reliable power flow studies and the commercial practices of the region in contracting for power.

Thank you again for the opportunity to comment on these alternatives and options. Developing the process and the allocation of risk that best protects BPA and its customers is a priority for the Parties and we believe that the proposed reforms are moving in the right direction.