

COMMENTS OF THE WESTERN PUBLIC AGENCIES GROUP ON NETWORK OPEN SEASON REFORM PROPOSALS

Submitted: January 11, 2013

The utilities that comprise the Western Public Agencies Group (WPAG) welcome this opportunity to comment on the Bonneville Power Administration's (BPA) proposals for Network Open Season (NOS) Reform presented at the customer meeting held on December 14, 2012. We also appreciate the hard and thoughtful work that BPA staff has put into developing the NOS Reform proposals. It is clear that the BPA is making an effort to reduce the financial risks to it, and its ratepayers, that are hardwired into the current NOS process. We believe this to be a worthwhile effort.

1. Introduction

The WPAG utilities primary concerns with the present NOS process are the financial risks that the process exposes to both BPA and, ultimately, BPA's ratepayers. The most recent and glaring example of the financial risks embedded in the current NOS process is the soon to be concluded Precedent Transmission Service Agreement (PTSA) reform process. In that process several multi-billion dollar international corporations leveraged the current NOS structure and the use of single project limited liability company shells to walk away from multi-year transmission commitments for no more than the forfeiture of their initial performance assurance deposit. This despite that BPA has or still intends to build the transmission facilities that these parties originally requested that BPA build in exchange for their promise to take and pay for service over those facilities.

The era of strategic defaults that burden Northwest ratepayers with the risks of the business ventures of multi-national corporations must come to a close. BPA does not have the borrowing authority and BPA's ratepayers do not have wherewithal or patience to pay for additional misadventures in NOS. For these reasons, and other reasons identified in prior submittals on this topic, the WPAG utilities make the following recommendations and comments:

2. Financial Commitments - Study Costs

During the NOS study phase NOS participants should be required to provide security equal to their pro rata shares of the Cluster Study costs and NEPA study costs. If parties drop out of NOS during the study phase then BPA should recalculate the pro rata shares of the remaining participants and require them to provide sufficient security to match their new pro rata share of study costs.

3. Financial Commitments – Construction Costs

With the proposed modifications contained in the comments submitted by the Public Power Council, the WPAG utilities support BPA's Option B for construction phase financial commitments. Option B's use of tiered financial commitments based on risk weighted criteria takes into account that not all NOS participants have the same risk-profile, which is appropriate. On the other hand, the minimum financial commitment under Option B, that customers provide no less than 50 percent of their pro rata share of construction costs, provides greater financial protection to BPA than Option A with no floor. Such commitments will reduce speculative transmission requests as well as the risk of strategic default that BPA experienced in the PTSA reform process.

We also support Option B's exemption from providing a financial commitment where a transmission service request (TSR) is associated with an attested Designated Network Resource (DNR). Customers that attest to a DNR are assuring BPA that they have obtained rights to the generation for which the transmission service has been requested. As explained by BPA staff on December 14, 2012, such attestation provides a much greater degree of certainty that the transmission facilities requested will be used and paid for by the requesting customer. In addition, the exemption is consistent with the attestation exemption contained in the current NOS process and BPA's Open Access Transmission Tariff.

4. Financial Commitments - Parental Guarantees

Before providing a discount to the financial commitment obligation of a customer based on the credit rating of that customer's parent corporation, BPA must require a parental guarantee from the parent corporation guaranteeing the obligations of its subsidiary. The absence of such a guarantee renders the parent corporation's credit rating meaningless for purposes reducing BPA's risk exposure in NOS.

5. PTSA Modification

The PTSA agreement should be modified to impose significant penalties, such as requiring that BPA be made whole for foregone revenues caused by a default, to reduce the number of speculative transmission requests and to make the price of renegeing on PTSA obligations formidable. In addition, the PTSA agreement must provide a direct and clear contractual basis for forfeiture of financial commitments in the event of default and require that any security instrument provided contain a similar direct and clear basis for realizing on that security in the event of default.

6. Five Year TSR Limitation

BPA's proposal to limit NOS participation to TSRs with a term of five years or longer seems appropriate. NOS builds are long term investments and that deserve long term commitments from customers to justify them. However, the limitation will mean that some TSRs needed by BPA's customers simply will not be met through NOS. The WPAG utilities respectfully request that BPA work with customers to address ways that BPA will consider and facilitate TSRs that are for less than five years if such requests are outside the NOS framework.

7. Deferral Fees

The relative low expense of deferral fees was a leverage point exploited by developers under the PTSA reform process to cause BPA to accept termination of their PTSAs for no more than their performance assurance.¹ BPA needs to reduce the efficacy of this tool in the strategic default toolbox. One way to do so would be to increase the amount of the deferral fee for each successive year of deferral, e.g., first year of deferral – fee equal to cost of one month of transmission service; second year - fee equal to cost of two months of transmission service; and so forth.

8. Conclusion

The proposals made by BPA staff on NOS financial commitment reform demonstrate that BPA has been listening to its customers regarding their concerns as to the financial risks to BPA and its ratepayers due to the current NOS framework. The proposals made are all a step in the right direction to reducing the financial risks to BPA's ratepayers from NOS. We are encouraged by BPA's reform efforts to date and look forward to working with BPA on this matter as BPA moves forward in the process.

¹ See WPAG submittal on PTSA Reform dated December 14, 2012.