

techforum@bpa.gov

March 7, 2018

Re: NIPPC Comments on BPA *Pro Forma* Gap Analysis Strategic Guidance and Rollover Rights

The Northwest and Intermountain Independent Power Producers Coalition (NIPPC) offers the following comments to the BPA proposals presented on February 21 related to Customer Rollover Rights.

General Comments on BPA's "*Pro Forma* Strategic Guidance"

In introducing the specific topic of Rollover Rights, BPA offered a very brief review of its strategy regarding alignment with the FERC *Pro Forma* Open Access Transmission Tariff. BPA stated that it intends to align its Transmission Tariff with the FERC *Pro Forma* where practical. In weighing whether to deviate from the *Pro Forma*, BPA identified several factors it will consider:

- BPA's statutory and legal obligations, authorities, or responsibilities;
- Reliable and efficient operation of the Federal system;
- Preventing significant harm or providing significant benefit to BPA's mission or the region;
- The FERC *pro forma* tariff is lagging behind industry best practice, including instances of BPA setting the industry best practice.

NIPPC concurs that BPA should adhere as closely as possible to the FERC *Pro Forma* tariff. NIPPC also agrees — that in certain instances — deviations from the FERC *Pro Forma* are appropriate. NIPPC, however, has concerns with the factors that BPA has indicated it will apply to determine whether BPA's tariff should deviate from the *Pro Forma*.

Is a Deviation Unduly Discriminatory or Preferential

NIPPC recognizes that BPA's transmission tariff must be consistent with the various statutes governing BPA. Among these statutory obligations, however, are the requirements of 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." Other factors listed by BPA must be subordinate to the statutory mandate that transmission service must be not be unduly discriminatory or preferential. Even if a proposed deviation enables a more efficient operation of the transmission system or creates benefits for the region; it should not be adopted if it fails to meet the "not unduly discriminatory or preferential" test.

Does a Deviation Foster a Stable and Predictable Regulatory Environment

BPA should also consider the impact a proposed deviation will have on the business environment in the Northwest, specifically the energy industry in the region. All business activity today requires electricity; but some industries are more energy intensive than others. Energy intensive businesses are sensitive not only to the price of energy and reliability of service; but with increasing frequency businesses are seeking to meet their energy demand with energy from renewable energy resources. Economic growth in the region is increasingly tied to access to new renewable energy generation.

Businesses considering whether to bring new loads or new generation to the Pacific Northwest need a stable and predictable regulatory environment. Companies will not invest hundreds of millions of dollars (or billions of dollars) in new load or generation facilities and bring hundreds of new jobs to the region in the absence of a stable and predictable business environment — which includes the terms and conditions of transmission service. BPA's decision to undertake a review of the terms and conditions of its transmission service has already increased the uncertainty and risk in the near term. Accordingly, BPA should take special care to ensure that the results of this tariff reform process are durable and minimize future uncertainties to the extent possible. A deviation that locks in uncertainty — such a periodic reassessment of whether a customer has transmission service — is not likely to contribute to investment and economic growth in the region.

Does a Deviation Encourage a Competitive Wholesale Energy Market

An additional factor BPA should consider in whether to adopt a deviation is whether the deviation advances the policy underlying the Open Access Transmission Tariff. Despite BPA's assertion in its presentation, the Open Access Transmission Tariff was not adopted for the primary purpose of standardizing the terms and conditions of transmission service. Rather the Open Access Transmission Tariff was the *mechanism* FERC used to achieve its primary policy goal to:

. . . remove impediments to competition in the wholesale build power marketplace and to bring more efficient lower cost power to the Nation's electricity consumers.¹

Accordingly, in considering deviations from the *Pro Forma* transmission tariff, BPA should evaluate whether a proposed deviation will result in a more competitive wholesale energy market than the *Pro Forma* language. NIPPC urges BPA to formally adopt this additional consideration as part of its criteria in evaluating potential deviations from the *Pro Forma*.

Queue Management/Rollover

BPA admits that its current practice with regard to determining which transmission requests are entitled to rollover rights is not consistent with either BPA's existing tariff, the FERC *Pro Forma* or industry standards. In light of this acknowledgment that BPA is not complying with the terms of its own tariff, any changes to BPA's policies related to rollover rights must provide a transition mechanism that allows customers currently in the queue to conform their requests to the new policy.

In theory, the problem BPA is trying to address should be fairly narrow. BPA has described a circumstance where a customer initially requested a transmission service contract with a term of five years or more — in which case the customer would be entitled to rollover rights; but

¹ FERC Order No. 888, p. 1 (1996) 75 FERC 61,080

because the originally requested service commencement date has passed, the term of the requested service is now less than five years. In this case, do rollover rights still attach to the service request?

It seems that BPA is in exclusive control of all the factors that result in a customer's transmission service request still being in the queue after the service commencement date in the original request. Certainly, BPA's failure to complete studies in a timely manner is one factor. BPA's policies related to allowing customers to linger in the queue with remainder requests is another factor. One solution to this problem would simply be for BPA to complete study requests on time and tender agreements on time; in which case very few service requests would still be in the queue after their requested service commencement date.

But BPA has invited customer comment on two options. The *Pro Forma* option would result in a customer not having rollover rights if the service commencement date passes resulting in the remaining term of the request being less than five years. The second option - titled *Customer Impacts* — would allow a customer to retain its rollover rights even if the remaining term of service on its request is less than five years so long as it is actively participating in a study, build or upgrade process.

NIPPC believes that the second option which allows customers to retain their rollover rights while they are participating in a study is superior to the first option which eliminates their rollover rights once the service commencement date passes.

The first option creates an opportunity for abuse. Even if BPA never acts with discriminatory intent, the first option would seem to enable BPA to cherry pick which requests get rollover rights by delaying its action on a request until the term of service was less than five years; removing rollover rights from the request; and applying the resulting capacity to lower queued requests. Certainly the first customer to be impacted in this way is likely to argue that BPA was discriminatory and preferential in awarding service in violation of § 211A.

The study option is preferable because it allows customers to retain their rights while locked into a study process whose timing they can not control. The ability to complete study requests, or even transmission projects on time is entirely within BPA's control; customers have no ability to speed the process. Accordingly, customers in the transmission service queue should not be negatively impacted - by losing their potential rollover rights - as a result of factors that are within BPA's exclusive control. Customers who participate in a study or upgrade process should have the opportunity to conform their requested term of service to retain their rollover rights.

Transition Process

Regardless of which option BPA chooses, BPA must offer customers in the queue the opportunity to conform their requests to the new paradigm so that they can retain their rollover rights for requests that would otherwise be impacted. This is a particular concern under the first option, but applies to the second option as well. That part of the problem stems from BPA's past failure to apply the terms of its existing tariff, underscores BPA's obligation to provide customers with a transition period to conform their existing requests in the queue.

Queue Management

NIPPC suggests that cutting off rollover rights is not a replacement for effective and timely processing of transmission requests. It appears that BPA staff believes that cutting off rollover rights for requests that have lingered in the queue beyond their original service commencement

date can be an effective tool for managing the transmission service queue. NIPPC disagrees. At best, cutting off rollover rights will provide a single instance of allowing BPA to clear requests from its queue; customers will respond by submitting transmission service requests with longer terms so that even if their commencement date passes, they will still retain a potential contract term of five years or more. To the extent there are other policies at BPA that contribute to a clogged transmission service queue, such as BPA's remainder policy; those policies should be addressed directly — not sidewise by cutting off rollover rights.

Feedback on Process

NIPPC hopes that future workshops in the *Pro Forma/Industry Standard Gap Analysis* series will be improved over the February 21 workshop. The level of detail in the written materials and presentation on Rollover Rights and the options BPA was considering was too general. That level of detail might be appropriate if BPA and customers anticipated that the workshop was the kick-off of a longer discussion regarding the specific topic of rollover rights. But if the February 21 workshop (and customers written comments) represents the only opportunity for BPA and its customers to engage on the topic, future workshops need to be much more detailed.

In future workshops, the various options BPA is considering need to be more fully developed; much more developed than mere bullet points on a single slide. In addition, if BPA is considering a deviation, it should apply its decision making criteria to the option as part of its initial presentation — not defer that first analysis to customers. The detailed written materials also need to be made available to customers much more ahead of time. These issues are complex; in order to be prepared for these workshops customers must have time to allow the subject matter experts within their own organizations the opportunity to review the materials ahead of time so that the right people can attend the workshop and ask the right questions.

Thank you for the opportunity to submit these comments. Please contact Henry Tilghman if you have any questions.