

BPA Transmission *Pro Forma* Gap Analysis (PFGA)

Comments of the Sacramento Municipal Utility District, Transmission Agency of Northern California, and Turlock Irrigation District

December 8, 2017

I. Introduction

BPA is an important entity in the west, and the Sacramento Municipal Utility District (SMUD), Transmission Agency of Northern California (TANC), and Turlock Irrigation District (TID) (jointly the “Northern California Utilities”) value our partnership with BPA. Given the unique dynamics of the western interconnection, BPA’s actions can have impacts throughout the interconnection that are not just limited to the Northwest. In particular, the robust connection between the Northwest and California creates a unique relationship where changes to respective operations or markets can be quite acute in neighboring regions.

We appreciate the opportunity to provide the following comments in response to BPA’s request for input following the series of workshops this year on the transmission *Pro Forma* Gap Analysis. The following comments should be read in combination with our comments previously filed on October 4, 2017 on the subject of the possible elimination of Hourly Firm service. We discuss Hourly Firm service here, in addition to other topics. The Northern California Utilities look forward to participating in BPA’s 2018 workshops on transmission rates and tariff provisions.

As a preliminary matter, at this early stage, we suggest BPA ensure that (a) adequate notice be provided of both timing and content, and (b) WebEx options be offered for those unable to attend in person. In addition, we suggest future workshops that address market operations should be driven to the greatest extent possible by empirical evidence. Finally, it would be helpful if BPA were to request regular feedback in writing to specific proposals, tariff provisions, business practice language, and optional solutions to well-identified problems, to allow incremental progress during the workshops.

II. Interests of Northern California Utilities

The Northern California Utilities and other California utilities seek to build new and continue existing business relationships with the Northwest and BPA, including long-term purchases of renewable energy and short-term arrangements for various forms of power (low

carbon, renewable, and thermal). State mandates in California require increasing supplies of renewable energy delivered to retail loads (Renewables Portfolio Standards or RPS), which in turn requires utilities to seek economical renewable power supplies throughout the western United States. Energy markets in the West are increasingly integrated and interdependent, even over great distances. California utilities' procurement plans for meeting California's RPS are clearly not limited to resources geographically located in California. In part as a result of increasing RPS obligations, California is expected to experience more frequent periods of intermittent over-supply, which can drive negative pricing and stimulate exports, including to the Northwest. This over-supply, in conjunction with the additional need for fast ramping resources, emphasizes the increasing degree of interdependence expected in the future between regions.

In addition, given that the Southern Intertie is comprised, in part, of the California-Oregon Intertie ("COI"), it implicates the California-Oregon Transmission Project ("COTP"), of which TANC is the largest Participant and Project Manager. Not only is the COTP interconnected with BPA's Southern Intertie to the north, it is interconnected to transmission lines under the operational control of the California Independent System Operator Corporation ("CAISO") to the south. TANC, on behalf of its Members (including SMUD and TID), developed the COTP to allow for the firm interregional transfer of energy and capacity between California and the Pacific Northwest to provide the opportunity for TANC Members to access Pacific Northwest excess energy, perform seasonal exchanges with Pacific Northwest utilities and to permit access to TANC Members for their ownership or long-term contractual rights to generation resources in the Pacific Northwest. Thus, the Northern California Utilities have a significant interest in ensuring that the use of the COTP by TANC Members and others is not adversely impacted.

III. Value-Based Pricing

BPA has proposed the implementation of "value-based pricing" of transmission services, but without any details supporting this proposal. For example, see BPA's "Transmission Business Model", Working Draft Version 3.0, September 2017 at 17:

Value-based price profiles are imperative to the BPA's ability to manage costs, and deliver certainty and quality under the Transmission of Tomorrow. Value based price

profiles will facilitate feedback loops, including benchmarking of our products and services in the industry.

By 202X, Transmission will distinctly price products that intersect value and cost at defined levels of service and engagement, delivering across basic and enhanced customer needs. BPA intends to use the full range of product options available in our current tariff, consistent with FERC *pro forma* and industry best practices. We will also appropriately balance and allocate the level of risk with the value and price of the product.

Appropriate cost allocation is foundational to offering a portfolio of products at rates with corresponding value. The effect of creating and offering this portfolio will drive changes to how BPA invests internally.

“Capturing value”, also discussed in BPA’s Transmission Business Model, is a proposal that will require careful consideration from an implementation perspective. It is important that, through the stakeholder process and workshops, BPA develops a clear understanding of how this proposal to “capture value” will impact markets in the Pacific Northwest and elsewhere throughout the West. Similarly, BPA’s withdrawal from a market (*e.g.*, Hourly Firm), will not prohibit non-federal transmission providers, including long-term transmission rights holders, from selling bundled or unbundled transmission service in shorter intervals, to “capture value” from customers.

At the same time, BPA has proposed that overall transmission rates would be constrained by the agency’s embedded-cost transmission revenue requirements. The combination of these two proposals (cost-based and value-based) is a significant undertaking, and raises significant legal, policy, economic and operational questions. At the very least, departures from traditional cost-based methodologies could cause both power and transmission customers to question the prudence of relying on the Northwest as a source of energy in the future. The Northern California Utilities are concerned that these proposals may reduce the ability to rely on the Northwest for any new long-term transactions, which will ultimately work to the disadvantage of Northwest customers who currently benefit from the sale of power and transmission services to customers in California.

Following is a list of questions that we recommend be addressed thoroughly and empirically before BPA embarks on any fundamental restructuring of transmission rates:

- a. Please explain the motivations for value-based pricing.

- b. Are there specific problems with current pricing methodologies that could be addressed by a shift to value-based pricing? If so, please describe these specific problems and provide examples.
- c. Are there alternative solutions to such problems? If so, please describe these alternative solutions and provide examples.
- d. Which transmission rates are under consideration for value-based pricing?
- e. What are “value-based price profiles”? Can BPA please provide some examples for evaluation?
- f. How will BPA decide to move to a specific “value-based profile”?
- g. What criteria will be used to choose a particular profile for a particular service?
- h. What analysis has been undertaken that shows “value-based profiles” are (a) necessary to meet BPA’s statutory mandates, (b) legal within such mandates, or (c) efficient?
- i. Does BPA expect LTF rights holders to shift to “value-based price profiles” as well? If so, please explain why and when this is expected to occur. If not, please explain why not.
- j. Has BPA considered the implications for western energy markets generally of moving toward value-based pricing?
- k. Will value-based pricing interrupt markets or cause liquidity to fall? If so, please explain how this will occur and who will benefit from such changes.

IV. Hourly Firm Service and Congestion Management

The Northern California Utilities understand that the question of unlimited Hourly Firm (HF) service originates on the BPA Network (Network) rather than on the Interties. The Northern California Utilities also acknowledge that hourly firm service is not required pursuant to Schedule 7 of the *pro forma* OATT (Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service). However, in light of the existence of this transmission product in BPA’s OATT, the Northern California Utilities have questions about whether there will be spill-over effects of any limitations on HF service from the Network to other segments of BPA’s grid. For example, limits on the availability of federal HF service on the Network could affect transactions at COB and NOB, which depend in most instances on transactions that originate or terminate at the Mid-Columbia Hub. Accordingly, has BPA considered whether changes in the availability of HF service on the Network would affect liquidity markets at COB and NOB? In addition, has

BPA considered how BPA's restrictions on HF service on the Network may affect availability of non-federal HF service?

A limited number of long-term firm transmission customers hold rights on both the Network and the Southern Intertie that enable transactions at COB and NOB. Has BPA considered how concentrated the HF market may become, possibly limiting the number of potential counterparties at COB and NOB? While BPA may achieve a federal financial objective, it could come at the expense of the broader markets. If the number of potential counterparties at COB and NOB falls sufficiently, and prices at COB and NOB spike and/or liquidity collapses, California utilities will be forced to turn to other, more liquid and more predictable suppliers at other trading hubs. Before embarking on such an enterprise, BPA should carefully consider the potential impacts across the WECC of changes in rate methodologies and/or quantities offered.

On the other hand, it is possible that new congestion management techniques may be developed for the Network that could have beneficial effects on trading at Mid-C, COB and NOB. For example, if redispatch in the Northwest (e.g., on the South of Allston flowgate) expands in an efficient and competitive manner, the availability of HF service both on the Network and on the Southern Intertie could increase, enabling more transactions at more competitive prices.

At the workshop on October 27, 2017, some customers expressed concerns about the South of Allston Pilot Project conducted last summer. As reported at the October 27 workshop, spot energy prices spiked to \$200/MWh, and some customers had to use non-firm transmission to serve firm retail load. These are not the hallmarks of a successful pilot project, and suggest that the next pilot be structured differently. We urge BPA to listen to these concerns about the advantages and disadvantages of redispatch as a congestion management tool. If the number of entities contracted to offer redispatch to help clear congestion was low, as reported, it is not surprising that the resulting energy prices were so high. According to BPA's "South of Allston (SOA) Non-Wires Pilot: 2017 Implementation", November 6, 2017,

"In April 2016, BPA issued a Request for Offer (RFO) for a pilot program to acquire third party supplied non-wires measures in the form of incremental energy (INCs), decremental energy (DECs), and Demand Side Management (DSM) load reduction for use in the BPA Balancing Authority Area. After careful evaluation of twenty bids, BPA

short-listed seven suppliers and executed contracts with three separate third-party suppliers of non-wires capacity.”

Depending on the method of implementation, a pool of only three suppliers could yield an oligopolistic solution, which would itself “extract value” from customers. Northern California Utilities are concerned that price spikes on the Network driven by non-competitive markets could spill over to the Interties, affecting prices and volumes at COB and NOB. Northern California Utilities further urge BPA to examine thoroughly the experience of the summer 2017 pilot before repeating the experiment in the summer of 2018.

While unlimited Hourly Firm may be “unworkable” according to some comments, other comments have said that this product is important. We agree that the status quo must be analyzed before any changes are proposed or implemented. Accordingly, the following is a list of questions that we recommend be addressed thoroughly and empirically before BPA embarks on any fundamental changes in the availability of HF service and the development and implementation of other congestion management techniques:

- a. If unlimited Hourly Firm is “unworkable,” how will Hourly Firm limits be determined? Has BPA considered what would occur if limits cause problems?
- b. Would limits be static or dynamic? Please describe what criteria would be used to determine static versus dynamic.
- c. Please describe how the Hourly Firm capacity on the Southern Intertie (or any Intertie) is driven by characteristics/uses/problems/issues on the Network.
- d. Does Hourly Firm present different “problems” on the Interties in general compared with the Network, within the context of BPA’s new “business model”? If so, please describe these problems and provide examples.
- e. Is BPA looking at different approaches to Hourly Firm for different parts of the grid? If so, please describe these approaches and provide examples.
- f. Would different restrictions on Hourly Firm on the Network and the Interties create internal seams (e.g., between Mid-C and COB/NOB, which requires both Network and Intertie service)? If so, please describe these seams and provide examples.
- g. Would the processes used to set limits on Hourly Firm be the same on all parts of the BPA grid? If not, please explain why.

- h. What impacts would there be on markets within the Northwest of limits on Hourly Firm on the Network?
- i. Are changes to HF curtailment protocols also being considered? If so, please describe these changes and provide examples.
- j. Are BPA's actions regarding HF driven by seams issues, either between the Northwest and California or within the Northwest? How does EIM market expansion affect the optimal solution to congestion management in the Northwest? Do any of these proposed changes solve any seams issues? If so, which seams issues? What plans does BPA have to coordinate changes with the CAISO and non-CAISO entities that transact at COB and NOB?
- k. What is BPA-Merchant's view on limits on Hourly Firm to the extent it is different than BPA-Transmission's view?

V. Changes in Access: ATC and System Impact Studies

At the October 27 workshop, the Northern California Utilities learned that it can currently take about eight years for a transmission service request to work through the long-term queue. Such a delay is commercially unworkable for utilities seeking to execute new Power Purchase Agreements (PPAs) with developers. Some kind of proof of firm transmission access to a specified POD is normally required by buyers as part of the due diligence process, even before PPA negotiations can begin after an RFP process. PPAs in turn normally state transmission rights as a "condition precedent", which failure to meet would cause termination of the PPA. The more uncertainty associated with transmission rights, the less functional and competitive are power markets. We urge BPA to find practical solutions to this problem in coordination with transmission and power customers as well as interconnected transmission owners, in the interest of all parties active in western energy markets. Again, existing scheduling and tagging systems rely on access to timely and accurate information regarding ATC. At the October 27 workshop, BPA also discussed the possibility that cluster studies would be implemented in the future on the Interties.

Following is a list of questions that we recommend be addressed thoroughly and empirically before BPA makes any fundamental changes to the methodology it uses to calculate ATC:

- a. How would BPA ensure that no undue discrimination results if BPA decides to not conduct studies and calculate ATC using the same processes, models and assumptions on the Network and the Interties?
- b. How would BPA ensure that any such change in procedure will facilitate clearing the Intertie queues in an expedited manner?

VI. Other Issues

At the October 27 workshop, the possibility of two simultaneous BPA open-access tariffs was discussed. As a general business proposition, the idea of two tariffs seems potentially unworkable and unduly complex. Customers (power and transmission) must know the rates, terms and conditions for delivery of power to specific PODs. E-tags must contain certain information or they will be denied. Working with multiple transmission agreements (legacy and open-access) can present problems in scheduling and tagging already, and the addition of a second BPA tariff would only seem to exacerbate the complexity of these processes. Two tariffs raise the possibility of two Business Practice Manuals, which could further complicate scheduling and tagging. Most fundamentally, transmission customers assume some (not unlimited) risk of changes in tariff conditions when signing a Transmission Service Agreement, so the need for two simultaneous tariffs has not yet been established.

Regarding ancillary services, we cannot find a compelling reason to conduct separate processes for setting rates, terms and conditions for required or optional ancillary services, and urge BPA to adopt industry standards wherever possible (*e.g.*, ancillary service schedules 3, 9 and 10). If terms and conditions for ancillary services are moved from the rate proceeding to the §212 hearing, there should be additional procedural safeguards to ensure the fairness of the process.

VII. Procedural Issues

BPA has proposed revising the language of its OATT §9 to eliminate review by the Federal Energy Regulatory Commission (“FERC”) when BPA proposes changes to its tariff, and instead implementing its own public process, modeled on §212 of the Federal Power Act, to allow interested parties to review and comment on the proposed changes. In a vacuum, the Northern California Utilities do not oppose this change to §9. Whether we ultimately support

this change, however, depends on the public process that BPA adopts. As discussed in more detail below, such a public process must, at minimum, have (a) an independent hearing officer (“HO”), (b) a separation-of-function provision in which the staff proposing the tariff changes is separate from the staff assisting and advising the Administrator in determining whether to adopt such a change, and (c) robust discovery provisions which allow for the development of a full and complete record in the proceeding.

The BPA Administrator has noted “a need to update BPA’s procedural rules” for its rate-making proceedings in the Final Record of Decision in the BP-18 proceeding. (See Final Record of Decision, BP-18 Rate Proceeding, p. 180.) In particular, the Administrator noted that the rules addressing “the treatment of confidential information in discovery and filings, the scope of and any limitations on discovery, the length of briefs and testimony, hearing and oral argument procedures” should be examined. *Id.* As to the scope and limitations on discovery, in particular, the Administrator recognized that the agency's rules would benefit from clarity on the issue of whether parties supporting a particular position, but possessing documents and data that would undercut their support, can or cannot shield that information from discovery by asserting that their chosen witnesses did not have access to it or did not rely on it.

1. Scope of the Proposed §212 Process

In the spirit of helping to craft an appropriate procedure consistent with the procedure set forth in §212 of the Federal Power Act for BPA’s tariff revision process, and to avoid some of the issues currently present in BPA’s rules for its ratemaking proceedings, the Northern California Utilities respectfully provide the following comments regarding elements necessary to ensure an open and fair process in revising BPA’s tariffs.

- a. As a preliminary matter, the Northern California Utilities seek clarification as to why a §212 tariff process is proposed.
 - i. How does a §212 tariff process provide BPA the flexibility to make the desired tariff changes, compared with other possible processes?
 - ii. Are there any other processes have been considered? If so, what were the reasons for rejecting such other processes?
- b. An independent HO is critical to ensuring the fairness of any tariff revision proceedings. The HO’s role in a §212 hearing is to determine what evidence is and is not admitted into the record and, based on such evidence, make a recommendation to

the Administrator stating the HO's findings and conclusions. Under §211 hearings that would be held before FERC before issuing an order under §212, an Administrative Law Judge typically serves as the hearing officer and not only rules on discovery matters and conducts the hearing, but issues a recommended decision.

- i. What will the HO's role be in the §212 process? In particular, if the HO will be making a recommended decision, independence becomes even more critical.
 - ii. Has BPA considered how the HO will be selected? Specifically, will BPA choose the HO unilaterally? What criteria will be used to ensure that the selected HO is independent and knowledgeable? In particular, an HO must know BPA's statutory obligations and be able to consider the available evidence, giving such evidence the appropriate weight, within those obligations.
 - iii. Will the HO be paid by BPA, or through some other source?
- c. Just as important as an independent HO is a separation of functions between BPA staff presenting evidence and the staff advising BPA management (including the Administrator) on the merits. The FERC regulations provide a good model for this concept. See 18 C.F.R. §2201. Such rules, akin to *ex parte* rules, establish a separation between the agency's staff performing a litigation role and those advising the agency on the merits. Without separation of functions, litigants simply have no way of knowing that the Administrator's decision was confined to the record or whether it may have been influenced by extra-record arguments made by trial staff. Creating a separation of functions rule will improve customer confidence in the impartiality of the process.
- i. Will BPA's proposal contain the important separation of functions between BPA staff presenting evidence and the staff advising BPA management (including the Administrator) on the merits?
 1. If so, please describe this separation of functions and how it will be similar to or different from FERC's process in 18 C.F.R. §2201.
 2. If not, please explain why BPA will not include such a separation of functions and how it will ensure impartiality without this separation.

- d. Another key consideration for the proposed §212 process is the discovery rules that would govern such a process. In particular, BPA must consider how it will determine what information is “relevant” during the discovery process and the standards BPA will use in mediating questions regarding relevance, burden, and attorney-client privilege.
- i. The Federal Rules of Civil Procedure (“FRCP”), and the attendant case law, provide useful guidance to such key discovery questions. FERC’s Order No. 466, 52 Fed. Reg. 6957, 6958 (1987) notes that, while the FRCP are not binding, they do guide FERC in resolving discovery issues. A similar proclamation by BPA from the beginning would provide all parties with an idea of what documents and other information may or may not be discoverable. Because the issue has come up in prior proceedings, the Administrator should make clear that parties cannot shield themselves against the production of relevant evidence by keeping the evidence from any witnesses they may choose to use. The Administrator should further clarify that parties cannot claim that information in their position contradicting their public positions is beyond discovery, simply because their chosen witnesses declare that they are not relying on such information to develop their public positions. Withholding information should be grounds for striking such parties’ testimony from the record.
 - ii. Will the Administrator make similar proclamations under BPA’s proposal?
 1. If so, please explain how BPA’s proposal will be similar and how it will be different from that provided for at FERC.
 2. If no, please explain whether, and if so, how BPA will ensure the same protections and processes provided at FERC are included in its proposed process.
 - iii. Under BPA’s proposal, will the Administrator require that parties cannot claim that information in their position contradicting their public positions is beyond discovery, simply because their chosen witnesses declare that they are not relying on such information to develop their public positions?

1. If not, please explain whether, and if so, how, BPA will ensure the same protections and processes provided at FERC are included in its proposed process.
- iv. Under BPA's proposal will withholding information be grounds for striking such parties' testimony from the record? If not, please explain why.
 - v. Similarly, while BPA's rules governing its rate hearings contemplate protective orders, parties would benefit from more guidance about protective order procedures. BPA should establish procedures for entering a protective order in a hearing, and then procedures for exchanging information pursuant to such a protective order. BPA proceedings often require the exchange of business-sensitive information that nonetheless is illuminating in proving or disproving a party's position. Thus, such information is often necessary to develop a complete record. By establishing procedures for entering a protective order and exchanging information pursuant to such an order, BPA can facilitate the development of a full and complete record without concern that sensitive business information may be improperly disclosed.
 1. Will BPA establish procedures for entering a protective order in a hearing? In not, please explain why.
 2. Will BPA establish procedures for exchanging information pursuant to such a protective order? In not, please explain why.
- e. Even when implementing robust procedures consistent with §212, difficult questions may arise in which the HO may seek the guidance of the Administrator, or alternatively, an incorrect decision by the HO may impact the entire proceeding. BPA should develop procedures permitting a party to appeal certain issues to the Administrator on an interlocutory basis, including what issues may be appealed and the procedures for seeking such an interlocutory appeal. Those rules should also permit the HO directly to seek input from the Administrator when necessary by certifying questions on an interlocutory basis. In some cases, waiting until the HO recommends a decision may be too late, and the damage from an earlier decision may be irreversible at that point. Again, FERC's procedural rules provide a model. See 18 C.F.R. §§714 and 715.

- d. When will interested parties have an opportunity to propose changes and comment on proposed changes?

Thank you.

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