

**Comments provided on behalf of Benton Rural Electric Association (Benton REA)
regarding the 04/07/08 Draft Regional Dialogue Load Following Contract Template**

Our utility is aware that public power representatives, including legal counsel for the Western Public Agencies Group (WPAG) and Northwest Requirements Utilities (NRU) are working with BPA staff to resolve issues presented by the draft Regional Dialogue contracts. We have asked our representatives to forego making detailed comments on the contracts and instead focus their limited time on resolving contract issues. However, our utility feels that it is very important to communicate to BPA the broad issues we have with the current draft of the Regional Dialogue Load Following Contract.

The following issues of concern have been identified after our initial review of the draft Load Following contract. We are likely to find additional issues of concern as we continue or review, so the following issues should be considered preliminary in nature. Additionally, Benton does not believe the contract template provides the necessary "must haves" that public power determined were necessary in order to proceed with TRM. We also find the arbitrary deadline that BPA has set for contract signature to be unnecessarily burdensome on Benton REA and other smaller customers creating a situation wherein we are unable to adequately employ the resources to accomplish the fiduciary and due diligence reviews necessary and required by our governing bodies. All of these issues must be satisfactorily resolved prior to the Regional Dialogue contracts being offered if these contracts are to be presented to our Board of Trustees for consideration and possible approval.

General Comments concerning the draft load following template

A. NO WARRANTY

The customer must agree that the contract provides no warranty against change because of subsequent legislation or agency regulation. This is worse than the current contract, which is silent on this issue. This language eliminates any defenses that a customer would have to resist legislative or agency regulatory change. The fact that agency regulation is not impeded by the contract also raises questions about the permanence of the Tiered Rate Methodology.

B. SETTING THE CHWM AND RHWM

The methodologies for determining key components of the business arrangement that set what power can be bought at what price should be included in the contract, rather than in the Tiered Rate Methodology. This includes the CHWM and RHWM. It is the contract, and not a rate policy, which establishes the business deal between BPA and a customer, so the contract is where the CHWM and RHWM should be determined.

C. CHANGING THE TRM

The Tiered Rate Methodology is the heart of the new business relationship, and any change to it should be subject to an approval process by the customers who are subject to its terms. This change mechanism must be set out in the contract, since that is the document that establishes the business rights and duties of the parties.

D. DISPUTING BPA DETERMINATIONS

Numerous values important to the customer are determined by BPA, and the customer has no ability to dispute or otherwise contest such determinations before a neutral third party. These values include the CHWM, RHW, net requirement, non-federal resource amounts, and the utility load forecast among others. Binding dispute resolution is only available to the customer when BPA agrees to it, and not as a matter of right. The draft provides less enforceability through dispute resolution before a neutral third party than the current contract.

E. TIER 2 NOTICE AND COMMITMENT TIMELINES

The contract requires three years advance notice and a five year commitment to either Tier 2 BPA service or for use of a non-federal resource to serve load above the RHW. This notice is far too long, and will impair the ability of customers to actually develop and use non-federal resources. Rather than encouraging customer resource development, the three years advance notice and five year commitment period seems designed to permit BPA to obtain customer commitments and then provide for BPA to pursue resource development on its own. This is just the opposite of what Regional Dialogue is supposed to achieve.

F. CONTRACT AMENDMENTS

Many of the exhibits to the contract are subject to revision by BPA without the consent of the customer, and without any means of disputing before a neutral third party the changes made by BPA. This is not how a contract should operate. Amendments to the exhibits should require the consent of both parties to the contract. Otherwise, it is not a business relationship of equals.

G. BUSINESS DEAL AND CONTRACT ORGANIZATION

The contract is so poorly organized that it is impossible for utility governing boards, managers and/or staff to understand what their rights and duties are, and when it is that they are obliged to take action. Such ambiguity will result in misunderstandings and disputes that are unnecessary and counterproductive. The contract must be much better organized, should use clear language, and should state with simplicity the nature of the basic business deal it is attempting to capture. It does none of these things now.

H. BILLING CREDIT WAIVER

The contract requires the customer to waive its statutory right to obtain billing credits, which was a mechanism included in the Northwest Power Act to *encourage* non-federal resource development. It is unclear why BPA is trying to hold this statutory right hostage. However, it is improper for BPA to insist that a customer waive a statutory right in order to obtain a power contract to which they also have a statutory right.

I. CHANGING PRODUCTS

The contract provides a single opportunity for all customers to change products, and all customers must do so on the same date. This approach creates a product change “cliff” that

helps neither the customers nor BPA. The contract should provide a single opportunity to change products during the contract term, but the timing of such change should be at the choice of the customer.

Detailed Comments concerning the draft load following template

Comments regarding the body of the Contract Template

Under Recitals (pg 4)- the fourth paragraph includes language as follows “in order to maintain the benefits of the federal system in the future.” Unless someone can point to specific contract language which actually does maintain the benefits of the federal system in the future” this language should be struck from the contract. Leaving it in the contract creates a false sense of contract rights that don’t exist.

Under Definitions (pg 6)-item (q) the definition of “Transfer Service” needs to be clarified.

Section 4-Tiered Rate Methodology Item (a)-This section suggests that a rate design will be established for Tier 1 PF power. However there is no such enforceable contract provision. The actual rate design is subject to the TRM and at the discretion of the BPA Administrator. This reference that seems to suggest some contract right to a rate design should be clarified so as not to create a false sense of contract rights that don’t exist.

Section 4-Tiered Rate Methodology Item (b)-This section suggests that BPA will lock in the TRM methodology, and in the event that FERC approves it for less than the full contract period, BPA will propose a continuation of the TRM. This raises the question-“what if the TRM is a disaster and needs to be modified”. Should there not be a critical review before it is simply re-implemented? We understand that everyone is so enamored with the TRM that they just don’t want it changed-however evaluation seems appropriate.

Section 4-Tiered Rate Methodology Item (d)-This section of the contract clearly reflects the importance of the changes suggested above. This section clearly points out that some of the fundamental “must haves” of public power are not part of this contract. In other words rates (cost based or otherwise) are not part of the provisions of the contract nor are any provisions of the TRM process subject to contract enforceability. It also clearly states that BPA has no intention of making dispute resolution over TRM part of the contract. This seems pretty straight forward. So with this in mind what assurances do we get from the contract?

Section 4-Tiered Rate Methodology Item (e)-This section specifically limits a utilities ability to challenge budgetary and revenue requirements as part of testimony or briefs on rate matters regarding implementation of TRM. While this is not a new concern regarding the rate process, it does exemplify the inability that utilities have under the contract to deal with cost based rates-if budget and revenue discussions are off the table.

Section 5-Applicable Rates Item (d), Additional Charges-The reference in this section of an Unauthorized Increase Charge is perplexing. When will the unauthorized increase charge be assessed given that BPA will be providing the load shaping as a particular product charged at market rates?

Section 6 - (a) (1) This section would seem to advantage a BPA Tier 2 product over another non-federal product. Does BPA actually do a remarketing (repricing) of its own tier 2 product or is the customer simply relieved of its tier 2 take or pay requirement to BPA for the tier 2 product?

Section 6-Applicable Rates Item (c), Remarketing of Federal Power at Tier 2 at PF Rates-The last sentence of this item indicates that the customer will remarket their own tier 2 non-federal resource. How will smaller utilities practically accomplish this, and when amounts on a per utility basis are so small it may be impossible to re-sell non federal power to even partially offset the take or pay costs which will still need to be paid. This is another ridiculous complexity of TRM.

Section 7 - Is the take or pay requirement the same no matter the selection pursuant to Exhibit C?

Section 8 - Delivery – In our current Full Requirements Contract in the Section 8 entitled Delivery there is a section (g) "Hourly Load Matching" – meaning the obligation within the hour to match generation with "Contracted Power" – the new proposed contract has substituted "Firm Requirements Power" for Contracted Power but other than that, why has this section been omitted in the new contract?

Section 8. (b) Pursuant to this section the customer may be subject to charges as a result of the Customers request to change products. So it would seem that a BPA customer ought to be able to change anytime not just in 2019 if the end result is other BPA customers will remain whole. An example would be the "exit fees" that were paid to BPA several years ago to provide for additional utility diversification.

Section 9-Billing Credits (pg12)- The BPA administrator may not be statutorily required to offer Billing Credits Benton REA would suggest that it is not prudent to require the contract signatory to waive their statutory right to request them.

Section 11 Delivery- Item (f) Delivery by Transfer (6) Non Federal Deliveries (pg 16)-The second to the last sentence seems to suggest that the signatory to the contract has no rights of enforcement since the language precludes access to the provisions of section 19-"Governing law and dispute resolution." Delivery by Transfer for Non-federal deliveries should allow the same enforcement rights as any other arrangement because the transfer delivery was initiated to save costs for BPA, and should be transparent to the customer.

Section 11 Delivery- Item (f) Delivery by Transfer (7) Annexed Load (pg 16)-This whole section is problematic as it creates incentives for cannibalization amongst BPA preference customers. The most cost effective load to acquire is that of another BPA customer because it comes with PF power.

Section 13 Billing and Payment, item (c) Late Payments (pg19)-we have argued this point in the past. It seems like the interest and time period should be reciprocal regardless of who owes the other money. In the event of a dispute of a bill BPA does pay simple interest.

Section 15 Conservation and Renewables- item (a)(2) Reporting requirements (pg 23)-a forecast for conservation for 10 years is fairly ridiculous. This issue needs to be eliminated or common sense applied to the time period and reporting requirements.

Section 16 Resource Adequacy (pg25)-We have no current obligation to send anything to the PNUCC and do not intend to accept a requirement to do so under this contract. BPA will have forecasts galore-let them do what they want with their forecast!

Section 16 Resource Adequacy (pg25)-We have no contract obligation to the Northwest Power Planning Council-and do not intend to create an obligation through this contract.

Section 16 Resource Adequacy (pg25)-the last sentence of this section suggesting a waiver from these reporting requirements is ridiculous. We have no obligation to either PNUCC or the Council. This section needs to be eliminated!

Section 19-Governing Law and Dispute Resolution-item (a) Judicial Resolution (pg27)-this section clearly reflect that a fundamental “must have” of Public Power is again not being met. This is a threshold issue for public power. It can not be stated more clearly that we are getting nothing here as far as dispute resolution or arbitration consideration!!

Section 19-Governing Law and Dispute Resolution-item (d) Arbitration Remedies (pg28)-The last sentence of this section is problematic. In some cases the remedy may be a change in a BPA policy, procedure or contract provision. Limiting the remedy to money only seems to preclude these other options.

Section 20-No Warranty (pg28)- This section is very telling and once again is a stark reminder that Public Power has not accomplished any of the assurance that it listed as “must haves.” This section clearly states that the administrator, administration, Congress or courts can change our fundamental business relationship with BPA with little or no recourse for utilities.

Section 21-Satutory Provisions, item (b)-Insufficiency and Allocation (pg29)-This section raises a number of questions-not the least of which is the continued service to DSI's and benefits

provided to IOU's. If in fact BPA was offering a true allocation of the FBS, this section would be less onerous, however, the definition of insufficiency under the TRM may by virtue of the policy be greatly amended. This section deserves significant attention!

Section 22-Standard Provision, item (i)-Bond Assurances (pg35)-Benton REA has adamantly opposed the recalculation of a preference customers HWM based upon annexation or cannibalization of another preference customers system. As such we find the last paragraph of this section unacceptable and are generally unwilling to agree that BPA has the right to reduce Benton's CHWM in connection with annexed load.

Comments Regarding the Exhibits

In general the exhibits reflect the undue complexity of trying to implement the provisions of TRM. In addition the templates encompass significant business arrangements which as written, are left to the discretion of the Administrator. This again does not seem to acknowledge the "must haves" of public power. In addition, having the business arrangements detailed in the exhibit may weaken a utilities ability to enforce the exhibit provisions under the contract.

Although BPA suggests that their intention is to "encourage BPA customers to develop regional power resource infrastructure to meet regional load", it is painfully obvious that BPA is making this process as onerous as possible.

We are providing our comments to the various and sundry exhibits attached to the draft contract template and have referenced our comments by exhibit number.

Exhibit A

Section 1-Establishing Net Requirements-item (2) Revisions-This section provides a significant amount of discretion to BPA to simply change, or adjust the exhibit unilaterally. It would seem that changes should be mutually agreeable, or at least subject to review and scrutiny through some formal process.

Section 3 (b) ". . . Unspecified Resource Amounts to meet any obligations <<Customer Name>> made in Exhibit C, Purchase Obligations, to serve its above-RHWM **energy** load with nonfederal resource amounts." The word **energy** should be removed.

Section 4 Changes to Resource Amounts-Item (a) (pg 2 of 15) Resource additions for a BPA insufficiency notice-Given the TRM construct regarding tier 2 resources, it is unrealistic to think that a utility the size of Benton REA could provide a resource or contract for resource output if BPA was not able to do so for some reason. This appears to be another effort on behalf of BPA to shirk their responsibility and obligation under the Regional Act to provide the full requirements of preference customers that choose to have BPA meet their resource needs in the future.

Section 5, 6, 7, 8, and 9 which require resource definition diurnally differentiated by month is extremely detailed and we would suggest this information is beyond the realm of reality. For the most part Tier 2 resource declarations will be small for most utilities which in themselves do not have the ability to provide such forecasts.

Section 10 Reshaping Dedicated Resources-this section requires extremely detailed information and we would suggest this information is beyond the realm of reality. For the most part Tier 2 resource declarations will be small for most utilities which in themselves do not have the ability to provide such forecasts.

Exhibit B

Section 1 Contract High Water Mark-item (b) Changes to CHWM (2)-Benton REA has objected to adjusting a utilities CHWM to accommodate, and even encourage, annexation of one utilities service area by another. This will lead to unnecessary conflict amongst public power.

Section 1 Contract High Water Mark-item (b) Changes to CHWM (4)-this section again clearly indicates the inability of the provisions of the TRM such as the CHWM to stand challenges from outside entities.

Section 2 Rate Period High Water Mark, item (b) (page 3 of 3)-Benton REA has objected to adjusting a utility's Contract Demand Quantity to accommodate, and even encourage, annexation of one utilities service area by another. This will lead to unnecessary conflict amongst public power.

Exhibit C

The language in this section falls far short of expectations, given the fact that there is no detail or reference to the provisions of TRM, notwithstanding that such provisions are unenforceable. Again there is much that is left up to a subsequent process. In addition making the required declaration regarding a tier 2 resource without the benefit of costs raises the question of whether a governing board could pass its test of financial prudence and due diligence in making such declarations.

Exhibit C should also indicate that all of the calculations that are made in this exhibit are all based upon a BPA forecast.

Section 5 Revisions (pg 6 of 6) To make the provisions of this exhibit meaningful it should include language similar to that in exhibit D requiring mutual agreement for any changes.

Exhibit D

Section 2 Irrigation Rate Mitigation-we assumed that continued assurance of this product would require a contract section or at least a reference. The provisions of the current IRM should be inserted in the body of the contract.

Exhibit E

Pretty straight forward.

Exhibit F

BPA has indicated that this Exhibit F (Option 1: Include for Transfer Customers with a BPA NT Agreement) will become part of the BPA Agreement with any BPA customer that has transfer service even if the BPA customer is not purchasing a non-federal resource.

Exhibit F – Item #6, 7 and 8. These provisions are unnecessary for an NT contract holder that is not purchasing non-federal power.

Exhibit G- Principles of Non-Federal Transfer Service

Note: Include the following exhibit only for Transfer Service Customers.

BPA's responsibility to those connected via non-federal transmission facilities should be no greater or less than those directly connected through federal transmission facilities when it comes to delivery of non-federal power. The GTA's allowed for one utility planning and cost savings for BPA. To suggest that BPA would now treat customers connected via these non-federal transmission delivery points differently than those connected to federal transmission is unfair and not in keeping with the spirit of the GTA's.

Exhibit H- REC's – No Comment

Additional Comments:

In our Current Contract there is an Exhibit A 'Rate Commitments' which says that Benton REA is contractually guaranteed through September 30, 2011 the Lowest PF Rates established in a successor BPA rates proceeding for its PF Contracted Power purchases under this Agreement. This section shall not be construed to waive, alter or amend any right that Benton REA may have under applicable statutes.

"Lowest PF rates" means the lowest applicable cost-based power rates provided under the applicable PF rate schedule as applied to Benton REA's Contracted Power purchases under this Agreement.

We request to have Exhibit A 'Rate Commitments' in our current contract honored and incorporated into the new Power Sales Contract offered to Benton REA.