

Submitted to BPA via techforum@bpa.gov - May 30, 2018

Comments on April 23, 2018 TC-20 Tariff Proceeding Customer Workshop

Thank you for the opportunity to comment on the April 23rd prehearing workshop for the Terms and Conditions 2020 (TC-20) proceeding. The new terms and conditions the agency will adopt for its transmission service in TC-20 are of great concern to PPC's members. The ability to serve load and move resources on firm, reliable, and affordable transmission is essential to the preference customers and to the value that BPA provides to the Northwest region.

TC-20 Pre-hearing Process Considerations

PPC appreciates BPA holding prehearing workshops to allow for open discussion, education on relevant issues, and exploration of alternatives before *ex parte* begins in TC-20. To make these prehearing workshops productive and meaningful, it is essential that BPA hold to its proposed timeline and share proposed alternatives and any associated analysis as soon as possible. Making this information available in a timely manner will allow for a robust regional discussion and will also shed some light on how BPA will apply its proposed criteria for deviating from the *pro forma* tariff.

To begin with, BPA should provide more clarity around the tariff language that is identified as "under review," including what aspects of those topics are being considered for possible revision. The block redline published thus far offers no guidance on the specific changes being considered and creates uncertainty for PPC's members. BPA should also provide more details on what aspects of its proposed policies will be addressed in the TC-20 process, the BP-20 process, or captured in Business Practices. Particularly, BPA should indicate when a deviation from *pro forma* is required, the level of detail that will be captured in the tariff and the details that will be captured in the business practice.

Publishing this additional information in accordance with the proposed timeline is imperative as PPC members will need to assess the proposed new tariff as a package. This will allow them to evaluate how all the policy changes fit together so they can understand the impacts to their business and their customers. It is premature for BPA to ask customers for substantive comments on specific policies. In many cases, the customers will be unable to provide feedback without having some idea of the specific revisions BPA plans to make and how these changes might interact with other policies under discussion. Rather than asking customers to opine on piecemeal revisions, BPA should make available all the proposed revisions as soon as possible.

Strategic Guidance as Principles for the New Tariff

BPA's Strategic Plan and Transmission Business Model declared BPA's policy and strategy to align its tariff with the *pro forma* tariff to the extent possible. Customers welcomed this policy

in hopes it would produce a durable tariff and ensure business certainty. But the lack of information on specific deviations is leading to increased customer concern that, contrary to its pronounced policy of alignment, BPA will deviate considerably from the *pro forma*. BPA's continued delays in publishing specific proposed revisions only fuel those fears and the ambiguity of the proposed criteria for deviations has done little to ease those concerns.

In general, BPA's proposed guiding principles for deviations from the *pro forma* tariff are very broad and were presented without meaningful examples of how they would be applied, which makes them difficult to assess. BPA offered only two examples of applying these principles: (1) tariff section 9, which is a discrete and long-standing issue that does not necessarily represent how these criteria will be applied to other policy issues, and (2) tariff schedule 10, which is largely uncontested among BPA's customers. If BPA plans to rely on these principles to justify deviations from *pro forma*, it needs to share more specifics about how the agency will interpret and apply them.

With regard to the specific criteria, it is important for BPA to maintain the flexibility to deviate from *pro forma* language to implement its statutory and legal obligations as presented in principle 1. But these obligations are more than just a principle or criteria to be assessed along with other factors; they set the baseline for any further analysis. BPA has no discretion in deciding whether to comply with its statutory requirements. Thus, this proposed principle should not be weighed equally with other principles because it is an obligation that must be met *prior* to applying any other principle.

PPC generally supports principle 2, but needs more detail on the scope of "reliability" and "efficiency" contemplated in this principle. Additionally, various statutes and reliability standards already require BPA to provide reliable and efficient transmission, so BPA should specify how, if at all, the scope of this principle expands beyond those requirements.

Principles 3 and 4 as proposed are too vague and should be clarified or removed. In principle 3, it is unclear what would constitute "significant" benefit or harm. It is also unclear how this principle would apply if a deviation from *pro forma* would benefit some customers, but harm others. We are also concerned that principle 3 does not appropriately highlight the importance of impacts to BPA's customers who bear the financial costs and benefits associated with these changes. If principle 3 is kept then the importance of impacts to customers should be elevated.

Similarly, there is little context to understand how principle 4 would be applied. First, it is unclear what constitutes industry best practice when it differs from *pro forma*. Most Transmission Providers are required to provide service that is consistent with or superior to the *pro forma* tariff. If BPA plans to limit the scope of this principle to consider only the deviations that have already been approved by FERC as superior to *pro forma*, it should specify that limitation in the statement of this principle. Customers need more information on how BPA plans to identify industry best practices to determine if this principle is appropriate.

In addition to being vague, principle 4 is likely unnecessary. If the "industry standard" is superior to *pro forma* and should be adopted by BPA, then, by definition, it would help BPA meet statutory requirements, increase reliability, and/or create benefits for its customers. These

are all covered by the previous principles. BPA should not adopt “industry standard” practices just because they are industry standard but should instead support the proposed deviation with sufficient justification based on the other principles. Regardless of whether it adopts this as a stated principle, BPA should continuously be assessing best practices in the industry and applying the other principles to those practices to see if a tariff change is warranted.

Finally, BPA should include an additional principle allowing for ministerial deviations from *pro forma* or deviations from *pro forma* for provisions that are impractical for BPA to comply with and where the deviation is widely supported by the region. One example of where this principle would justify a deviation is the requirement for BPA to act as a “Financial Middle Man.” The region generally understands and supports BPA’s choice not to take on this role and associated expense, which would provide little benefit to its customers.

Tariff Section 9

Earlier this year, BPA decided to use procedures set out in section 212 of the Federal Power Act to establish generally applicable terms and conditions for transmission service. Accordingly, BPA has now proposed language for section 9 of the new tariff that permits BPA to modify the tariff after following the procedural requirements of section 212.

In assessing BPA’s proposed section 9, PPC considered the relationship between the proposed language and BPA’s statutory obligations and authorities. It is important that the preference customers retain all their rights under BPA’s enabling statutes and the Federal Power Act, including the right to seek review of the terms and conditions of BPA’s transmission service and the right to apply for an order requiring different terms. BPA is a creature of statute and cannot contractually change the law’s applicability with the proposed revisions. PPC understands that BPA is not seeking to do so, and that all statutes applicable to the FCRTS shall continue to apply in full force and effect.

Additionally, BPA must always comply with all the substantive requirements of the applicable statutes without elevating one standard over the others by specifically referencing it in section 9. Although BPA is confident that the new tariff will satisfy all the applicable statutory standards and customers are free argue otherwise in TC-20, BPA should explain in its initial proposal how the new tariff satisfies its statutory obligations. BPA must also be mindful of unintentionally creating actionable contractual obligations or creating a conflict between its statutory and contractual obligations. BPA must be careful to ensure its contracts will not run afoul of its statutory mandates or authorities.

While BPA is subject to many of the same substantive requirements as “public utilities” under the Federal Power Act, it does not have, and cannot unilaterally cede to, the same type of regulatory filing obligations as public utilities under FPA sections 205 and 206. In general, BPA’s proposed section 9 resolves this issue and reconciles BPA’s decision to use a section 212 process with its statutory authorities. It also preserves the customers’ rights, without elevating some statutory standards over others or creating unintentional contractual obligations.

PPC appreciates the difficulty in drafting precision and urges BPA to consider suggestions from other preference customers for refining the specific language of section 9.

Ancillary Services

While PPC understands the intent behind BPA's proposed Ancillary Services schedules, more discussion is needed around BPA's proposed revisions for schedule 9. It is important for BPA to ensure that the proposed schedule 9 language will not impact preference customers' access to output from the FCRPS. The preference rights to the FCRPS include both energy and capacity.

While there may not be an availability issue now, it is important to establish the proper protections for preference access in the proposed tariff change. BPA must comply with these preference rights and it would be more sensible to include these protections now than to revisit this discussion after additional contracts are signed and scarcity again becomes a concern. As discussed above, BPA must continue to assure itself that any new transmission services it offers are consistent with its statutory responsibilities.

Specifically, PPC would like to better understand how BPA is planning on defining and memorializing limitations to the amount of balancing services BPA can provide from the FCRPS so that the rights of preference customers are protected. PPC understands that BPA feels the availability risk is mitigated by its ability to purchase additional reserves from third-party suppliers. While this could be a useful tool in allowing BPA to supply more balancing reserves, it is important that any costs of procuring such reserves are allocated appropriately. So long as Federal power is available to serve the general requirements of the preference customers, BPA may not allocate to its preference customers the costs of acquiring non-Federal power.

BPA should develop a policy allocating to its balancing services any costs associated with acquiring third-party reserves to the extent they are needed to supply Generation Imbalance Service in excess of what is available from the FCRPS after all of BPA's statutory obligations are met. This is consistent with BPA's decision in the BP-12 ROD that "BPA has the authority to equitably allocate the costs associated with maintaining the stability and reliability of the transmission system. Assigning the costs of incremental balancing reserve capacity purchases that are necessary to provide VERBS to the VERBS rate is consistent with cost causation and equitable allocation."¹

Conclusion

Thank you for considering these comments. PPC appreciates BPA's willingness to discuss these issues and engage with customers before beginning the TC-20 process. We look forward to working with BPA to better understand the wholistic vision for the new tariff. Continuing timely discussions on substantive materials will ensure that customers are able to provide adequate feedback prior to the development of BPA's initial proposal.

¹ *BPA Administrator's Final Record of Decision*, BP-14-A-02 at 325.