Comments from the Northwest & Intermountain Power Producers Coalition on BPA's Draft Business Practices implementing interconnection queue reform

The Northwest & Intermountain Power Producers Coalition ("NIPPC") submits the following comments on BPA Staff's Preliminary Proposal on BPA's Transmission Planning Workshop. The Northwest & Intermountain Power Producers Coalition is a membership-based advocacy group representing competitive electricity market participants in the Pacific Northwest and Intermountain region. NIPPC has a diverse membership including independent power producers and developers, electricity service suppliers, transmission companies, marketers, storage providers, and others. Many of NIPPC's members are currently seeking to interconnect generation projects to BPA's transmission grid.

General Support for Draft Business Practices Necessary to Implement TC-25 Settlement

NIPPC was an active participant in the workshops and discussions that ultimately led to the settlement of TC-25. The settlement agreement of TC-25 balanced the competing interests of a diverse set of stakeholders. Accordingly, the Business Practices drafted to implement the TC-25 settlement agreement must be consistent with the settlement agreement. NIPPC congratulates BPA staff on successfully drafting a set of proposed Business Practices that accomplishes this goal. NIPPC encourages BPA staff to reject any proposed changes to the draft Business Practices that are inconsistent with the terms of the TC-25 settlement agreement.

Site Control Business Practice

Section A.1.a. Alternative Proposal for Customers to Establish Site Control on Federal Lands

The settlement agreement addresses the site control requirement for customers seeking to enter the generation interconnection queue. The settlement agreement states (in relevant part):

> Interconnection Customers shall submit evidence of exclusive Site Control to Bonneville for public/non-public lands.

During the discussions last summer, NIPPC and other stakeholders proposed language that would have provided greater detail in describing the specific evidence that would satisfy this requirement with regard to generation projects on Federal land. At that time, BPA declined to consider these proposals. Instead, Staff indicated a clear preference to develop the details of site control in the context of a business practice. NIPPC would like to take this opportunity to provide more context to BPA staff related to the development of generation projects on federal land and encourage BPA to adopt NIPPC's alternative proposal for customers seeking to establish site control on federal land. As more fully

explained below, NIPPC urges BPA to add "cost recovery agreement with a federal agency" to the list of acceptable forms of evidence of site control.

The draft Site Control Business Practice provides a list of documents that generation interconnection customers may submit to establish exclusive site control. Of the options on that list, the only category that would apply to a project on federal land is a grant of Right of Way or Lease. As explained below, a Right of Way grant or Lease on federal land represents a significantly greater investment in time and resources than the options available to developers of generation sited on private land.

NIPPC supports BPA staff's proposal for customers to establish exclusive control of the site where their generation project is located. The proposal to require a full Right of Way grant or Lease for federal lands, however, goes much further than necessary. In fact, Staff's proposal to require proof of a Right of Way for projects on federal land inserts into the settlement agreement, unnecessarily, a more stringent requirement for projects on federal land compared to the requirements for projects on private land. BPA staff is familiar with the NEPA requirements for federal agencies. Any generation project on federal land must undergo NEPA review with a Record of Decision approving the project before the responsible federal agency will grant a Right of Way or Lease. As explained below, NIPPC proposes that an executed cost recovery agreement with a federal agency for a generation project on federal land should be sufficient evidence to demonstrate exclusive site control for purposes of entering BPA's interconnection queue.

Under BPA's proposed Business Practice, in order to enter the interconnection queue, a customer must complete the following steps. First, the customer must submit a Standard Form 299 (SF-299) Application for a generation development on federal land. Either in conjunction with, or subsequent to, the SF-299 application, a developer must submit a Plan of Development ("POD"), which requires the same level of effort as a permitting application – a much higher bar than negotiating private lease terms. Once the agency receives the completed SF-299 and POD, the agency than begins preliminary review to ensure that the application is complete and complies with all regulatory requirements and develops a cost recovery agreement with the applicant. The cost recovery agreement provides for the applicant to reimburse the agency for the costs of the necessary NEPA review. Once environmental studies on on the customer's site are complete, the Federal land agency begins its Record of Decision process which, as BPA knows, requires development of a draft NEPA report for public comment and then a final Record of Decision. Once the Record of Decision is final, the agency and the developer execute a Right of Way agreement or Lease consistent with the final Record of Decision.

But the developer of a project on federal land obtains exclusive site control well before the Record of Decision. For example, the Bureau of Land Management ("BLM") land, Title 43, Ch. II, Section 2804.23(c) of the Code of Federal Regulations states "The BLM will not competitively offer lands for which the BLM has accepted an application and received a plan of development and cost recovery agreement." Thus, when combined with an

accepted application, proof of a cost recovery agreement with a federal agency would meet BPA's intended goal of establishing that an Interconnection Customer has exclusive site control. While a cost recovery agreement is not a final Record of Decision that approves the proposed project, final permitting approval was not a requirement contained in the settlement agreement. Accordingly, NIPPC urges BPA to add "cost recovery agreement with a federal agency" to the list of acceptable forms of evidence of site control.

The practical effect of BPA's proposal would be to require developers of projects on federal land to provide not only proof of exclusive site control, but also to require them to complete the federal permitting process to meet the documentation requirements. The timeline to complete NEPA evaluation of a generation project on federal land is between 2 and 3 years. BPA is proposing to require developers to complete that process before the customer can enter the transmission queue and gain any insight into their potential interconnection costs. Because the TC-25 interconnection queue process itself takes 2-3 years, BPA's proposal would establish a timeline of at least 4-6 years for a developer to obtain an interconnection agreement for a project on federal land, which assumes that the Right of Way agreement is in hand when a cluster window opens. If a developer misses a cluster study window, then the timeline is likely to be closer to 6-8 years.

Compare this timeline to a project on private land. For a project on private land, the developer must provide documentation of exclusive site control (which could take a variety of forms including a lease, deed, or option). Significantly, none of these forms of site control require the customer to have completed the state or county permitting process. For a project on private land, the project developer can provide proof of site control while at the same time pursuing its permitting process concurrently with the interconnection cluster study process. As a result, a project on private land can undergo permitting and interconnection at the same time and complete both in 2-3 years.

The TC-25 settlement agreement incorporated the concept of exclusive site control. NIPPC's position is that the settlement agreement never contemplated that interconnection customers would be required to complete the applicable permitting process (whether county, state, or federal) in order to enter the interconnection queue. BPA's proposal effectively requires developers to complete the federal permitting process to qualify for the interconnection queue while not extending that same requirement to developers on private land.

NIPPC's members have indicated that if BPA adopts the proposal to require a Right of Way demonstration to meet the site control requirement, then generation development on federal land in BPA's footprint will become untenable. Developers are willing to pursue projects on federal land, despite the timeline and costs of NEPA. But to do so, they need earlier insight into the potential interconnection costs and schedules associated with their project and a pathway to an Interconnection Agreement on a reasonable timeline that allows construction to start within the requirements of the federal ROD on the project's site. A project timeline that requires developers to complete a NEPA process for the use of

federal land as a prerequisite to entering the interconnection queue is simply too lengthy and risky.

NIPPC's proposed alternative would allow developers to demonstrate site control by providing BPA with an executed cost recovery agreement (or similar agreement) that holds the developer responsible for the federal agency's NEPA costs.

Section A.1.a.i.

BPA appears to require a customer who uses a Lease Agreement to obtain site control to provide BPA with a copy of the entire Lease Agreement. The Lease Agreement is a proprietary document that contains sensitive business information. Many NIPPC members have expressed concerned that their competitors may obtain copies of the materials provided to BPA. NIPPC suggests that a copy of the entire Lease Agreement is not necessary to establish exclusive site control. Customers should be able to demonstrate site control by providing BPA with an executed/notarized memo of the lease as BPA has accepted in the past. Alternatively, BPA should allow customers to redact the financial and other commercially sensitive terms from the Lease Agreement.

Section A.3.

BPA proposes that customers who rely on an option to demonstrate proof of site control must show evidence that the option continues through the latest Commercial Operation Date. Many developers, however, convert an option to another form of site control before beginning construction.

Separately, BPA's proposed language refers to the "project's latest COD." In this context "latest" is ambiguous. Projects typically state a commercial operation date in their interconnection request. BPA may respond with a proposed earliest commercial operation date. In the context of the draft business practice, this language could refer to an updated commercial operation date that changes from the information the customer initially provided. NIPPC suggests that the term of site control should extend through the commercial operation date in the study agreements as revised over time. NIPPC urges BPA to revise the proposed language to eliminate this ambiguity.

NIPPC suggests that this section be revised to read as follows:

> When using an option to lease or purchase as documentation evidencing Site Control the term must extend through the ~~latest~~ **current** Commercial Operation Date (COD) or the Interconnection Customer must have the right to extend the term of ~~the option~~ **a form of site control** through the project's ~~latest~~ **current** COD.

Transition Business Practice

Section F.

NIPPC urges BPA to state clearly how long customers have to cure any deficiency that BPA has identified. The draft currently refers to actions BPA will take after 15 days or 20 days, but there is no clear statement of how long customers have to cure any deficiency.

Section F.2.b states that BPA will terminate Interconnection Agreements under certain circumstances. NIPPC believes this should read as "Interconnection Study Agreements".

Section H. and I.

BPA proposes to use announcements through "techforum" to notify customers in the transition cluster of developments in the study process, including whether restudies will be necessary. While "techforum" announcements are a useful way to disseminate information to a broad range of stakeholders, NIPPC suggests that BPA should send notices to customers in the transition cluster through the mechanisms identified in the study agreements.

Commercial Readiness Business Practice

Section B.3.f.i

BPA proposes to draw the full amount of the customer's Letter of Credit if the Letter of Credit is 10 days from expiration. NIPPC has two concerns with the proposed language. First, many customers obtain Letters of Credit that provide for automatic renewal on the expiration date. BPA's business practice should exempt Letters of Credit with annual automatic renewal provisions from being drawn upon. Second, NIPPC urges BPA to provide customers with 30 days' notice that the Letter of Credit is at risk of being drawn upon.

Section C.

NIPPC is concerned that the proposed remedy is inadequate for a customer who successfully challenges a dispute with BPA and is erroneously removed from a cluster study. Simply allowing the customer to reenter the interconnection cluster study in the next cycle will not mitigate the harm to the customer who must now wait two to three years for the next cluster study cycle (which itself will take two to three years to complete). NIPPC encourages BPA to offer the customer the option of being included in any subsequent phases of the current cycle (i.e any restudy of Phase 1, or inclusion in Phase 2).

Thank you for the opportunity to comment.