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Via email

U.S. Department of Energy
Bonneville Power Administration
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RE: TC-26: Comments of NewSun Energy and the Pacific Northwest Renewable Interconnection & Transmission Customer Advocates on Withdrawal Penalties Proposal

NewSun Energy Transmission Company LLC (“NewSun”), and the Pacific Northwest Renewable Interconnection & Transmission Customer Advocates (“PRITCA”), a coalition of several dozen BPA interconnection customers, transmission customers, and load developers, comprising over 20 GW of interconnection and transmission requests, together with NewSun, the “Commenting Parties”) provide the following comments in response to the BP/TC-26 presentation regarding Generator Interconnection (“GI”) withdrawal penalties, including presentations at the August 27-28, 2024, workshops. The Commenting Parties have responded separately to the confidential settlement communications occurring in parallel with this process.

The withdrawal penalty proposal is inconsistent with the fundamental nature and architecture of the cluster study process adopted in TC-25. Bonneville Power Administration’s (“BPA’s”) unique multi-phase cluster study process differs from the structure adopted by the Federal Energy Regulatory Commission (“FERC”) in important respects that make highly punitive withdrawal penalties disproportionate to the issue being addressed and inconsistent with the TC-25 settlement. Specifically, the TC-25 settling parties opted to adopt a two-phase cluster study approach with lower application fees that maintains the interconnection customers’ queue positions for the purpose of identifying their place within a “scalable plan block”—a plan of service for a subset of interconnection requests within a cluster area. This approach is designed to facilitate smaller projects and competitive developers, allow customers to get useful cost and feasibility information, make informed choices about whether to continue, and then to encourage those customers to withdraw while equipping BPA with the tools to simply shift projects down the blocks without endless re-study. The large scale of the withdrawal penalties proposed here

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are inconsistent with those end goals and threaten to undermine the unique cluster study architecture parties achieved in the TC-25 settlement.

The fundamental problem BPA aimed to address with queue reform was to address the backlog of interconnection requests. This was and is human resources problem. It is not a problem of bad actors sitting in BPA's interconnection queue and then withdrawing causing BPA to perform cascading restudies. BPA does not have history of material restudy problems. BPA actually has a good track record of identifying the break points for network upgrades and shifting projects down when one project withdraws. Therefore, the highly punitive approach to withdrawal penalties is not consistent with the history and the nature of the problem. Accordingly, the Commenting Parties oppose BPA's proposal to add withdrawal penalties to its Open Access Transmission Tariff ("OATT").

If BPA persists in pursuing the withdrawal penalty proposal, the Commenting Parties believe the penalty structure should be significantly amended to avoid its worst consequences.

BPA Proposal and Background

In the TC-25 settlement, BPA agreed to a system allowing customers to remain in the interconnection queue by either providing demonstrations of commercial readiness or making deposits in lieu of a demonstration of commercial readiness. Although there is no evidence that this mechanism has been problematic, BPA nonetheless proposes a significant departure from that mechanism, which now proposes to impose withdrawal penalties on interconnection customers who withdraw from the queue, regardless of the reason for the withdrawal. Furthermore, BPA's TC-25 reforms are only now coming into effect. Not enough time has passed to draw meaningful conclusions regarding their implementation or provide a good reason to change course.

Alternative 2 from the August 28 workshop, which we understand to be BPA's preferred alternative, would impose penalties of 5% of the interconnection customer's Network Upgrade ("NU") costs if the customer withdraws after the Phase 2 study has commenced but before the Interconnection Study begins, with the penalty increasing to 10% of NU costs if the customer withdraws after the Interconnection Facilities Study has been completed, and to 20% of NU costs if the withdrawal occurs after the LGIA has been executed. Alternative 1 would retain the status quo and Alternative 3 would impose even more onerous penalties.

Under Alternative 2, no withdrawal penalty would be imposed if: (1) the withdrawal does not cause a "material impact" on the cost or timing of Interconnection Service Requests ("ISR") in the same cluster; (2) the interconnection customer's NU costs increase by more than 25% in a cluster study report as compared to the costs assigned to the customer in the previous report; or, (3) the Interconnection Facilities Study identifies NU costs that have increased more than 100%

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from the previous cluster study. Penalty funds would be retained by BPA. BPA intends penalties to “incent behavior that would encourage customers to enter and remain in the queue when ready to move forward.”

Principles for Decision

The Commenting Parties urge BPA to use the following principles when considering whether to adopt its withdrawal penalty proposal (or, for that matter, any proposal):

- *Reforms Should Fit BPA’s Unique Scalable Plan Blocks and Approach to Queue Positions:* BPA’s planning approach is unique among transmission providers, and BPA’s results are generally superior to those of other transmission providers. BPA isolates portions of its system and identifies plans of service for a subset of interconnection requests within a cluster area (its “Scalable Plan Blocks” approach). Scalable Plan Blocks identify the ‘break points’ at which certain network upgrades are triggered. In addition, BPA preserves the interconnection customer’s queue position for purposes of determining the customer’s position within a Scalable Plan Block, so that customers with an earlier queue position can access the BPA transmission system using transmission capacity that is available before break points are triggered that result in significant increases in NU costs assigned to interconnection customers who come later in the queue.

These two elements, which BPA does differently than other transmission providers and differently from the FERC *pro forma* tariff, give interconnection customers transparent information about where their project stands within the stack of projects in the larger cluster area, encourages projects to downsize to fit within a Scalable Plan Block, or to withdraw if their project cannot support the upgrades. Once a project withdraws, it allows BPA to shift other projects down the stack and minimizes the need for restudies. BPA noted in the TC-25 pre-proceeding workshops that “[w]e believe having multiple, Scalable Plan Blocks for high interest areas will *combat the issue of endless re-study* that other Transmission Providers face *as requestors drop out* until a goldilocks plan of service is identified.”¹

Changes to the BPA OATT should recognize and preserve these uniquely valuable aspects of BPA’s interconnection process.

- *Promote Competition:* Any change should promote competition and minimize the ability of utility incumbents to use control of critical transmission facilities to discourage competitors and favor their own generation assets. The Commenting Parties strongly

¹ BPA TC-25 Tariff Pre-Proceeding Workshop presentation from May 25, 2023, Slide 22 (emphasis added) available at https://www.bpa.gov/-/media/Aep/rates-tariff/TC-25/May-25-Workshop/TC-25-workshop-PPT_May-25_final_updated_5_25_2023_post-workshop.pdf.

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support these core principles, which have been the driving force of industry regulation for the last three decades, since FERC adopted Order No. 888. The Commenting Parties believe withdrawal penalties are inherently anticompetitive because they impose unique burdens on smaller competitors. Furthermore, promotion of competition is one of the principles BPA stated that it intended to honor in the TC-25 settlement agreement. Imposition of the proposed withdrawal penalties cuts against that commitment.

- *Recognize Core Values and Success of Open Transmission Access:* BPA should not lose sight of the basic values that have made the open access transmission system a success: (a) limiting the ability of utility incumbents to use their control of transmission facilities to stymie competition in the generation market and to erect artificial barriers to new market entrants; (b) ensuring that consumers have access to competitive options, including options created by new entrants; (c) a stable platform that helps support investment flows; (d) consistent recognition that NUs benefit all transmission customers. These precepts have allowed creation of a new, competitive independent power industry. BPA should be wary of proposals from utility incumbents that would seek to undo these gains and reestablish utility monopoly power to leverage large balance sheets to artificially disadvantage smaller competitors like the Commenting Parties.
- *Recognize the Value of Interconnection Studies:* Interconnection studies perform a useful function in providing necessary information to both transmission providers and interconnection customers to identify system capacity and facilities that must be constructed to safely and reliably interconnect a new project. BPA should focus on ensuring that interconnection study processes produce the necessary information as efficiently as possible, and do not act as a source of unnecessary delay or expense.
- *Create a Stable Investment Climate:* BPA must recognize that project development is a difficult, expensive, and risky endeavor, requiring substantial investments of capital to secure land rights, obtain all necessary permits, acquire equipment and supplies, retain contractors, obtain transmission rights, and negotiate contracts with off-takers. Given the necessity to attract very large amounts of capital to the industry, it is essential for BPA to create stable rules that encourage investment, and to honor existing investments in any transition to new rules. FERC has, regrettably, in many past decisions, such as its treatment of queued projects on systems with significant queue congestion,² treated these investment-backed expectations cavalierly, undermining the trust necessary for capital investment. BPA should not follow FERC down this dangerous road.

² See *PacifiCorp*, 171 FERC ¶ 61,112, *reh'g denied*, 173 FERC ¶ 61,016 (2020); *Pub. Serv. Co. of Colo.*, 169 FERC ¶ 61,182, *reh'g denied*, 167 FERC ¶ 61,141 (2019); *Pub. Serv. Co. of N.M.*, 136 FERC ¶ 61,231 (2011), *reh'g denied*, 139 FERC ¶ 61,155 (2012).

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- *Encourage New Entrants:* To promote competition and critically needed new investment, BPA should seek to reduce the needless barriers to market entry created by its interconnection rules and should seek to encourage new entrants into both the generation and transmission markets. In this connection, BPA should be especially wary of proposals to impose disproportionate charges on interconnection customers or charges that vary arbitrarily.
- *Recognize That Smaller Developers Are Important Market Participants:* BPA should recognize that smaller developers like the Commenting Parties represent a significant and important segment of the market. BPA should avoid reforms that artificially favor larger entities. It should also recognize that many smaller developers lack the resources to participate in complex BPA proceedings like these but that their importance to the industry is much greater than their voice in such proceedings.
- *Encourage market-based solutions:* Market participants often develop sensible solutions without Commission involvement. For example, the trading of interconnection queue positions has become common in the industry and is a valuable way for projects that are farther along toward commercial readiness to obtain queue positions from projects that are less advanced in the development process. BPA should not create artificial barriers to these kinds of private solutions.
- *Allow time to implement TC-25 reforms:* The TC-25 settlement was adopted just this past January. The settlement represented a major reform to the interconnection process and aimed to address its significant backlog by offering a more “reliable, timely and streamlined process.” BPA should allow time for these reforms to take hold before attempting to fix a speculative problem.
- *Promote public power:* Demand for energy in the Pacific Northwest, specifically renewables, is skyrocketing. Clean energy goals, emissions reduction requirements, and increased native load compel most Northwest public power entities to make significant new investments that depend in large part on reliable delivery of power across the BPA transmission system. Withdrawal penalties threaten and disadvantage public power by creating artificial barriers to transmission access, increasing development costs, and shrinking the base of transmission ratepayers. Ultimately, public power winds up paying these costs. In addition, withdrawal penalties undermine competition, and competition in the generation market ultimately benefits consumers like public power. BPA should instead seek to implement reforms that encourage development and participation, that maximize the financial base of support for badly needed transmission expansion, and that optimize generation market competition.

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- *Require proportionality*: If imposed, withdrawal penalties should be proportional to the costs actually imposed by withdrawal from the interconnection process. If an interconnection customer’s withdrawal has no material impact on the costs of interconnection imposed on other customers, it is not just and reasonable to nonetheless assess the withdrawing customer exorbitant fees.
- *Do not penalize forced withdrawals*: If imposed, withdrawal penalties should seek to discourage truly “speculative” TSRs, or those TSRs where withdrawal considerations are wholly within the control of the Interconnection Customer. Penalties should not be imposed where circumstances outside of a customer’s control force its withdrawal. For example, a customer may have no choice but to withdraw if BPA delays completion of required studies or construction of Network Upgrades. The same is true if a customer must withdraw due to legitimate unforeseen force majeure events.

BPA’s proposal to impose withdrawal penalties fails to meet most or all of these principles and Commenting Parties therefore oppose adding withdrawal penalties to the interconnection process. If BPA nonetheless proceeds to impose withdrawal penalties, its proposals should be substantially modified so that they are at least more consistent with these principles.

Withdrawal Penalties are Unnecessary and Counterproductive

The idea of imposing withdrawal penalties on interconnection customers who must withdraw from the queue appears to be animated by the perception that there are many “speculative” projects that should be “punished” for remaining in the queue unnecessarily. This idea rests on several invalid assumptions.

To start with, it assumes that BPA’s existing approach does not provide adequate incentives for non-viable projects to withdraw from the interconnection queue. But BPA’s existing approach, which requires interconnection customers either to provide demonstrations of commercial readiness or to make substantial deposits in lieu of that demonstration, already creates hefty financial incentives for non-viable projects to withdraw from the queue. If a project cannot demonstrate commercial readiness, the project developer faces the choice of either withdrawing the project or sinking substantial financial resources into the interconnection process to keep the project alive – deposits-in-lieu are two times the Phase 2 cluster study deposits, a minimum of \$100,000 plus \$2,000 per MW of project capacity, up to \$1 million. To stay in the queue, projects must also provide demonstrations of site control, which also is an expensive proposition. On private lands, developers must generally purchase options, which may cost many tens of thousands of dollars, that require additional outlays to renew for each year the option must be extended. For federal lands, obtaining site control can take large investments to obtain leases and many years to complete required NEPA processes, often with uncertain results where leases are awarded on a competitive basis.

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There is no evidence and no reason to believe that project developers are sinking deposits-in-lieu of this size into non-viable projects or that the deposits-in-lieu approach creates insufficient incentives for non-viable projects to withdraw. Nor is there any evidence or reason to believe that adding withdrawal penalties, which merely pile on additional financial risk and commitments, will meaningfully reduce the number of unduly speculative projects that supposedly remain in the BPA transmission queue. And again, BPA's TC-25 reforms are just now being put into place. Not enough time has passed to determine whether those reforms will result in a speedier, more efficient interconnection process as envisioned by BPA. Further reformation at this point would be premature.

Nor is there any evidence that projects that are currently holding positions in the BPA queue are more speculative than other projects. Development of energy projects is inherently speculative in the sense that a project that is otherwise viable can be thrown off the rails by any number of factors, such as adverse permitting decisions, lengthy appeals of permitting decisions, financing difficulties, supply chain constraints, and energy market volatility, to name but a few. As FERC has recognized, "the business of developing generation is very dynamic and requires the coordination of a whole host of factors beyond interconnection, many of which are outside the full control of the developer."³ Arbitrary penalties for pursuing a development process that is inherently risky makes no sense at all.

The apparent assumption that only "speculative" projects withdraw from the queue is also invalid. Developers are forced to abandon projects for a host of reasons, such as those listed above, most of them beyond the developer's control. This does not make the project "speculative" and does not make withdrawal a punishable offense.

The assumption that the exponential growth of BPA's queue in recent years is driven by speculation is equally without foundation. The growth is driven largely by federal policy encouraging the transition to renewable resources, and policies in many Western states, including those in the BPA region, requiring a transition away from fossil-fired resources by mid-century. It is also driven by the fact that the BPA transmission system overlaps with some of the best wind and solar resources in the nation. The existential threat of climate change means these policies are essential and, if anything, should have been implemented decades ago. Rather than seeking to punish developers attempting to meet the urgent need for carbon-free energy by developing these resources, BPA should be focused on expanding its transmission system to meet this need and to encourage maximum competition between renewable energy suppliers, which is the best path to assuring that regional decarbonization goals are met at the least cost to electricity consumers.

The apparent assumption that developers are entering the queue willy-nilly without regard to interconnection costs is also invalid. Because developers will generally be required to pay transmission rates that include rate-based costs associated with NUs, they retain a strong incentive to avoid upgrades that are unnecessarily expensive. Further, high upgrade costs render

³ *Interconnection Queuing Pracs.*, 122 FERC ¶ 61,252, at ¶ 14 (2008).

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many projects uneconomic, forcing them to be abandoned even if the project's economics are otherwise highly attractive. Even if the project is not abandoned, high interconnection costs will place the project at a competitive disadvantage to projects with lower interconnection costs. In short, developers already are subject to a variety of economic signals that will encourage them to withdraw unduly speculative projects and, if possible, to avoid highly congested segments of the grid. There is no reason to pile withdrawal penalties on top of these existing incentives.

The final, and perhaps most important, invalid assumption underlying withdrawal penalties is that interconnection customers have adequate visibility into the likely interconnection costs and thus the financial viability of their projects before entering the queue. This is, of course, incorrect. At the time a customer submits a TSR, the costs of interconnection are essentially a black box – there is precious little information upon which even highly sophisticated developers can obtain reliable estimates of interconnection costs, let alone estimates that are accurate enough to factor into financial models. It makes no sense to penalize developers for submitting interconnection requests unless and until they have at least somewhat reliable information about the interconnection costs they will face and can make an informed decision about whether their projects remain economically viable when these costs are taken into account.

Additionally, the withdrawal penalties will have several deleterious consequences. First, penalties are likely to be counterproductive. Increasing the amount of money at stake for an interconnection customer, and not providing reasonable off-ramps from the interconnection process at reasonable decision points where previously unavailable information is supplied, does not “incent behavior that would encourage customers to enter and remain in the queue when ready to move forward,” as BPA hopes. Instead, it incentivizes a project to remain in the queue on the chance that other projects will withdraw, and the penalty *those* projects pay will eventually be distributed to the remaining projects in the cluster. Or projects may elect to remain in the queue in the hopes that others in the cluster withdraw to the point where the cost of network upgrades become more palatable. Permitting an exception to penalties where the withdrawal does not have a material impact on the cost or timing of any interconnection requests does not eliminate this perverse incentive. This is because an interconnection customer will not know whether its withdrawal resulted in no material impact until well after the request is withdrawn. Where there is still a risk of a penalty, a customer will still feel the pressure to stay in the queue to avoid incurring the penalty. If there is simply no penalty to begin with, then those customers will be encouraged to withdraw once they see and understand study results that render their project uneconomic.

Withdrawal penalties are also anti-competitive. Investor-owned utilities are unlikely to be deterred from investing in speculative projects because they can pass the costs of penalties on to captive ratepayers. Large developers, with ample balance sheets and access to capital, can easily bear the costs of withdrawal penalties. But smaller developers like Commenting Parties have neither the luxury of a captive rate base nor a large balance sheet and ready access to large amounts of capital. Withdrawal penalties therefore tilt the competitive playing field in favor of

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utility incumbents and large multinational developers, and place smaller competitors at an artificial competitive disadvantage.⁴

Finally, withdrawal penalties are ill-suited to the BPA interconnection process. BPA's system of Scalable Plan Blocks is designed to provide interconnection customers with information and *encourage* customers to withdraw or downsize while also minimizing the need for restudies. Rather than imposing withdrawal penalties – especially at points in the interconnection process where the interconnection customer has not yet received reliable estimates of NU costs – will have the opposite effect of encouraging less- or non-viable projects to remain in the queue out of fear of incurring large penalty payments and in hopes that other projects will withdraw, allowing them to benefit from lower NU costs.

The best solutions for reducing queues and increasing the speed of interconnections are: (1) to build new transmission as rapidly as possible to connect areas with high renewable energy potential to load centers; (2) to provide developers (as well as state commissions and other interested parties) with detailed information about where transmission systems are congested and what NUs are likely to be triggered by interconnection requests in a particular area; and, (3) to provide an interconnection process that is as efficient and predictable as possible. BPA's TSR Study and Expansion Process ("TSEP") already includes many features that meet these goals.

Commenting Parties therefore oppose the addition of the withdrawal penalties to the interconnection process.

BPA's TSEP Process Already Addresses Concerns of Commenters Who Support Withdrawal Penalties.

The common theme among commenters supporting withdrawal penalties is that each is concerned with perceived delays that may result due to withdrawals. But BPA's unique process is already designed to minimize delays and restudies.

- NIPPC and Renewable Northwest comment that "[o]ther transmission providers have noted that withdrawals trigger restudies."⁵ NewSun has experienced cascading restudies on other systems and it is precisely because those transmission providers **do not** adequately isolate portions of their system and create scalable plan blocks or identify break points. And those systems **do not** preserve queue position seniority for determining a project's position within the scalable plan, and do not shift requests down

⁴ See, e.g., *Am. Wind Energy Ass'n v. Sw. Power Pool, Inc.*, 167 FERC ¶ 61,033 (2019), *reh'g denied in part*, 169 FERC ¶ 61,227 (2019) (explaining that withdrawal fees for market participation should be just and reasonable, not serve as a barrier to entry, and not be excessive as a means of ensuring the desired outcome).

⁵ Northwest & Intermountain Power Producers Coalition and Renewable Northwest Comments on BP/TC-26 Workshop of April 24, 2024 (May 8, 2024) available at https://www.bpa.gov/-/media/Aep/rates-tariff/bp-26/April_Workshop/Customer_Comment/RNWNIPPC-Comments-on-BP26-0424-Workshop-5824.pdf.

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the blocks as requestors drop out. Rather, those transmission providers study the entire cluster as one block without identifying the break points or preserving seniority, so once there is a withdrawal, it triggers a re-study almost automatically. BPA's unique approach is designed to avoid this.

- Savion comments that BPA “must establish withdrawal penalty policies that encourage non-viable projects to exit the queue voluntarily” with an aim to minimize re-studies and cascading withdrawals.⁶ BPA's unique process is designed to do exactly that. By **not** imposing withdrawal penalties, BPA can encourage projects to withdraw when their project cannot support the upgrades identified in their scalable block plan. This allows other projects to shift down into place until the ‘goldilocks’ plan of service is identified.
- Seattle City Light also notes its primary concern with any potential withdrawal penalty structure is that it is designed to “reduce delays and costs associated with restudy.”⁷ As already noted, this is the primary goal of the scalable plan blocks.
- Finally, Avangrid recommends that BPA “implement withdrawal penalties consistent with FERC's rules *unless there is a compelling reason to deviate to accommodate Bonneville's unique process.*”⁸ The most compelling reason not to adopt withdrawal penalties is that BPA's unique process is actually designed to encourage non-viable projects to withdraw, while also minimizing the need for re-studies. Therefore, BPA should not adopt withdrawal penalties. And it should not simply parrot what FERC has adopted without careful consideration of whether the FERC approach will enhance the TSEP process. BPA should be particularly wary of adopting the FERC model where the FERC approach will be counterproductive. For reasons explained in these comments, the Commenting Parties believe the withdrawal penalties proposed by BPA will worsen rather than relieve congestion in the BPA transmission queue.

What all of these comments highlight is that there is a perceived risk that withdrawals *will* cause re-studies. This does not have to be a universal truth for all transmission providers and BPA is leading the way by setting industry best practices using its unique approach. The scalable plan

⁶ Comments of Savion on Additional Generator Interconnection Reforms Included in the BP-26 and TC-26 Proceeding (May 8, 2024) available at https://www.bpa.gov/-/media/Aep/rates-tariff/bp-26/April_Workshop/Customer_Comment/Savion-Comments-on-TC26-reform-topics--050824.pdf.

⁷ Seattle City Light Comments on BPA April 24th BP TC-26 Workshop Topics (May 8, 2024) available at https://www.bpa.gov/-/media/Aep/rates-tariff/bp-26/April_Workshop/Customer_Comment/2024-05-08-City-Light-Comments-April-24th-BPA-TC-BP-26-Workshop-topics.pdf.

⁸ Comments of Avangrid Renewables, LLC on the BP-26 and TC-26 April Workshop (May 8, 2024) (emphasis added) available at https://www.bpa.gov/-/media/Aep/rates-tariff/bp-26/April_Workshop/Customer_Comment/Avangrid-Comments-on-BP26-and-TC26-April-Workshop.pdf.

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blocks and preservation of queue order seniority are different from other transmission providers and different from the *pro forma* tariff and specifically designed to encourage non-viable projects to voluntarily exit the queue and minimize the risk of re-studies.

If BPA Moves Forward With Withdrawal Penalties, Its Proposal Should Be Substantially Modified

If BPA moves forward with imposing withdrawal penalties, the structure of those penalties should be substantially modified in the following particulars:

1. No Penalties Without Adequate Information: As proposed, interconnection customers would be subject to a withdrawal penalty if they withdraw after the Phase 2 study has commenced but before the Interconnection Facilities Study commences. The apparent assumption is that the results of the Phase 1 study will provide adequate information for the interconnection customer to make an informed decision about the viability of its project and whether staying in the queue is economically justified. But the assumption is unjustified. In fact, the results of the Phase 2 study provides the first realistic estimate of the interconnection costs a customer will face and therefore the first juncture in the interconnection study process at which the interconnection customer can make fully-informed decisions about the viability of its project taking into account reasonably reliable information about the NU costs it will face. Accordingly, if BPA imposes withdrawal penalties, the penalties should not be imposed, and withdrawal without penalty should be allowed, until after the Phase 2 study results have been released and interconnection customers have a reasonable time to digest those results and make reasoned decisions about whether, in light of the estimated interconnection costs, the project remains viable.

Phase 2 is the most reasonable point at which withdrawal penalties might be imposed for several reasons. While the Phase 1 Cluster Study Report provides a preliminary list of NUs and interconnection facilities and a non-binding cost estimate,⁹ those results are not particularly reliable. By contrast, the Phase 2 study will take into account withdrawal of customers after the Phase 1 process is completed and those customers who conclude their projects are non-viable based on Phase 1 estimates have withdrawn from the queue. Further, the Phase 1 study assumes that all customers will use ERIS service, and the NUs necessary to accommodate NRIS requests are not identified until the Phase 2 study is completed.¹⁰ Phase 2 study results are therefore the first juncture in the study process where interconnection customers can make a reasonable determination about the continued viability of their projects. Permitting penalty-free withdrawal at this point allows the interconnection customer to make the best decision about the viability of its project taking into account interconnection cost information that is likely to be at least roughly accurate.

⁹ *Id.*

¹⁰ *Id.*

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Further, BPA retains the discretion in Phase 1 to change the point of interconnection,¹¹ and if the interconnection customer is unable to obtain access to the point of interconnection designated by BPA in the Phase 1 Study Report in the ninety days allowed before it must execute the Phase 2 study report, it may be forced to pay penalties due to circumstances beyond its control. It may be impossible to, for example, locate owners and obtain land rights necessary to construct a tie line to the newly-designated point of interconnection and virtually impossible to obtain needed permits in that time frame. Imposing penalties on customers whose projects cannot be connected to the new point of interconnection for reasons beyond the customer's control makes no sense.

In short, BPA should not impose withdrawal penalties on interconnection customers until adequate and reasonably reliable information about the full costs faced by the project, including NU, interconnection costs, and the required point of interconnection, is available. An approach which punishes customers who are forced to withdraw based on the results of the Phase 2 study, which is the first point in the interconnection process when the economics of their project can be reasonably evaluated in light of full information, is unjustifiably punitive and counterproductive.

2. *Withdrawal Penalties, If Adopted, Should Be Based On Study Costs, Not NU Costs.* In their counterproposal submitted on September 10, 2024, the Commenting Parties suggest that withdrawal penalties should be based on a multiple of the interconnection customer's share of study costs, capped at a specific dollar amount, rather than NU costs. This suggested approach should more accurately reflect the actual costs that withdrawal may impose on other customers. Under the BPA process, withdrawals in many cases are likely to reduce the NU costs faced by other customers in the cluster, particularly where a withdrawal is in a lower-cost scalable plan block and the withdrawal allows a customer in a higher-cost block to move into the lower cost block. Thus, under the TSEP model, there is no clear relationship between withdrawals and increased interconnection costs. Further, if withdrawals create impacts on other interconnection customers, they are most likely to be in the need for restudies, and study costs therefore more closely reflect the likely impacts on non-withdrawing customers. Finally, NU costs may vary widely, with low or no costs on uncongested portions of BPA's transmission system and very high costs on congested pathways. Therefore, basing withdrawal penalties on study costs creates more predictability and less risk than basing penalties on NU costs that cannot be predicted at the time a customer submits its TSR.

3. *Punishment Should Fit the Crime.*

a) *No penalty if withdrawal is beyond control of interconnection customer.* In most cases, interconnection customers are forced to withdraw projects from the queue because of circumstances beyond their control, ranging from inability to obtain necessary permits or unsuccessful litigation to defend permits already obtained, to supply chain problems, to financing arrangements that fall through at the last minute. Interconnection customers should not be

¹¹ BPA TC-26 Settlement Tariff - OATT Attachment L, Standard Large Generation Interconnection Procedures § 6.4, available at <https://www.bpa.gov/-/media/Aep/rates-tariff/bp-26/Aug-27-28-Workshop/TC26InitialProposalTariffDraft20240823.pdf>.

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punished by withdrawal penalties – which will be added to the large losses the developer will inevitably incur as a result of a cancelled project – where they are forced to withdraw due to circumstances beyond their control.

b) Withdrawal penalties should be limited to actual costs imposed on other interconnection customers. Given that withdrawals are generally the result of circumstances beyond the control of the withdrawing customer, it makes no sense to impose punitive penalties for such withdrawals. In such circumstances, if any withdrawal penalties are imposed at all, they should be limited to the costs other interconnection customers incur if, and to the extent that, the withdrawal imposes actual costs on other customers in the same subcluster. Penalties exceeding these actual costs penalize interconnection customers for events they cannot control, which violates fundamental notions of fairness and due process. Excessive penalties are also anticompetitive because they disfavor smaller market participants like Commenting Parties and because they create unnecessary barriers to market entry that accomplish no obvious purpose.

c) Penalties Should Not Be Imposed If a Withdrawal Creates No Material Impacts. BPA's initial proposal would have not imposed penalties if there were no material impacts. The Commenting Parties urge BPA to retain its initial proposal. If the withdrawal causes no material impacts, there is no reason to impose a withdrawal penalty. This is the case even if the withdrawal occurs after the customer receives the Facilities Study Report. It is also possible that a restudy or revised updated study report may result in *reduced* costs for customers remaining in the queue, particularly where a customer is able to move up into a lower-cost scalable block plan as a result of the withdrawal or the withdrawal reduces the costs of NUs needed to accommodate the smaller cluster. In these circumstances, a withdrawal penalty is unjustified. In addition, the Commenting Parties believe there is no reason to specifically define what “material” means in this context but is comfortable leaving the determination to BPA on a case-by-case basis, recognizing that what is material in one context (for example, NUs of \$100,000) may not be material in a different context (NU costs of \$10 million).

d) Penalties Should Not Be Imposed If Another Customer Agrees To Assume the Withdrawing Customer's Queue Position. It follows from the above discussion that, in the situation where a withdrawing customer's queue position is transferred to another interconnection customer, no withdrawal penalties should be imposed. If the withdrawing customer's queue position is assumed by another customer, no restudies should be required and there would be no change to the NU costs incurred by remaining customers. Hence, there would be no justification for penalizing the withdrawing customer.

e) Penalties Should Not Be Imposed If NU Costs Increase Substantially Over Estimates. If withdrawal penalties are imposed, the Commenting Parties favor eliminating those penalties if the NU costs assigned to an interconnection customer increase by the thresholds specified in our counterproposal. Our recommended approach is generally consistent with

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FERC's approach regarding refund of security in RTO/ISO regions.¹² There is no basis for more onerous penalties in non-RTO regions where the risk of discrimination is greater and enhanced protection for interconnection customers is necessary.¹³ This approach allows a penalty-free withdrawal where the increase in NU costs is unpredictable and also is likely to render a project uneconomic. Higher thresholds are unjustified because they are likely to produce, at best, marginally greater incentives for non-viable projects to withdraw from the queue while substantially increasing the risk that a project rendered uneconomic by unpredictably high NU costs will be forced to pay withdrawal penalties on top of all the other losses imposed on the developer when it is forced to terminate a project that has made it partway through the development process.

f) *No Penalties If Cluster Study Results Are Unduly Delayed.* Under the structure adopted by FERC in Order No. 2023, the system of withdrawal penalties for interconnection customers is counterbalanced by penalties imposed on transmission providers if interconnection studies are unduly delayed. BPA's proposal lacks any such counterbalance, and this is another reason why BPA should not simply pluck the FERC withdrawal penalties out of the *pro forma* OATT without considering whether they fit with the BPA process. The Commenting Parties do not advocate imposing penalties on BPA for undue delays in the cluster study process because BPA lacks shareholders and imposing penalties on BPA is therefore unlikely to create the same incentives as would be the case for an investor-owned utility subject to penalties for study delays. Rather than imposing penalties on BPA, The Commenting Parties propose that, if BPA studies are delayed beyond specified timeframes, interconnection customers should be afforded an opportunity to withdraw their TSRs without penalty. Substantial delays are both unpredictable and likely to affect project economics by, for example, forcing developers to miss contractual deadlines for construction or causing expiration of permits. Accordingly, in these circumstances, interconnection customers should be allowed to withdraw their TSRs without penalty.

g) *No Penalties Due to BPA or Affected System Delays.* Other delays caused by BPA or other transmission providers, which are outside of an interconnection customer's control, can materially impact a project's viability. The Commenting Parties include a non-exhaustive list of such delays in the September 10 comments submitted along with its counter-proposal for the TC-26 settlement. For example, the Commenting Parties propose that penalties should not be assessed if BPA has failed to tender an LGIA within three years of a Facilities Study Agreement, if BPA has not commenced its NEPA process for interconnection or contingent facilities within

¹² *Midcontinent Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,207, at ¶ 30 (2021); *Sw. Power Pool*, 167 FERC ¶ 61,275, at ¶¶ 17, 39 (2019); *Midcontinent Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,003, at ¶¶ 107-108 (2017).

¹³ See *Midcontinent Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,003 at 21 (noting discrimination is less of a concern in RTO regions because RTOs "do not have affiliated generation and thus are less likely than non-independent entities to favor one generator over another").

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2-3 years of the Facilities Study Agreement, or if there are similar unforeseeable delays in interconnection studies or NU construction on an Affected System.

5. *Withdrawal Penalties Should Not Be Applied to the Transition Cluster.* Even if a penalty structure is explored for the durable cluster study process, the Commenting Parties agree with Avangrid, that BPA should refrain from applying any TC-26 rule changes to the transition process. Decisions are being made **now** regarding whether to proceed in the transition cluster and withdrawal penalties are not a part of that calculus. It would be inappropriate to retroactively apply the penalty structure to previously submitted, and in some cases, partially studied, transition cluster study applications.

6. *Withdrawal Penalties Should Not Compound Risk.* Penalties should not be assessed where an interconnection customer demonstrates that it already has committed funds or undertaken obligations that create sufficient exposure risk exposure to provide reasonable assurance that the project is viable. For example, if a transmission customer has already committed funds to BPA for related transmission or interconnection costs, where it has executed a long-term firm transmission service with BPA for POI-related service, or where it has provided cash or security to an unaffiliated third party based on BPA's projected interconnection schedule, it would suffer substantial losses if it cannot timely complete its project. Hence, these types of commitments, like commercial readiness demonstrations, confirm that the interconnection customer is fully committed to building its project and will terminate the project only because of unforeseeable events beyond its control. Adding penalties on top of this already substantial risk will do nothing to encourage "speculative" projects to exit the queue, but will only compound the already substantial risks and costs of project development.

7. *Penalties Should Be Used To Accelerate Universal Benefits.* We oppose any penalty structure where penalty payments could wind up in the pockets of our competitors. Rather than passing penalty funds back to study participants, BPA should use penalty funds to support planning, engineering and construction of transmission projects providing benefits across the region. In addition, transferring penalties to customer who remain in the queue creates a perverse incentive for non-viable projects to remain in the queue in the hopes that they can collect penalties from their competitors who are forced to withdraw.

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CONCLUSION

We oppose adding withdrawal penalties to BPA's existing transmission interconnection process. The proposed penalties are premature, factually unjustified, and likely to be both counterproductive and anticompetitive. If BPA adopts penalties, the proposal must be substantially modified to avoid its most counterproductive and anticompetitive impacts.

Sincerely yours,



Eric L. Christensen