

Response to Customer Comments

Conditional Firm Service Agreement

Posted: March 3, 2009

This document contains the Customer comments and Transmission Services' response to those comments for the Conditional Firm Service Agreement posted for review from January 16, 2009 to February 2, 2009.

Thank you for your comments.

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1 CEP

A. Customer Comment:

Reassessment Service: There must be limits to BPA's ability to modify the number of hours such that the associated changes to the transmission service agreements does not impair a project's finance-ability.

Transmission Services' Response:

In Order 890, FERC attempted to balance the concerns expressed by both Transmission Providers and potential Conditional Firm Service (CFS) customers when they developed the two-year reassessment provision. In paragraph 982 of Order 890, FERC addressed potential CFS customers' concerns over the impact of the two-year reassessment right on the financial aspects of developing a new generator. In this paragraph FERC states "While this is a shorter period than some transmission customers would desire, customers who require greater certainty over the long-term can obtain that certainty by agreeing to support the construction of new facilities." It will be up to each Customer that is offered a Conditional Firm Service Agreement to determine if the offer satisfies its business model and sign the Service Agreement only if they are satisfied that it meets their business need.

B. Customer Comment:

Section 3

The option to choose Bridge Service or Reassessment Service should be at the Transmission Customer's option.

Transmission Services' Response:

The Customer does choose the type of Conditional Firm Service it takes. Following the Conditional Firm construct developed in paragraphs 980 and 981 of Order 890, if the Customer commits to a build, it is choosing Bridge Service and if it doesn't commit to a build, it is choosing Reassessment Service.

C. Customer Comment:

Section 4

It is unclear at whose option it is the selection of Bridge Service or Reassessment. In my view it should be the Transmission Customer's option.

Transmission Services' Response:

Section 4 doesn't deal with the option to choose Bridge Service or Reassessment Service; it deals with the termination of either of those services. As pointed out in the answer to the previous question, the Customer's action determines the type of service awarded and the Service Agreement doesn't impact that.

D. Customer Comment:

It seems to be clear that when Bridge Service is terminated then Reassessment Service is the business arrangement. What happens when Reassessment Service is terminated?

Transmission Services' Response:

Once the Reassessment Service is terminated, Transmission Services no longer has a Conditional Firm Service agreement with that Customer's TSR and, at that time, it is up to the Customer to determine what they wish to do to meet their business needs.

E. Customer Comment:

Section 4(b)(iii)

Simply stating that the Transmission Provider can terminate if service can not longer be provided reliably is too open ended. More specificity and definition must be provided for why BPA has determined the service can not be provided reliably with remedies and next steps provided for the Transmission Provider to continue receiving service. This seems like an easy off-ramp.

Transmission Services' Response:

In Order 890, FERC did not place any limits on how the Transmission Provider determines that it can no longer provide the service reliably. Making a determination that a reliability issue exists and terminating one or more contracts would carry over into other arenas in which it is active. Transmission Services views such a determination as requiring a very "high bar". An action of this sort would be done based on sound studies.

F. Customer Comment:

Section 7(c) and 7(d)

I do not agree that the Customer must pay for the Reassessment studies. Transmission Services is required by FERC to do two year study Reassessments and the Customer should not be required to pay.

Transmission Services' Response:

Transmission Services' interpretation of Order 890 is that it can not do a Reassessment Study any more often than once every two years and that the time between actual Reassessments could be several years apart. That said, the Customer has the choice to accept or decline the offer of Conditional Firm Service. Accepting a Reassessment offer carries with it the requirement of paying for the studies when they are done and the Customer is aware of this requirement when they accept the Service. Paying for the Reassessment Studies is no different than the requirement for a party to pay for an SIS or an SFS. Reassessment Studies are expected to be relatively inexpensive.

G. Customer Comment:

Section 7(d) must have some parameters and limits within which BPA can change the number of hours. A project's finance-ability is contingent upon the level of transmission service it receives so this section must be limited.

Transmission Services' Response:

The answer to this comment is the same as the answer to CEP, Comment A.

H. Customer Comment:

Section 9

Where is the System Condition associated with the CF service agreement described? I do not see it in the exhibits.

Transmission Services' Response:

When Transmission Services filed its revised Tariff under Order 890 in October 2008, it was noted in the Petition associated with the Tariff filing that Transmission Services was not able to offer the System Conditions option at this time. This is also noted in section 9 of the Conditional Firm Service Agreement. When Transmission Services develops the automation necessary to provide System Conditions, it will determine whether any modifications to the contract are necessary. If the Customer wishes to switch to the System Conditions option when offered, a new contract will need to be executed.

2 Powerex

A. Customer Comment:

(Reassessment Service) The Agreement provides that Transmission Services only has the right to modify the number of conditional curtailment hours to maintain reliability every two years. Powerex believes it is important to ensure, as much as possible, that existing firm service holders do not experience increased curtailments due to the implementation of conditional firm service. As a result, we recommend that Transmission Services perform yearly assessments of the number of curtailable hours it is offering as part of conditional firm service. Powerex believes this is important to ensure that firm service holders' rights are protected in the event Transmission Services inadvertently "over-sells" Conditional Firm Service; underestimates the amount of necessary curtailable hours; or there is otherwise insufficient ATC to provide conditional firm service without impacting other rights' holders.

Transmission Services' Response:

Transmission Services shares Powerex's concerns that impact of Conditional Firm Service on existing firm Customer must be minimized. However, since only the Reassessment form of Conditional Firm Service allows for modification of the number of hours, while the Bridge form of Conditional Firm Service does not, Transmission Services focused on building conservative assumptions (for example, base the inventory on the capacity that goes unused 97% of the time during the heavy load hours in the worst two months of the year) into the Conditional Firm Service

Inventory Methodology and the design of our Conditional Firm Service product offering. In addition, FERC prescribed the limitation on reassessment rights that are reflected in the Conditional Firm Service product. To go to one year intervals would require a new tariff filing at FERC and it is unlikely that FERC would approve the filing given their statements in Order 890. For this reason, the minimum time that Transmission Services needs to wait between reassessments will not be reduced.

B. Customer Comment:

(Information regarding Curtailments) Section 8(c) of the Agreement provides that Transmission Services will track the number of conditional curtailment hours that have been used, and provide this information to the customer within a reasonable time upon customer request.

Powerex strongly believes that Transmission Services should post the number of conditional hours that have been allocated to each conditional firm contract, and post the actual number of curtailed hours on at least a monthly basis. As we have indicated previously, we believe it is important that this information is transparent and accessible, both to conditional firm rights holders and to other firm rights holders.

Transmission Services' Response:

Transmission Services will make public the amount of hours associated with all of its posted Conditional Firm inventory. All of the Conditional Firm Service inventory that will be offered in Phase I will result in contracts with 200 hours of Conditional Firm Curtailment rights per year.

The current draft Conditional Firm Business Practice provides the additional information only to the Conditional Firm Customer on request and Order 890 doesn't address this issue. Transmission Services feels this information could be considered proprietary by some Customers and will not post individual contract information. However, Transmission Services is open to discussing aggregated data with all Customers.

C. Customer Comment:

(Reassessment Studies) Powerex also believes that the reassessment process should be open and transparent. In this regard, we believe that reassessment studies should be posted for market review and comment. It is important that existing firm rights holders have the opportunity to comment on whether they believe their rights have been impacted by the award of Conditional Firm Service, or whether they foresee that they could be impacted if the number of curtailable hours decreases.

Transmission Services' Response:

Order 890 gives the Transmission Provider the right and the responsibility to conduct the studies and determine the resulting number of hours of curtailment based on their analysis. The Transmission Provider is allowed to determine a conservativeness factor as they deem necessary. However, Transmission Services will continue to share the data on which it will base those decisions with customers as has been done throughout the development of this product. Note however, that Transmission services expects all Conditional Firm Service to be offered on a bridge basis during the initial offering of Conditional Firm Service due to the NOS projects that are proceeding forward.

D. Customer Comment:

(Customer's Obligations in the Event of Conditional Curtailments) Section 8(b) provides that during Conditional Curtailments, customers must have arrangements in place such that the output of the generator(s) will be reduced as per Transmission Services' e-tag order. If Transmission Services executes a conditional curtailment, customers must decrease the generator(s) supporting the customer's e-tag. Similarly, section 8(d) provides that, within five business days upon request, customers must provide generator output readings which relate to the curtailment.

Powerex believes these sections, as currently drafted, should not apply to PTP customers with generation sourced outside of BPA's balancing authority, as such customers may not be able to identify a specific generator or affect the output of that generator. It should be sufficient if the conditional firm customer reduces the schedule, resulting in the actual flow of energy changing across the respective intertie.

Transmission Services' Response:

One of the cornerstones of the Conditional Firm Product as developed by Transmission Services and its Customers was the requirement that the source generation decrease when the Conditional Firm is curtailed. This applies to all generation inside and outside Transmission Services' Balancing Authority (BA) taking service under this product. This is to satisfy reliability concerns expressed by firm customers such as yourself (see Powerex's Comment A). While it is true that the exact generator decreased in BCTC's BA may not be necessary in the Conditional Firm Service Agreement Table for Powerex, after the fact there needs to be an accounting of which generators in BCTC's BA were reduced in order to verify that a reduction did occur.

3 PSE

A. Customer Comment:

Under Order 890, modifications of Number of Hours and determinations to terminate service for reliability may only be made biennially and must be based on biennial Reassessment Studies. See, e.g., Order No. 890 at paragraph 981.

Transmission Services' Response:

Transmission Services agrees that a reassessment study must be made before the number of hours subject to curtailment under Reassessment Service can be modified. Further, findings of the reassessment study must support the need for such change. However, Transmission Services disagrees that these studies can only be done at two year intervals. They cannot be done anymore often than once every two years. This is consistent with our principle of protecting the rights of our existing firm customers in as many ways as possible.

B. Customer Comment:

Section 4(a)(i) appears to indicate that Bridge Service is always provided in connection with a PTSA because it indicates that Bridge Service "commences on the start date specified in the Service Agreement attached to the Customer's PTSA." The black-line edit clarifies Section 4(a) subpart (i) to address the Start date of Bridge Service with Bridge Service is provide din conjunction with a PTSA -and when it is not.

Transmission Services' Response:

Section 4(a) deals with the termination of Bridge Service when the build is complete, not the commencement of Bridge Service. If you have further questions on this section, please submit them and Transmission Services would be happy to discuss such concerns with you.

C. Customer Comment:

Section 4(a) subparts (ii) and (iii) appear to suggest that the Transmission Provider could, in effect, cause termination of Bridge Service by merely failing to make good faith efforts to adopt a rate or meet requirements. This fails to provide the certainty required by customers who commit to support transmission upgrades. Indeed, the conditional firm requirement of Order No.890 are intended to provide "certainty both with regard to upgrade costs and, before upgrades can be constructed, the redispach requirements or curtailment conditions that may apply to their service." Order No. 890 at paragraph 980.

Transmission Services' Response:

Transmission Services is committed to providing our customers with Conditional Firm Service whenever it is appropriate to do so. Transmission Services will operate in good faith under the Conditional Firm Service Agreement and will not terminate it unless it is absolutely necessary to do so for reliability reasons.

D. Customer Comment:

Section 4(a) subparts (ii) and (iii) refer to failure to perform "under the PTSA" and "outside of a PTSA". This distinction is confusing. It appears that the intended distinction between subparts (ii) and (iii) is whether or not the PTSA is a PTSA in the form of Attachment O to Transmission Services' OATT (the requirements in subpart (ii) seem to be drawn from Attachment O). The black-line edits reflect this distinction.

Transmission Services' Response:

Transmission Services agrees it's confusing and is considering different language to provide clarity.

E. Customer Comment:

The relationship of section 4(b) subparts (i), (ii), and (iii) is unclear. The black-line edits clarify that the "trigger" is either (A) subpart (i) and subpart (ii) together or (B) subpart (iii) by itself.

Furthermore, the black-line edits clarify section 4(b) to provide that Reassessment Service may be terminated only as part of a Reassessment of the Conditional Curtailment hours, which may occur no more often than every two years. This revision is consistent with Order No. 890, which provides that "The customer will receive (Reassessment) service for the requested term unless the transmission provider determines through its biennial reassessment that the firm point-to-point service can no longer be reliably provided. The customer may also choose to terminate the service at the time of reassessment if the service no longer meets it's needs." Order No. 890 paragraph 981.

Transmission Services' Response:

As noted in the response to your comment A above, Transmission Services does not agree that it is prudent to limit doing a reassessment only on a two year cycle.

F. Customer Comment:

Finally, the black-line edits add a provision to allow for termination of Reassessment Service by the Transmission Customer. Such termination is contemplated in Order No. 890 at paragraph 981.

Transmission Services' Response:

Transmission Services does not agree with PSEs interpretation of the language in paragraph 981.

G. Customer Comment:

The black-line edits add a sentence to section 5(b) to clarify the effect of short-term firm ATC availability.

Transmission Services' Response:

Transmission Services feels the statement that the curtailment priority is a NERC priority 7 in 5(a) and the discussion of using short-term firm to firm up the Condition Firm Service on a monthly basis in the business practice is sufficient.

H. Customer Comment:

The black-line edits revise section 7(d) and section 7(c) to reflect the fact that modification of Number of Hours and Termination by the Transmission Provider for reliability may only be made biennially and must be based on biennial reassessment studies. The revisions also reflect the fact that the biennial reassessment studies and narrative statement must be provided to the Transmission Customer.

The black-line edits also revise section 7(d) and 7(e) to provide that the Notice of Modification to the Number of Hours and the Termination by the Transmission Provider, respectively, shall be in writing. The black-line edits make similar edits in other sections to provide that notices should be in writing.

Transmission Services' Response:

See Transmission Services' response to PSEs Comment A.

I. Customer Comment:

After BPA and its customers gain experience with the BPA Conditional Firm Service product, it may be appropriate to revisit (e.g., in the 2012 Transmission Rate Case) whether there should be a pro rata reduction in the LTF PTP or NT rate for customers with BPA Conditional Firm Service if such service is in fact substantially curtailed due to Conditional Curtailment during any calendar month. This is a complex issue that would raise a number of issues, but future review of such an approach may indicate that a pro rata reduction would increase the usability of BPA Conditional Firm Service.

Transmission Services' Response:

Paragraph 1047 of Order No. 890 provides "that customers using conditional firm service pay the long-term firm. . . rate." Based on historical data, the curtailments of Conditional Firm are anticipated to be minimal.

4 PNGC

A. Customer Comment:

If a TSR is an NT request for a **Designated Network Resource**, and CF is offered, then the resource should be added to Exhibit A containing the Designated Network Resource (DNR) section and the corresponding POR section with a reference to the Conditional Firm limitations in Exhibit F. In Exhibit F, SA Table, section 3, only the POR that is subject to the CF should be listed. The Exhibit F POD, section 4, should reference back to the regular NT Exhibit A POD tables.

Transmission Services' Response:

This is a reasonable request and will be done when an NT Conditional Firm Service Agreement is offered. However, Transmission Services do not anticipate any NT Conditional Firm Service Agreements will be offered in NOS I, due mainly to subgrid issues.

B. Customer Comment:

If the NT TSR is a request for addition of **Network Load** and CF is offered, then the POD should be listed in section 4 of Exhibit A with a reference to the Conditional Firm limitations of Exhibit F. In this case, section 3, POR of Exhibit F should reference Exhibit A, PORs.

Transmission Services' Response:

The PORs and PODs both need to be listed in the Conditional Firm Service Agreement so the proper PUF factor and the monitoring of generator reduction during a curtailment can be properly noted. If this requirement cannot be met, the transaction is not a candidate for using Conditional Firm Service.

C. Customer Comment:

This format of adding PORs or PODs to the usual sections of the NT agreement with references to Exhibit F will meet the NT customers' needs for firm service. NT customers have a need to show a resource is a DNR, albeit subject to CF, in order to buy Transmission Scheduling Service from BPA Power Services. For transfer customers, it is equally important that they be able to demonstrate firm service on the BPA transmission system.

Transmission Services' Response:

Same response to PNGC Comment B. The FERC has defined Conditional Firm Service as a form of firm service and the Transmission Services Conditional Firm Service reservation will be at NERC curtailment priority 7 with scheduling rights at NERC curtailment priority 6.

D. Customer Comment:

Modify 1(a) Bridge - BPA should add "or other arrangements" after "system upgrades" in the third line of this definition. This will allow BPA to look not only at transmission expansion but also at other operating arrangements or participation in others' projects as a way of obtaining Long-Term Firm Transmission availability.

Transmission Services' Response:

Transmission Services adopted the language for this definition that PNGC proposed in its comments on the Conditional Firm Business Practice (see comment PNGC comment A in the Responses to the Comments on the Conditional Firm Business Practice).

E. Customer Comment:

Modify 1(f) Reassessment with the underlined additional language: "means a type of Conditional Firm Service in which Transmission Provider has the right to unilaterally modify, no more than once every two years, the number of hours specified in the Table or terminate service to maintain reliability." Strike the last sentence of section (f)

Transmission Services' Response:

This is a good suggestion and will be incorporated in the Conditional Firm Service Agreement.

5 NRU

A. Customer Comment:

NRU requests that BPA clarify that conditional firm NT service, once granted for a new network resource, means that the resource is a designated network resource ("DNR") for all practical purposes under the OATT. This is necessary because, in order to qualify for some services under the Tiered Rates Methodology, network resources must be DNRs or actively in the process of being designated network resources.

Transmission Services' Response:

Transmission Services agrees, see response to PNGC Comment A above.

B. Customer Comment:

The Draft Agreement appears geared for PTP service predominantly. In particular, Exhibit F does not but should clearly distinguish between PTP and NT service for purposes of identifying the PORs and PODs relevant to the service. It is sensible to have CF PTP service identify both the POR and POD for the requested service. However, in the instance of network service, specifically identifying PORs and PODs may not make sense and may create confusion with existing NT Agreements. For example, for transmission service requests to support a new NT Resource, NT customers should only be required to list the applicable POR for the new resource; PODs should not have to change from what is already listed in Exhibit A of their existing NT Agreements. In other instances when NT customers seek additional transmission for a new POD, the CF NT service should not require the naming of a new POR, but rather would require only the naming of a new POD. BPA could make this clarification with a footnote explanation to sections 3 and 4 of Exhibit F.

Transmission Services' Response:

Due to key principles of Conditional Firm Service, Transmission Services cannot agree. See responses to PNGC Comments B and C.

6 TransAlta

A. Customer Comment:

The cover letter references Section 15.4(c) of the OATT, which does not exist in the OATT labeled "current" on BPAT's site. As I mentioned on the phone, I am expecting this to come up immediately.

Transmission Services' Response:

Transmission Services has updated its website to show the recent OATT filing as its "current" OATT with the appropriate caveats to clarify that certain portions (which include section 15.4(c)) as final and other portions are awaiting FERC approval.

B. Customer Comment:

Termination of Bridge Service, Exhibit J 4.(a)(i): Where in the documents is the description of how the end date of converted service is preserved through the conversion? For example, if a CFS contract has three years until expiry when it is converted, where is it described how converted service assumes the remaining duration, rollover rights, etc...?

These details seem to be implied, but where are they laid out in the contracts?

Transmission Services' Response:

Transmission Services will revise the Conditional Firm Business Practice to clarify how the end date of converted service is preserved. This revised Business Practice will be posted in final form prior to the Customer with the first Conditional Firm offer needing to return the signed Conditional Firm contract.

C. Customer Comment:

Obligation to Provide Service, Exhibit J 5.(b): The contract should reference the OATT, which overrides Business Practices in all cases. Contracts should have no references to Business Practices unless specifically tied to the OATT. Correct example from the PSTA:

"The Customer agrees to comply with Bonneville's credit support requirements throughout the term of this Agreement, as set forth in Bonneville's Creditworthiness Business Practice, as amended from time to time, and in accordance with section 11 of the OATT."

Examples where Business Practices are referenced without also being tied to the OATT: Section 5.(b), Section 7.(c), Section 8.(b), Section 8.(c)(1), Section 8.(c)(3)

Transmission Services' Response:

Transmission Services has modified the five sections noted to have language that parallels the language in the PTSA.

D. Customer Comment:

Testing, Section 8.(c)(1): Has BPAT defined "reasonable circumstances" and where is the testing protocol? I'm surprised this made it through the public process because customers bear the brunt of testing through purchases of replacement power from the market. Or is testing intended to be in Redispatch Pilot style where BPAT plans to make the curtailed schedule whole during the tests?

Transmission Services' Response:

Transmission Service is modifying the business practice to provide information regarding implementation of these testing provisions. Transmission Services will work with the Customer

prior to any scripted testing to define the parameters of the timing and the magnitude of the test to satisfy Transmission Services' need to confirm the ability to comply and to minimize the impact to the Customer. Note however, that the customer's input regarding a specific unscripted test will not be sought. Input to unscripted testing needs to be provided in response to the business practice draft.

E. Customer Comment:

Demonstration, Section 8.(d): Another item that the public process should have rooted out. It appears that CFS customers will be held to a different standard than other customers of other BPAT products. Is BPAT intending to create a special class of customers that is held to this requirement, or is demonstrated adherence to curtailments new for all products? If the former, has BPAT's legal team provided guidance on what makes this requirement applicable to just CFS customers and not all?

Transmission Services' Response:

FERC provides wide latitude to the Transmission Provider to ensure that reliability standards will be met. In addition, Transmission Services made a commitment when the development of the Conditional Firm Service began to create a product that minimized the impacts to existing firm transmission Customers. This commitment was a fundamental principle underpinning the development of all aspects of the CF product. This requirement in the Conditional Firm service contract is designed to do just that. Finally, Conditional Firm Service has a variety of attributes that are different from full Long-Term Firm service, as the product could not be provided without such differences. If this contract provision does not fit a PTSA Customer's business model, they are not obligated to execute a Conditional Firm Service offer.