**Reservation of Rights:** *All draft Provider of Choice (POC) contract language presented by BPA for discussion is subject to ongoing review and revision. Prior to finalizing the POC contract templates, BPA will publish complete contract templates for public review and comment. BPA acknowledges that failure to offer edits or comments on this document does not preclude a stakeholder from offering edits or comments during the formal public review.*

**Summary of Changes:**

We added a new section 3.5.2 to capture the non-federal resource Tier 1 Allowance from section 2.3.3.1 of the final policy. The rest of section 3.5 has not been updated in this document and is being reviewed separately. As such, it has been shaded in grey here and is included in this document for reference.

**Customer Comments and BPA Responses for 9/9 Workshop**

At the July 16 workshop, BPA heard comments suggesting various clarifications, which guided the redline comments below. Of note, BPA added clarifying language that Tier 1 Allowance Amounts can be added at any time. BPA also added language stating that the Tier 1 Allowance Amount limit may be subject to adjustment if a customer’s CHWM changes. Because this section is entirely new, redlines in section 3.5.2 represent changes since the 7/16 workshop.

**Edits of Particular Note:**

This new section 3.5.2 language is intended to be included in all POC templates.

**Reservation of Rights**

The following draft language has not been agreed to by NRU or any NRU member and is provided for discussion purposes only. The draft Provider of Choice contract red-lines, including this section, are subject to NRU’s ongoing review and recommended revision. NRU reserves the right to subsequently object to, and if necessary, reject the language below, in whole or in part, and/or propose alternative language, including the right to reject or propose alternatives to the edits proposed by NRU in this draft.

**Related Definitions:**

*Reviewer’s Note: The following three terms/definitions are recommended by NRU and are being considered for use in both the PRDM and the POC contract.*

**NRU Recommended Definitions**

“Above-CHWM Load” means the greater of: 1) Preliminary Net Requirement less the customer's CHWM; and 2) zero.

“Preliminary Net Requirement”means the forecast annual Total Retail Load less Existing Resources, NLSLs, Specified Resources added to Tier 1 Allowance Amount, and Consumer-Owned Resources serving Onsite Consumer Load, as determined in the Above-CHWM Load Process.

“Above-CHWM Load Process”means the public process conducted during the Forecast Year prior to each 7(i) Process, in which BPA will calculate the following values for the upcoming Rate Period: 1) each customer’s Preliminary Net Requirement; 2) Subsequent CHWMs and associated Augmentation, if any; and 3) each customer’s Above-CHWM Load.

*Reviewer’s Note: This is the Regional Dialogue definition. An updated version, as “Above-CHWM Load”, will be shared later.*

2.«##» “Above-RHWM load”***(07/21/09 Version)*** means the forecast annual Total Retail Load, less Existing Resources, NLSLs, and the customer’s RHWM, as determined in the RHWM Process. For the Transition Period (as defined in the TRM), Above-RHWM Load will be established as described in section 4.3.2.2 of the TRM.

*Reviewer’s Note: This is a new definition for review together with the new draft section 3.5.2 below.*

2.«##» “Tier 1 Allowance Amount”***(XX/XX/XX Version)*** means the aggregate total nameplate capacity of qualifying Specified Resources listed in section 2 of Exhibit A that «Customer Name» is applying to offset its purchase obligation in accordance with section 3.5.2.

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*Reviewer’s Note: The gray highlighted text below is included for reference, but is being presented separately and is outside the scope of this section 3.5.2 review.*

3.5 **Changes to Dedicated Resources**

3.5.1 **Specified Resource Additions to Meet Above-RHWM Load**

By written notice to BPA, «Customer Name» may elect to add Specified Resources to section 2 of Exhibit A to meet any obligation «Customer Name» may have in Exhibit C to serve its Above-RHWM Load with Dedicated Resources. Subject to the following:

3.5.1.1 By any Notice Deadline, «Customer Name» may elect to add a Specified Resource to section 2 of Exhibit A with amounts effective at the start of the corresponding Purchase Period. The following applies for such Specified Resources:

(1) «Customer Name» shall determine amounts for such Specified Resources in accordance with section 3.3.1.2.

(2) «Customer Name» may elect to reshape such Specified Resources in accordance with section 3.4.3 or may elect to purchase DFS from BPA to support such Specified Resources.

3.5.1.2 After any Notice Deadline, and if «Customer Name» notifies BPA of its election in writing by October 31 of a Rate Case Year, then «Customer Name» may add Specified Resources to section 2 of Exhibit A with amounts effective at the start of the upcoming Rate Period. The following apply for such Specified Resources:

(1) «Customer Name» shall determine amounts for such Specified Resources in accordance with section 3.3.1.2.

(2) The shape of such resources shall either be in the shape selected in section 3.1.1 of Exhibit A for any Unspecified Resource Amounts for the applicable Purchase Period, or «Customer Name» may purchase DFS from BPA to support the Specified Resource pursuant to section 2.2 of Exhibit D.

3.5.1.3 BPA shall revise Exhibit A consistent with «Customer Name»’s elections by March 31 following «Customer Name»’s elections under sections 3.5.1.1 or 3.5.1.2.

3.5.2 **Specified Resources Added to Tier 1 Allowance** **Amount*(XX/XX/XX Version)***

At any time over the term of the Agreement and by written notice to BPA, «Customer Name» may request for BPA to add Specified Resources that meet the qualifying criteria in section 3.5.2.1 to its Tier 1 Allowance Amount in section 2 of Exhibit A. BPA shall review such request and revise Exhibit A as soon as reasonably practical to include such resources, provided that BPA determines in its sole discretion that the Specified Resources meet such qualifying criteria. Any qualifying Specified Resource included in the Tier 1 Allowance Amount shall remain in the Tier 1 Allowance Amount for the term of the Agreement unless the resource is removed consistent with section 3.5.6. Any qualifying Specified Resource included in the Tier 1 Allowance Amount shall be treated as an Existing Resource for purposes of temporary resource removal as provided in Section 10.

3.5.2.1 **Tier 1 Allowance Amount Limit**

«Customer Name»’s Tier 1 Allowance Amount shall be limited to the amount stated in section 2 of Exhibit A, and shall not exceed the lesser of 5 MW or 50 percent of «Customer Name»’s CHWM reflected as a megawatt value. Such value will be considered the Tier 1 Allowance Amount limit. If BPA changes «Customer Name»’s CHWM consistent with section 1.2 of Exhibit B, then BPA shall recalculate «Customer Name»’s Tier 1 Allowance Amount limit and update Exhibit A if necessary. If «Customer Name» has a reduction to its CHWM, then BPA shall determine whether a reduction in the Tier 1 Allowance Amount limit is appropriate. In the event that BPA reduces «Customer Name»’s Tier 1 Allowance Amount limit, BPA will determine on a case-by-case basis the treatment of «Customer Name»’s resource(s).

3.5.2.2 **Qualifying Specified Resources For Tier 1 Allowance Amount**

Any Specified Resource «Customer Name» elects to add to its Tier 1 Allowance Amount must meet the following qualifying criteria:

1. the Specified Resource is a New Resource; and,
2. the Specified Resource is connected to «Customer Name»’s distribution system, regardless of voltage, and does not require the use of BPA or Third-Party Transmission Provider facilities; and,
3. the Specified Resource reduces «Customer Name»’s Total Retail Load.

3.5.2.3 **Treatment for Calculating Above-CHWM Load**

For purposes of calculating Above-CHWM Load, BPA shall treat qualifying Specified Resources added to «Customer Name»’s Tier 1 Allowance Amount under this section 3.5.2 equivalent to Existing Resources. «Customer Name»’s qualifying Specified Resources included in the Tier 1 Allowance Amount may be subject to charges pursuant to the applicable Wholesale Power Rate Schedules and GRSPs.

3.5.3 **Resource Additions for a BPA Insufficiency Notice**

If BPA provides «Customer Name» a notice of insufficiency and reduces its purchase obligation, in accordance with section 23.2, then «Customer Name» may add Dedicated Resources to replace amounts of Firm Requirements Power BPA will not be providing due to insufficiency. The Parties shall revise Exhibit A to reflect such additions.

3.5.4 **Decrements for 9(c) Export**

If BPA determines, in accordance with section 23.6, that an export of a Specified Resource listed in section 2 of Exhibit A requires a reduction in the amount of Firm Requirements Power BPA sells «Customer Name» then BPA shall notify «Customer Name» of the amount and duration of the reduction in «Customer Name»’s Firm Requirements Power purchases from BPA. Within 20 days of such notification «Customer Name» may add a Specified Resource to section 2 of Exhibit A in the amount of such decrement. If «Customer Name» does not add a Specified Resource to meet such decrement, then within 30 days of such notification BPA shall add Unspecified Resource Amounts to section 3.2 of Exhibit A in the amount and for the duration of such decrement.

3.5.5 **Temporary Resource Removal**

By March 31 of each Rate Case Year, BPA shall revise «Customer Name»’s Dedicated Resource amounts listed in the tables of Exhibit A consistent with «Customer Name»’s resource removal elections made in accordance with section 10.

3.5.6 **Permanent Discontinuance of Resources**

«Customer Name» may permanently remove a Specified Resource listed in section 2 of Exhibit A, consistent with the 5(b)/9(c) Policy on statutory discontinuance for permanent removal. If BPA makes a determination that «Customer Name»’s Specified Resource has met BPA’s standards for a permanent removal, then BPA shall revise Exhibit A accordingly. If «Customer Name» does not replace such resource with another Dedicated Resource, then «Customer Name»’s additional Firm Requirements Power purchases under this Agreement, as a result of such a resource removal, may be subject to additional rates or charges as established in the Wholesale Power Rate Schedules and GRSPs.

3.5.7 **Resource Additions for Annexed Loads**

If «Customer Name» acquires an Annexed Load, in addition to any resources assigned by the other utility to serve the Annexed Load, «Customer Name» may add Dedicated Resources to Exhibit A, subject to sections 3.5.6.1 and 3.5.6.2 below, to serve amounts of such Annexed Load that are Eligible Annexed Load. “Eligible Annexed Load” means an Annexed Load: (1) that is added after the Effective Date, and (2) for which «Customer Name» did not receive a CHWM addition pursuant to section 1.2.2 of Exhibit B.

3.5.7.1 During the Rate Period in which «Customer Name» acquires an Eligible Annexed Load, «Customer Name» may serve such load for the remainder of that Rate Period with Dedicated Resources in the shape of the load, as negotiated by the Parties, or with additional power purchased from BPA. If «Customer Name» elects to serve such load with Dedicated Resources, then «Customer Name» shall apply such resources for the remainder of the Rate Period and in accordance with applicable terms stated in Exhibit D. If «Customer Name» elects to purchase additional power from BPA for the Annexed Load, then during that Rate Period such power purchases may be subject to additional rates or charges as established in the Wholesale Power Rate Schedules and GRSPs and as applicable to the shape of the Eligible Annexed Load.

3.5.7.2 For all Rate Periods after the Rate Period when «Customer Name» acquires an Eligible Annexed Load, «Customer Name» may serve such load with Dedicated Resources pursuant to «Customer Name»’s elections to apply Dedicated Resources or Purchase Firm Requirements Power at Tier 2 Rates during the applicable Purchase Period as stated in Exhibit C.

3.5.8 **Resource Additions/Removals for NLSLs**

3.5.8.1 To serve an NLSL listed in Exhibit D that is added after the Effective Date, «Customer Name» may add Dedicated Resources to section 4 of Exhibit A. «Customer Name» may discontinue serving its NLSL with the Dedicated Resources listed in section 4 of Exhibit A if BPA determines that «Customer Name»’s NLSL is no longer an NLSL in «Customer Name»’s service territory.

3.5.8.2 If «Customer Name» elects to serve an NLSL with Dedicated Resources, then «Customer Name» shall specify in section 4 of Exhibit A the maximum monthly and Diurnal Dedicated Resource amounts that «Customer Name» plans to use to serve the NLSL. «Customer Name» shall establish such firm energy amounts for each month beginning with the date the resource was dedicated to load through the earlier of the date the resource will be removed or September 30, 2028. «Customer Name» shall serve the actual load of the NLSL up to such maximum amounts with such Dedicated Resource amounts. To the extent that the NLSL load is less than the maximum amount in any monthly or Diurnal period, «Customer Name» shall have no right or obligation to use such amounts to serve the non-NLSL portion of its Total Retail Load. Specific arrangements to match such resources to the NLSL on an hourly basis shall be established in Exhibit D.

3.5.9 **PURPA Resources*(07/21/09 Version)***

If «Customer Name» is required by the Public Utility Regulatory Policies Act (PURPA) to acquire output from a Generating Resource and plans to use that output to serve its Total Retail Load, then such output shall be added as a Specified Resource pursuant to Exhibit A. «Customer Name» shall purchase DFS from BPA (or equivalent service if DFS is unavailable) to support such resources for the term of this Agreement.