**BPA Summary of Changes For 4/10 Workshop**

During the pandemic, many contracting organizations within BPA added pandemics and endemics to their Uncontrollable Forces clause. We proposed adding those two into the Provider of Choice contracts to align with other BPA contracts. Additionally, BPA proposed to name cyberterrorism as a form of terrorism that is covered under this clause.

**Customer Comments and Proposed BPA Responses for 5/6 Workshop**

BPA received four sets of comments related to Uncontrollable Forces:

1. DOE Hanford/DOE Richland requested two edits. First, they requested that customers be required to notify “promptly” instead of “immediately” aften an Uncontrollable Force; BPA agrees to this edit. Second, they state that for federal agencies, the unavailability of funds or financing should be considered an Uncontrollable Force and have the dispute resolution provision apply. BPA disagrees with this edit; dispute resolution would apply, as would subsections in Billing and Payment related to disputed bills and late payments. And any such change would apply to all federal agencies, presumably.

2. NRU requested that BPA delete the proposed addition of cyber terrorism as a category of terrorism. BPA agrees to this edit.

3. NRU and WPAG requested new language that addresses what BPA’s process would be if an Uncontrollable Force perpetuated for a long amount of time. NRU submitted a new paragraph of contract language outlining the process. BPA disagrees with the proposed process residing the power sales agreement. Also, would the process be equally applicable; would customers also need to commit to a similar process? BPA agrees with the spirit of the WPAG and NRU request, and proposes adding a sentence that has Parties commit to keeping each other apprised.

**BPA Responses for 6/10 Workshop**

At the 5/6 workshop customers discussed Ryan Neale’s language in section 21.4 but customers ultimately gave the okay for BPA’s proposed edits. No comments were received after the 5/6 workshop. BPA proposes to move the language to the master Provider of Choice contract template.

**21. UNCONTROLLABLE FORCES*(05/31/24 Version)***

21.1 A Party shall not be in breach of an obligation under this Agreement to the extent its failure to fulfill the obligation is due to an Uncontrollable Force. “Uncontrollable Force” means an event beyond the reasonable control, and without the fault or negligence, of the Party claiming the Uncontrollable Force, that prevents that Party from performing its obligations under this Agreement and which that Party could not have avoided by the exercise of reasonable care, diligence and foresight. Uncontrollable Forces include each event listed below, to the extent it satisfies the foregoing criteria, but are not limited to these listed events:

(1) any curtailment or interruption of firm transmission service on BPA’s or a Third Party Transmission Provider’s System that prevents delivery of Firm Requirements Power sold under this Agreement to «Customer Name»;

(2) any failure of «Customer Name»’s distribution or transmission facilities that prevents «Customer Name» from delivering power to end-users;

(3) strikes, work stoppage, or terrorist acts;

(4) floods, earthquakes, other natural disasters, epidemics, or pandemics; and

(5) final orders or injunctions issued by a court or regulatory body having subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court having subject matter jurisdiction.

21.2 Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

21.3 If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall:

(1) promptly notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable;

(2) use commercially reasonable efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable;

(3) keep the other Party apprised of such efforts on an ongoing basis; and

(4) provide written notice of the resumption of performance.

Written notices sent under this section must comply with Exhibit I.

21.4 The Parties shall keep each other apprised of the status of any Uncontrollable Force once invoked.