

March 22, 2017

**COMMENTS ON BEHALF OF  
THE CITIES OF ANAHEIM, AZUSA, BANNING, COLTON,  
PASADENA, AND RIVERSIDE, CALIFORNIA**

On behalf of the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, the “Six Cities”), please find below proposed revisions to selected provisions of the Open Access Transmission Tariff (“OATT”) proposed by the Los Angeles Department of Water and Power (“LADWP”).

**Revisions to Section 2:**

**2 Initial Allocation and Renewal Procedures**

**2.1 Continuation of Service**

Subject to the Service Agreement term limitations in Section 13.1 and Section 28.1A, existing firm service customers (wholesale requirements and transmission-only, with a contract term greater than one year), have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed; provided, however, the total term for any Service Agreement, including all renewal options, is limited to three (3) years, unless:

2.1.1 In the ~~exclusive-reasonable~~ determination of Transmission Provider, the Eligible Customer has satisfied the requirements of the Governmental Person Use Certification and the requirements of Section 5.2 of this Tariff; ~~or~~

2.1.2 The Transmission Provider and a firm service customer with a contract term of two (2) years or more ~~have~~ mutually agreed to add the following automatic renewal option to the initial Transmission Service Agreement:  
“**Automatic renewal option**”: This TSA will automatically renew for an additional term of two (2) years, unless either Party notifies the other party of the termination of this automatic renewal option on or before the date that is one (1) year prior the last day of the initial term of the TSA, and one (1) year prior to the last day of each subsequent term of the TSA thereafter.”; or

2.1.3 The applicable transmission service contract specifies otherwise.

**2.2 Competing Requests**

This transmission reservation priority is independent of whether the existing customer continues to purchase capacity and energy from the Transmission Provider or elects to purchase capacity and energy from another supplier. If at the end of the contract term, the Transmission Provider's Transmission System cannot accommodate all of the requests for transmission service, the existing firm service customer must agree to accept a contract

term at least equal to a competing request by any new Eligible Customer requesting service (up to three (3) years in duration) and be willing to pay the current rate for such service, as approved by the Transmission Provider's Board of Commissioners and the Los Angeles City Council for such service; provided that, the firm service customer (i) shall have a right of first refusal at the end of such service only if the Transmission Customer has not exhausted its three (3) year Service Agreement limitation and (ii) may only renew the service for a period such that the total term of the Service Agreement, including all renewal options, does not exceed three (3) years, unless in the **exclusive reasonable** determination of Transmission Provider, the Eligible Customer has satisfied the requirements of the Governmental Person Use Certification and the requirements of Section 5.2 of this Tariff; or the Transmission Provider and a firm service customer with a contract term of two (2) years or more have mutually agreed to add the automatic renewal option set forth in Section 2.1.2 of this Tariff to the initial Transmission Service Agreement. The existing firm service customer must provide notice to the Transmission Provider whether it will exercise its right of first refusal no less than six (6) months prior to the expiration date of its transmission service agreement. This transmission reservation priority for existing firm service customers is an ongoing right that may be exercised at the end of all firm contract terms greater than one year.

### **2.3 Prior Service Agreements**

Service agreements entered into ~~under Transmission Provider's open access transmission tariff~~ prior to the effective date of this Tariff, unless terminated, will be subject to the renewal procedures above on the first roll over date after the effective date of this Tariff, **except that, if the service agreement includes provisions governing continuation, renewal, or extension of service upon expiration of the service agreement, then those terms shall govern.**

## **Revisions to Section 5:**

### **5 Municipal Tax Exempt Bonds**

#### **5.2 Governmental Person Use Certificate**

5.2.1 The Transmission Provider may provide Transmission Service to an Eligible Customer in which the total term for any Service Agreement, including all renewal options, is greater than three (3) years, if the Eligible Customer provides a Governmental Person Use Certificate to the Transmission Provider, substantially in the form of Attachment A-2, consisting of a signed and notarized declaration, from a senior management representative who is duly authorized to represent Eligible Customer.

5.2.2 Any dispute between Transmission Provider and the Eligible Customer as to the determinations made by Transmission Provider in this Section 5.2 shall not be subject to the dispute resolution provisions of Section 12 of this Tariff; provided that nothing in this Section 5.2 shall be construed as affecting in any way the ability of the

Transmission Provider or Eligible Customer to exercise rights under any applicable law or regulations.

5.2.3 To facilitate the review by the Transmission Provider of the Eligible Customer Certification ~~set forth~~provided for in 5.2.1, the Eligible Customer may include documentary support, such as an IRS letter ruling or ~~an unqualified~~ opinion of a nationally-recognized bond counsel supporting the statements in the Certification. The Transmission Provider shall review and respond to the Eligible Customer's submission of a Governmental Person Use Certificate within forty-five (45) days of receipt of said ~~request~~Certificate.

5.2.4 After Transmission Provider's review of the Eligible Customer Certification provided in Section 5.2.1, which may include review by Transmission Provider's bond counsel, Transmission Provider will inform the Eligible Customer whether ~~or not~~, providing the Eligible Customer with a term of service longer than three (3) years pursuant to the Eligible Customer Certification would ~~not~~ jeopardize the tax-exempt status of any municipal bond(s) used to finance the Transmission Provider's facilities. The Transmission Provider ~~shall have the exclusive~~will exercise reasonable judgment to make such determination. Eligible Customer agrees to pay or reimburse Transmission Provider for reasonable costs and expenses (including fees and expenses of counsel) that may be incurred by Transmission Provider for review of the individual Eligible Customer's Governmental Person Use Certificate.

5.2.5 Supplemental Procedures for Resale, Assignment or Transfer of Service. An Eligible Customer that has been informed by Transmission Provider after the review in Section 5.2.4 that it qualifies for Transmission Service under a Service Agreement in which the total term, including all renewal options, is greater than three (3) years, may only sell, lay-off, or otherwise transfer in any manner, any individual service transaction pursuant to the provisions set forth in Section 23 of this Tariff, if the total term of the Service Agreement (~~as subsequently sold, laid-off, or otherwise transferred~~), including all renewal options, does not exceed three (3) years, unless in the ~~exclusive-reasonable~~ determination of Transmission Provider, the other Eligible Customer to which such service is sold, laid-off or otherwise transferred has also satisfied the requirements of the Eligible Customer Certification in Section 5.2 of this Tariff or unless such transfer is to the operational control of an Independent System Operator or Regional Transmission Organization. Any resale, assignment or transfer of service that fails to conform to the provisions of Sections 5.2.5 and 23 of this Tariff, by intent or otherwise, shall be void and unenforceable.

**Comment [MEM1]:** What would be an example of an individual service transaction?

5.2.6 Transfers to ISOs/RTOs. Eligible Customers that have executed the Governmental Person Use Certificate (Attachment A-2) may transfer rights to Transmission Service on Transmission Provider's Facilities to the operational control of an Independent System Operator or Regional Transmission Organization. The terms applicable to such transfer shall provide for preservation of the tax-exempt status of financing instruments used to finance the Facilities, and, if requested, Eligible Customer shall provide to Transmission Provider assurance in the form of a legal opinion rendered

by nationally-recognized bond counsel or similar documentation that is reasonably acceptable to Transmission Provider that transfer of operational control of Eligible Customer's rights to Transmission Service shall not impair the tax-exempt status of the financing instruments.

#### **Revisions to Section 13:**

### **13 Nature of Firm Point-To-Point Transmission Service**

#### **13.1 Term:**

The minimum term of Firm Point-To-Point Transmission Service shall be one hour and the maximum term, including all renewals granted in accordance with Section 2, shall be limited to three years pursuant Section 5.1 of this Tariff, unless in the ~~exclusive~~ reasonable determination of Transmission Provider, the Eligible Customer has satisfied the requirements of the Governmental Person Use Certification and the requirements of Section 5.2 of this Tariff, in which case the maximum term shall be specified in the Service Agreement; or the Transmission Provider and a firm service customer with a contract term of two (2) years or more have mutually agreed to add the automatic renewal option set forth in Section 2.1.2 of this Tariff to the initial Transmission Service Agreement.

#### **Revisions to Section 15:**

### **15.6 Other Transmission Service Agreements:**

Eligible Customers receiving transmission service under other agreements with the Transmission Provider may continue to receive transmission service under those agreements until such time as those agreements may expire or terminate. If the service agreement includes provisions governing continuation, renewal, or extension of service upon expiration of the service agreement, then those terms shall govern.

#### **Revisions to Section 23:**

### **23 Sale or Assignment of Transmission Service**

#### **23.1 Procedures for Resale, Assignment or Transfer of Service:**

Subject to the ~~limitations-provisions in~~ Section 5.2 of this Tariff, Transmission Customer may sell, assign, or transfer all or a portion of its rights under its Service Agreement, ~~but only~~ to another Eligible Customer or to the operational control of an Independent System Operator or Regional Transmission Organization (the Assignee). The Transmission Customer that sells, assigns or transfers its rights under its Service Agreement is hereafter referred to as the Reseller. ~~Compensation to Resellers shall not exceed the higher of (i) the original rate paid by the Reseller, (ii) the Transmission~~

~~Provider's maximum rate on file at the time of the assignment, or (iii) the Reseller's opportunity cost capped at the Transmission Provider's cost of expansion.~~

The Reseller and Assignee must execute the Form of Service Agreement for the Resale, Assignment or Transfer of Point-To-Point Transmission Service (Attachment A-1), with the Transmission Provider governing reassignments of transmission service prior to the date on which the reassigned service commences, unless the transfer is of operational control to an Independent System Operator or Regional Transmission Organization, in which case execution of Attachment A-1 is not required. Transmission Provider is not responsible for administering any financial arrangements between the Reseller and Assignee, including without limitation, the payment of financial losses and penalties. Reseller remains liable for any and all financial obligations and payments to Transmission Provider under the parent Service Agreement except as specifically agreed to by the Transmission Provider and the Reseller through an amendment to the Service Agreement. Transmission Provider will not accept payment from an Assignee for a resale transaction on behalf of a Reseller. If the Assignee does not request any change in the Point(s) of Receipt or the Point(s) of Delivery, or a change in any other term or condition set forth in the original Service Agreement, the Assignee will receive the same services as did the Reseller and the priority of service for the Assignee will be the same as that of the Reseller. The Assignee will be subject to all terms and conditions of this Tariff. If the transfer is to an Independent System Operator or Regional Transmission Organization, then only provisions of the OATT that are relevant to usage of the transferred rights under the Service Agreement will be applicable. If the Assignee requests a change in service, the reservation priority of service will be determined by the Transmission Provider pursuant to Section 13.2.

**Comment [MEM2]:** We are unclear as what situation this phrase is intended to address.

#### **Revisions to Section 28:**

##### **28.1A Term of Service:**

The minimum term of Network Integration Transmission Service shall be more than one year and the maximum term, including all renewals granted in accordance with Section 2, shall be limited to three years pursuant Section 5.1 of this Tariff, unless in the exclusive reasonable determination of Transmission Provider, the Eligible Customer has satisfied the requirements of the Governmental Person Use Certification and the requirements of Section 5.2 of this Tariff, in which case the maximum term shall be specified in the Service Agreement; or the Transmission Provider and a firm service customer with a contract term of two (2) years or more have mutually agreed to add the automatic renewal option set forth in Section 2.1.2 of this Tariff to the initial Transmission Service Agreement.

#### **Revisions to Attachment A-2:**

**Qualifying Use.** Except as provided in (e) and (f) below, for the term of any TSA, including any renewal periods, the Eligible Customer will use the Facilities to transmit electricity

only in connection with its retail electric system in providing electricity to its retail electric customers.

**Governmental Person Uses Permitted.** In the event there is to be a sale, lay-off, or other transfer in any manner, of any service pursuant to any TSA, by the Eligible Customer, to another Governmental Person for a period of longer than 3 years, such may only be permitted if such other Governmental Person satisfies the requirements of Section 5.2 and executes a form of this Certificate.

**Transfers to ISOs/RTOs.** Eligible Customer may transfer its rights to Transmission Service on Transmission Provider's Facilities to the operational control of an Independent System Operator or Regional Transmission Organization, in which case execution of this Certificate shall not be required. The terms applicable to such transfer shall provide for preservation of the tax-exempt status of financing instruments used to finance the Facilities, and, if requested, Eligible Customer shall provide to Transmission Provider assurance in the form of a legal opinion rendered by nationally-recognized bond counsel or similar documentation that is reasonably acceptable to Transmission Provider that transfer of Eligible Customer's rights to Transmission Service shall not impair the tax-exempt status of the financing instruments.

**Additional information.** Eligible Customer agrees to immediately inform, in writing, Transmission Provider of any change regarding the foregoing certifications, representations and agreements and agrees that, if such change is reasonably likely, in the discretion of Transmission Provider, to adversely affect the tax-exempt status of the Transmission Provider's bonds, Transmission Provider may ~~immediately~~ terminate any TSA in accordance with Tariff Section 5.1, to the extent necessary to prevent such adverse impact.

In addition to the foregoing revisions, the Six Cities do not waive, and expressly reserve their rights with respect to any other issues associated with LADWP's 2017 OATT stakeholder process (and the tariff revisions proposed therein) that may be subsequently identified.

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