

## CUSTOMER'S JPA ISSUES OF DISCUSSION

There are a few items that Customers agreed to provide to DSW prior to the next meeting with them. PDP/INT Customers are scheduled to meet with DSW on August 27<sup>th</sup> at their DSW facilities from 10:30 am to 3:00 pm.

Many PDP and INT Customers met last week to discuss these items and to draft a basic Customer response. The items are listed below and a preliminary PDP/INT Customer response. Please see below:

### 1. **Transmission Planning.**

- a. ISSUE: At our last meeting with DSW, we discussed transmission planning functional area and our concern that the JPA only referred to Attachment P and the OATT rather than including any details within the JPA.
- b. WAPA REQUEST: DSW requested that Customers review Attachment P and the OATT to identify what was missing that should be included in the JPA.
- c. CUSTOMER SUGGEST: PDP and INT Customers support the attached document, Attachment I, and propose discussion and consideration.

### 2. **Termination of Prior Agreement.**

- a. ISSUE: Customers want to ensure that there is no lapse in coverage between the old JPA agreement and MOU and the new JPA agreement. We had some discussion, but it is unclear as to whether Customers and DSW were in agreement with the language.
- b. CUSTOMER SUGGEST LANGUAGE: *(Will provide language by the end of the week)*

### 3. **Sovereign Immunity.**

- a. ISSUE: Since Section 16 of the JPA incorporates the GPCPs, and Section 38 of the GPCPs incorporates "Federal law" to control obligations and procedures established by the contract and the enforcement thereof, and federal law includes 10 CFR 904.13 as the procedures for Disputes which includes provisions for arbitration, there is an issue with tribal sovereign immunity.
- b. CUSTOMER SUGGEST LANGUAGE: PDP and INT Customers support the attached proposed document, Attachment II, and propose discussion and consideration.

### 4. **Ten-Year Plan Voting.**

- a. ISSUE: At the last meeting with DSW, the participants discussed authorized TYP voting and the criteria in which votes would occur.
- b. CUSTOMER SUGGEST VOTING CRITERIA: PDP and INT Customers support the attached proposed document, Attachment III, and propose discussion and consideration.

### 5. **Meeting Notification.**

- a. ISSUE: Customers' schedules, as well as DSW's schedules, are very busy and their calendars are populated with many meetings very early.

- b. CUSTOMER SUGGEST: To ensure that Customers have sufficient notification for upcoming meetings, PDP and INT Customers recommend a 28-day notification for upcoming meetings and DSW should post the meeting's information two weeks prior to the meeting.

**6. Annual Meeting Schedule.**

- a. ISSUE: There are numerous WAPA/DSW meetings that are scheduled throughout each fiscal year that encompass several functional areas. To minimize required time, travel requirements, cost and meeting coverage, PDP/INT Customers recommend that DSW combine meetings or hold multiple meetings on the same day.
- b. CUSTOMERS SUGGEST: PDP/INT Customers recommend that DSW make efforts to schedule one regular meeting per month. This does not prevent DSW from scheduling special meetings or unscheduled meetings when needed to keep Customers informed and engaged and to maintain transparency.

**TRANSMISSION PLANNING**

Strawman Proposal (Transmission Planning)

Background: Per Attachment P of the OATT, WAPA holds two transmission planning meetings a year. The purpose of the first meeting, in Q1, is to review load and resource data submitted by its customers. The second, in Q4, is to review study results.

The customer group propose the following as part of the JPA:

- 1) Each year, WAPA requests that load and resource data be submitted by its customers by March 15. WAPA should expand its annual data request to include a call for proposed studies to be submitted by its transmission customers.

Customers would propose:

- a. regional projects which tend to affect many WAPA customers and/or other utilities.
  - b. local transmission projects which address the needs of one customer or a small group of customers but may not have a material effect on system-wide reliability or power flows.
- 2) During WAPA's Q1 meeting, WAPA would dedicate a portion of the meeting to reviewing how they plan to move forward with customer requested studies. Regional project studies would also likely move through the more typical OATT process.

Local project studies would have their own process as follows:

- a. If a project is likely to impact a single customer, WAPA will work one-on-one with the customer to define the scope of the studies, review results, etc.

- b. If a project is likely to impact more than one customer, WAPA will form a study group. The study group will meet at least twice, once to define the scope of the studies, and the second time to review the results of the studies.
  - c. At WAPA's discretion, WAPA may call for additional meetings of the study group.
  - d. Study groups are open to all participants to ensure meetings are not discriminatory or "closed."
- 3) At WAPA's Q4 meeting, WAPA would dedicate a portion of the meeting to reviewing the results of customer requested studies.

**SOVEREIGN IMMUNITY**

Proposed Language includes two suggested resolutions:

- 1) Clarify the definition of “Contractor” by replacing “and is” with “who has chosen to be”. This results in the following new definition of “Contractor”: “An entity with one (1) or more contracts or agreements with WAPA who has chosen to be a Party to this Agreement.” This will make clear that not all entities with WAPA contracts must sign this agreement, allowing any tribe to opt out of this agreement all together.
  
- 2) Add the following language to the Agreement, either as a new section or at an appropriate place. Since there may be other issues related to WAPA’s sovereign immunity, perhaps a new section will be needed.

“Nothing in this Agreement or in any current or future schedules, attachments, exhibits, amendments, or addenda is intended to be or shall be construed as a waiver of any tribe’s sovereign immunity. The Parties understand and agree that neither this Agreement nor any underlying law or procedure shall confer jurisdiction on any state or federal court over any tribe for claims under this Agreement.”