



Agenda
City Council Workshop Meeting
Tuesday, October 27, 2015
City Hall Council Chamber | 505 Swift Boulevard

City Council Workshop - 6:00 p.m.

Agenda Items:

- I. Marijuana Update (20 minutes)
 - Heather Kintzley, City Attorney
2. Department of Energy Acquisition Reform (30 minutes)
 - David Rose, Mayor
 - Terry Christensen, Council Member
 - Robert Thompson, Council Member
3. Wholesale Power Purchase Decisions (45 minutes)
 - Bob Hammond, Energy Services Director

Adjournment

Richland City Hall is ADA accessible with special parking and access available at the entrance facing George Washington Way. Requests for sign interpreters, audio equipment, and/or other special services must be received 48 hours prior to the City Council Workshop by calling the City Clerk's Office at 942-7388.



COUNCIL WORKSHOP COVERSHEET

Council Date: 10/27/2015

Department: City Attorney

Key Element:

Subject:

Marijuana Update (20 minutes)

Summary:

The City Attorney will provide Council with an update on the 2015 legislative changes to recreational and medical marijuana in Washington.

Attachments:



COUNCIL WORKSHOP COVERSHEET

Council Date: 10/27/2015

Department: City Council

Key Element:

Subject:

Department of Energy Acquisition Reform (30 minutes)

Summary:

Recently, Mayor Rose and Councilmember Thompson attended a meeting with the Department of Energy regarding their Acquisition Reform. Attached are the documents received during that meeting.

At the October 20 Council Meeting, Mayor Rose and Councilmembers Thompson and Christensen requested time at the October 27 Council workshop to discuss Richland's position on this topic.

As agents for DOE in managing its land, facilities and programs, DOE's prime contractors have a major impact in host communities. The Tri-City economies have come to depend on them and the DOE funding behind them. It will be important for Richland to weigh-in on this topic.

Attachments:

1. Energy Communities Alliance – Changing Course: The Case for Sensible DOE Acquisition Reform
2. Contract Clauses of Particular Community Interest

Attachments:

1. ECA Acquisition Reform
2. Contract Clauses



Energy Communities Alliance

Changing Course: The Case for Sensible DOE Acquisition Reform

June 2015

Significant changes are needed in four areas—risk-sharing, contract vehicles, subcontracting and community input—to ensure that future Department of Energy acquisitions are successful and achieve the Department’s important mission over the long-term

Executive Summary

The successful and safe operation of Department of Energy (DOE) sites is of paramount importance to the adjacent communities. Virtually all of the major prime contracts in DOE's Office of Environmental Management (DOE-EM) and NNSA's portfolios are set to expire between 2016 and 2019 (if not extended), setting up an unprecedented period of contract re-competition over the next four years. In addition, several new contracts—including a new contract to manage environmental cleanup work at Los Alamos National Laboratory—will be competed during this same time period. The approach to—and ultimate success of—these new contracts is vital to the overall nuclear security and nuclear waste cleanup mission in the United States, the health and viability of the communities that host these sites, the strength of the future workforce and the sustainability of businesses—both small and large—that take on these unique tasks.

Numerous factors will impact how successfully DOE navigates this period of change, including appropriations, interactions with host states, DOE's own contract and program management, leadership at sites and at headquarters and the performance of contractor key personnel. Yet one thing clearly transcends all other variables: the contract vehicles are the foundation of this strategic effort. As DOE's planning begins in earnest for this next wave of acquisitions, we are concerned that DOE's current processes, policies and procedures are not currently up to the task.

DOE's effort to shift more risk to contractors through fixed-price and cost-capped contracts, fee claw-back and other measures has resulted in significantly decreased competition for recent DOE contracts and, more importantly, has been a severe impediment to the completion of work on several existing contracts. At the same time, community and site-level input into contracting strategy is diminishing and subcontractors whose vitality is critical to local economies are seeing a similar decrease in their roles and opportunities.

These trends are not in the best interests of the DOE or its host communities. ECA has proposed a process to address our concerns and move DOE towards contracts that will accomplish DOE's goals.

The Energy Communities Alliance is the organization of local governments that are adjacent to or impacted by DOE and NNSA activities. Our board members include elected officials and administrators from local governments impacted by DOE and our members include community reuse organizations and other local community agencies and organizations adjacent to DOE facilities.

1.0 Introduction

DOE is on the leading edge of a period of unprecedented contract competition. The Idaho cleanup ‘core’ contract competition (DOE-EM) and the Kansas City M&O competition (NNSA) are both currently ongoing in 2015 and followed by at least 17 major contracts which are set to expire between 2016 and 2019 (see Table 1.1).

In addition, several new contracts are set to be completed during this time period as well, most notably the new Los Alamos National Laboratory cleanup contract that is being separated from the NNSA lab M&O contract to be managed by DOE-EM. While some of the expiring contracts can—and likely will—be extended, the combination of new contracts and expiring contracts will present a tremendous challenge for DOE, its contractors, and the communities that host DOE/NNSA sites.

Table 1.1

Upcoming Contract Expirations	
2016 • DUF6 Conversion Operations (Jan. 2016) • Oak Ridge ETTP (July 2016; can be extended for four years) • Nevada National Security Site (Sept 2016) • Moab (Sept. 2016) • SRS (Sept. 2016; can be extended 22 months) • Portsmouth (March 2016; can be extended for five years) • Hanford waste tanks (Sept. 2016; two-year extension possible)	2017 • SRS waste tanks (June 2017) • Paducah (July 2017) • WIPP M&O (Sept. 2017; five-year extension possible) • Los Alamos National Laboratory (Sept. 2017; more award terms possible) • Sandia National Laboratories (April 2017) 2018 and Beyond • Hanford Central Plateau (Sept. 2018) • Lawrence Livermore (Sept. 2018; more award terms possible) • West Valley (April 2019) • Y-12/Pantex (June 2019; up to five more years possible) • Hanford Mission Support (Sept. 2019) • Salt Waste Processing Facility

These new contracts will be especially important as they will be re-competed during a pivotal time for DOE, particularly for the Office of Environmental Management. For many years, DOE-EM has been spreading the annual appropriation of \$5.5 to \$6 billion in a thinner layer

Energy Communities Alliance Case for Sensible DOE Acquisition Reform

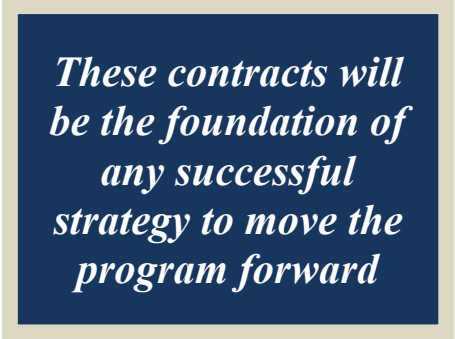
over an increasingly expensive portfolio, but in the next few years a variety of circumstances will make that all but impossible. During the same 2016-2019 time period in which the contracts will be expiring, the operational commitments of the program—particularly at the Hanford site in Washington State—will begin to outpace expected appropriations by \$2 billion or more.

Likewise, a vast number of legally enforceable—and largely unattainable—cleanup milestones are coming due, bringing with them fines and legal settlements that diverts DOE’s leadership’s attention and puts a further financial strain on the program. Adding to that strain, the bill for lack of investment in infrastructure and maintenance across the complex over the last two decades is coming due. Finally, the mandatory defense cuts known as sequestration could return in 2016, bringing a whole new dimension to this equation.

This convergence of events makes the contracting strategy all the more important, as these contracts will be the foundation of any successful strategy to move the cleanup mission forward under these complex and difficult conditions.

2.0 Appropriately Balance the Risk in Contracts

DOE has traditionally seen a very high level of competition for its contracts, with three to five teams led by world-class engineering and construction firms vying for each opportunity. However, in the last four years, DOE has changed its acquisition approach, seeking to shift more risk to its prime contractors, both within existing contracts and in planning for new opportunities. This has had several impacts, the most notable of which is the dramatic drop-off in the number of companies willing to bid for contracts with DOE-EM.



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No one wins if the best and brightest companies decide to take their talent elsewhere. If the winning contractor is just the one who bids hoping that they can get reasonable treatment from DOE in the future—rather than the one who leverages the best ideas, corporate reachback, technical approach, technical advances and key personnel—it does not set up a successful situation for DOE, the community or subcontractors. The risk-reward equation needs to be rebalanced to ensure the taxpayers and stakeholders are protected, while at the same time providing enough of an upside that companies are willing to compete.

Energy Communities Alliance Case for Sensible DOE Acquisition Reform

The changes in DOE's acquisition policies are outlined in a Dec. 12, 2012 memorandum (Attachment 1) from then-Deputy Secretary of Energy Dan Poneman. In that memo, DOE lays out two primary principles: DOE will align the contractor interest to the taxpayer interest and contracts will be structured so that contractors bear responsibility for their actions. These principles are laudable in theory, but in practice have resulted in contracts that do not serve the interests of taxpayers, DOE, contractors or the communities that host DOE sites.

Primarily, the breakdown has been the result of an emphasis on fixed-price contracting and provisional fee payments, as directed by the 2012 memo:

The changes in policy have resulted in fee structures in new contracts that are overly punitive, with little upside and a tremendous potential downside for the bidding companies

"In accordance with Administration policy, contracting officers will first consider the use of a firm-fixed-price contract to complete work requirements. This contract type is most appropriate for services that can be objectively defined in a statement of work and the risks involved can be estimated with an acceptable degree of certainty. Long-standing views about the unique and sometimes unpredictable nature of work performed by the Department have resulted in the limited use of firm-fixed-price or other fixed-price type contracts. However, improved upfront planning and requirements definition, as well as appropriate scoping of the contract to clearly-defined, will allow for the greater use of firm-fixed-price contracting."

The memo directs that performance measures link all or "a substantial portion" of the fee to achievement of final outcomes rather than interim accomplishments. "Contracts shall be structured such that all or a significant portion of the fee for interim milestones will be provided provisionally and must be returned if the contractor does not fulfill its ultimate contractual obligations," the memo states. In addition, the DOE policy puts an emphasis on hard cost caps or a cost-share approach:

"Using this approach effectively transforms a cost-reimbursement contract into a fixed-price contract if the contractor incurs costs beyond a certain amount. This approach is appropriate for contracts where the total cost to perform can be estimated with reasonable certainty. If a contractor does not meet performance targets, the cost cap and /or cost share will shift the cost burden to the contractor. In this context, the contractor must still perform regardless of the costs it incurs and the Department will not reimburse some or all of the costs beyond the state amount as set forth in the contract, subject to certain legal limitations."

Energy Communities Alliance Case for Sensible DOE Acquisition Reform

It is unquestionably important for DOE to be a demanding customer and to hold contractors accountable for performance, but the emphasis on accountability can't supersede the overarching mission of cleanup of the various sites. Accountability alone cannot be the end goal. For example, as part of the shift in DOE policy, hard cost caps were put in place over the last several years at two of DOE-EM's most troubled projects—the Integrated Waste Treatment Unit at the Idaho site and the Separations Process Research Unit in New York. Both projects have greatly exceeded the cost cap with the contractors CH2M (IWTU) and AECOM (SPRU) on the hook for the remaining costs. For CH2M, that has meant more than \$90 million at IWTU and for AECOM that has meant more than \$150 million at SPRU. The Department has cited both contracts as successes given that the contractors in charge of each project are fully responsible for cost overruns.

“...the emphasis on positive penalties and accountability has failed to achieve positive project performance.”

However, in both cases the emphasis on punitive penalties and accountability has failed to achieve positive project performance. IWTU continues to experience delays in startup and commissioning, causing state regulatory milestones to be missed, while there continues to be no clear path for completion of cleanup at SPRU. In both cases, the contractors were certainly held accountable but ultimately the projects—and the cleanup mission—are no better off. This is a classic case of short-term thinking not producing long-term results.

Similarly, the changes in policy have resulted in fee structures in new contracts that are overly punitive, with little upside and a tremendous potential downside for those companies bidding on prime cleanup contracts. The impact on the level of competition before and after this policy went into effect is striking. In the five major unrestricted DOE-EM contract competitions from 2010-2012 (Portsmouth, WIPP, ETTP, West Valley and AMWTP), an average of 4.4 teams bid, with as many as six teams on at least one occasion.

In the two major contract competitions since the changes in DOE's procurement approach took effect (Paducah and Idaho Core), only two teams have bid, with many traditional contractors in the DOE market deliberately staying away from the competitions (See Table 2.1).

3.0 Rely on Proven Contract Types That Encourage Competition

Traditionally, DOE-EM's biggest successes—Rocky Flats, Fernald, Mound, River Corridor and others—have shared a common contracting strategy: a cost-plus incentive fee contract that provides highly lucrative fee payments for exceeding cost and schedule targets, well defined scopes of work and uncertainties, and lack of DOE micro-management of the

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Case for Sensible DOE Acquisition Reform

contractor. Generally, these contracts gave the contractor a great deal of flexibility in performing the work to ensure the job was done as efficiently, quickly and completely as possible. These contracts had simple cost and schedule targets, which informed a fee share line that was easy to understand and served as a powerful incentive to companies. Contractors were able to make substantial fee, but the big winner is DOE—which saved billions of dollars in lifecycle costs through accelerated cleanup—and the communities—which were able to see the benefits of both the federal investment, protection of human health and the environmental and a cleaned up site on an accelerated schedule.

Table 2.1

Contract Competition	Bidding Teams	Notable ‘No-Bids’
Idaho Core (2015)	2 teams: 1. Fluor-CH2M 2. AECOM	Bechtel, B&W, EnergySolutions, HII, CB&I
Paducah Cleanup (2014)	2 teams: 1. AECOM-Stoller 2. Fluor-CB&I	Bechtel, URS, EnergySolutions, B&W, CH2M
WIPP M&O (2012)	4 teams: 1 URS-B&W 2 Bechtel-EnergySolutions 3 Fluor 4 CH2M	None
ETTP (2011)	5 teams: 1 URS-CH2M 2 Fluor-B&W 3 EnergySolutions-Northrop Grumman 4 Shaw-Stoller-Weston 5 Bechtel	None
AMWTP (2011/2010)	3 teams: 1 B&W-URS-EnergySolutions 2 CH2M-Northrop Grumman 3 Bechtel-Northwind	Fluor
West Valley (2011)	6 teams: 1 CH2M-B&W 2 Stoller 3 URS 4 Bechtel-EnergySolutions 5 Fluor-Jacobs 6 LATA-ECC	None
Portsmouth (2010)	4 teams: 1. Bechtel-CDM 2. Fluor-B&W 3. EnergySolutions-AECOM-LATA 4. CH2M-Battelle	None

****Bolding indicates company awarded contract****

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In 2005, Congress reminded DOE to not lose track of the success it achieved as part of the 2005 National Defense Authorization Act: *“The committee encourages DOE to reach out to the communities at the 2006 closure sites and determine what lessons can be learned to help accelerate cleanup and thereby reduce the safety and health risks at the remaining major EM sites. In 1995, when a few individuals at Rocky Flats, Fernald, and Mound first began discussing closure of these sites as much as 60 years ahead of schedule, there were many more skeptics than believers in the accelerated closure approach. At that time, the contractors were required to merely meet compliance milestones, not to do cleanup. These three sites have proven that by reducing the highest risks first, the risk of exposure to the workers, environment, and communities was reduced, and accelerated cleanup has significantly reduced the life cycle cost.”* (Full text set forth in Appendix A)

The best tool in the DOE-EM toolbox is being taken off the table in favor of contract structures that have never driven mission success in the DOE program

Yet with the 2012 DOE changes in policy, those kind of contracting vehicles were effectively removed from the table for the next wave of DOE-EM contract competitions. The best tool in the DOE-EM toolbox is being taken off the table in favor of contract structures that have never driven mission success in the DOE program and that have a number of potential negative consequences. DOE lost track of what made it successful in cleanup.

The currently ongoing Idaho Core procurement presents an example of how the changes in acquisition policy have driven the Department to rely on ill-conceived contract structures that discourage competition and emphasize punitive penalties over mission completion. Unlike the simplicity of successful past DOE-EM contracts, the Idaho Core RFP relies on a highly sophisticated and complex set of fee measures that will take substantial contractor and DOE time to administer, and may not properly incentivize the contractor. The draft RFP released in 2014 proposed a cost cap that made the winning contractor responsible for all costs once the cap was breached by \$150 million. The draft RFP also proposed reducing fee by \$0.20 for every dollar the contractor exceeds the proposed target cost, and to prevent the contractor from earning cost incentive fee and to begin reducing fee on a dollar-for-dollar basis if the contract performance ceiling is exceeded. For publicly traded companies, the fee structure was especially difficult, as earnings declared in each of the first four years of the contract could be voided as the results of an unforeseen cost overrun experienced in the final year of the contract. Additionally, fee criteria were based on achieving operational levels that were largely unrealistic and unachievable even under the most favorable conditions and a

provision was included that would give a DOE contracting officer the ability to withhold fee based on a subjective determination that performance was inadequate.

While some of the provisions were modified in the final RFP—including dropping the cost cap and making some of the fee non-provisional—the starting point in the draft RFP was so far removed from the vehicles that have been successful in DOE-EM that the final version, even with the changes, functionally had the same impact. And even though the Department ultimately removed enough of the barriers that a few companies were able to justify a bid, the final RFP is still a far cry from the kind of strategic, mission-driven contracts DOE-EM will need to be successful over the next four years and beyond.

Conversely, the 2005 River Corridor contract, awarded to Washington Closure Hanford—a team of URS, CH2M Hill and Bechtel—should be held up as a model for future DOE-EM contracting. Under the cost-plus-incentive-fee contract, for every dollar the work comes in under Washington Closure’s target cost, the company receives \$.20 in additional fee; for every dollar in increased expense, it loses \$.20 in fee. There are also enforceable contractual requirements for subcontractor and small business participation—60 percent of the work has to be subcontracted, with 50 percent of that subcontracted work going to small business. A minimum of three of every 10 contract dollars was to flow to small business, the Department said at the time of award.

While implementation of the River Corridor contract and management by both DOE and the contractor was not without its bumps—especially early on as DOE, regulator and contractor behaviors adjusted to the new type of contract—the result has been what is viewed by many observers across the weapons complex as the single best contract DOE-EM has ever crafted. Certainly, the fee structure was able to drive performance and the subcontracting requirements offered substantial opportunities for the full spectrum of local and small businesses and residual benefits to the local community.

Going forward, it’s especially important for DOE to look for contract models that have been proven successful for the cleanup mission.

4.0 Incentivize Small Business Opportunities and Healthy Subcontracting

Another key factor in the success of the next wave of DOE contracting will be the strategy for ensuring opportunities for small businesses and a healthy base of subcontractors throughout the complex. The subcontractors, both small and large, and small business primes must be an equal partner in this process, as their specialized skills and innovation are important drivers for mission success, economic development, and the long-term sustainability of the communities that host DOE sites. They are typically highly motivated, efficient and effective. Yet they are made vulnerable under the current procurement model.

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In recent years, the climate for subcontractors has worsened as budget constraints, inconsistent subcontracting requirements and a number of other factors have resulted in a large number of DOE prime contractors self-performing broad scopes of work that were previously subcontracted primarily to local and other small businesses. For example, CH2M Plateau Remediation Company at Hanford announced a new subcontracting approach in 2013 as it began a five-year extension of its contract. Under the new approach, which was intended to save \$7-9 million annually, roughly 55 percent of the subcontractor workforce was invited to join CHPRC, 30 percent of the subcontracts were initially set to be competed and 15 percent of the subcontracts were extended. Similarly, Oak Ridge cleanup contractor URS-CH2M Oak Ridge (UCOR) unveiled its own revamped subcontracting approach in 2012, converting to a mostly staff augmentation approach in which subcontractors would provide employees and UCOR would manage the actual cleanup work.

The subcontractors, both small and large, and small business primes must be an equal partner in this process, as their specialized skills and innovation are important drivers for mission success, economic development and the long-term sustainability of the communities that host DOE sites.

While there are arguably small short-term benefits to pulling work back under prime contractors, the long-term negative impacts to subcontractors—small businesses in particular—are significant and difficult to reverse. Likewise, the loss of innovation, specialized skills and efficiency that subcontractors bring to the DOE complex is hard to measure in the short-term, but long-term impacts will be severe.

During the next wave of procurements, DOE should put in place a broad strategy to include language in its large, prime contracts that not only requires a subcontracting plan, but includes the plan in the evaluation criteria at award and annually evaluates performance against the subcontracting plan as part of the yearly fee determination. Too often, pre-selected subcontractors have been added to teams in order to win the contract only to see the work never materialize or be pulled back after a year or two because there is no contract mechanism to enforce or incentivize the subcontracting plan. Additionally, the evaluation of the subcontracting plan should include a scoring advantage for proposing local businesses and sourcing, and recognize that staff augmentation as a dominant practice should be avoided.

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It is important that such subcontracting policies don't come at the expense of DOE direct (prime) small business opportunities, but rather work in concert to support sustainability for the local business community. A healthy, vibrant subcontracting and small business community is vital to achieving the long-term mission of the DOE cleanup program, and the next round of procurements should include subcontracting provisions that position everyone—DOE, the contractors and the communities—for success.

Another facet of healthy subcontracting involves development and deployment of new technologies in the cleanup mission. As detailed in the December 2014 report from the Secretary of Energy Advisory Board's (SEAB) Task Force on Technology Development for Environmental Management, current contracts do not adequately incentivize contractors to incorporate new technologies, largely because of the limited term of the contracts, the risk associated with new technologies and an emphasis on delivering on the baseline that discourages innovation. In its May 2015 response to the SEAB task force report, DOE said it will "identify strategies that promote and enable contractors to exploit new and emerging technologies, especially those that have the potential to be high mission impact. Incorporating performance incentives and flexibility for technological innovation in contracts will be explored. Sharing the financial benefits of incorporating innovations and implementing smarter solutions has already proven to be effective at motivating contractor performance."

"...current contracts do not adequately incentivize contractors to incorporate new technologies, largely because of the limited term of the contracts, the risk associated with new technologies and an emphasis on delivering on the baseline that discourages innovation."

DOE's recognition of this issue is important and ECA encourages the Department to incorporate incentives—not only for development and deployment but also for technology transfer—in the next round of procurements.

5.0 View the Host Communities as the Ultimate "Customer"

The local communities that host DOE sites are the ultimate "customer" in the acquisition process and it is critical that the Department engage appropriately with elected officials and other community groups early and often as part of the planning for the next round of procurements. Too often, the communities are left to respond after the fact to potentially harmful provisions in Requests for Proposals, with little hope of sparking a change.

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Case for Sensible DOE Acquisition Reform

For future procurements, DOE should seek out local community input early in the planning process not only to ensure that DOE's goals in each acquisition align with the community's goals, but also to take conscious advantage of the lessons learned from the last round of prime contract competitions. Elected officials in these communities are not "stakeholders" only to receive an after-the-fact briefing. Instead, DOE must engage the local government officials in substantive discussions (like at the most successful DOE cleanup projects over the years) during the planning, the execution, and the evaluation of each new procurement. Host communities have years of first-hand experience being on the front lines to assess which subcontracting policies, economic development incentives, and labor strategies have been successful—and which haven't—and their perspective would be invaluable during acquisition planning.

For future procurements, DOE should seek out local community input early in the planning process not only to ensure that DOE's goals in each acquisition align with the community's goals, but also to take conscious advantage of the lessons learned from the last round of prime contract competitions.

Additionally, it is crucial that this engagement with the community is part of an overall strategy to make the federal leadership at the DOE field offices where these contract competitions will take place the focal point of the acquisition planning, procurement and award process rather than having those decisions driven by headquarters or a central procurement office such as the EM Consolidated Business Center. While the broader DOE organization should certainly play the appropriate role in supporting these acquisitions, it's important to recognize that each DOE site is unique and there is no 'one-size-fits-all' acquisition approach that should be implemented from hundreds—or thousands—of miles away. Local communities can often help coordinate more effectively with State and other oversight/regulatory bodies to deal with regulatory and other requirements that may be overly burdensome or result in skewed priorities that get in the way of completing these cleanups and transitioning the sites as efficiently as possible.

The current approach to contracting, in which there has not been substantial community engagement, is proving to be increasingly insupportable to communities that host DOE sites. This creates a myriad of issues for DOE, and it must be addressed as DOE approaches the next wave of contract competitions.

It also behooves DOE to be aware of and sensitive to the costs borne by local communities as they strive to be good hosts. Community planning for everything from infrastructure like roads and stoplights and the provision of fiber optics to sites, to educational concerns like school expansions or closures, and residential and commercial development can be impacted

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by the quality and duration of a contract. Thus further underscores why it is important to involve localities in the process.

Additionally, the length and timing of contracts ought to be given careful consideration as the procurement process is examined. Elsewhere in this document reference has been made to the likelihood of contract extensions. DOE is urged to right-size the duration of a contract at the onset rather than establishing set, five-year contracts with seemingly haphazard and/or last-minute extension provisions. For a small community (arguably under 100,000 in population) the difference between a five-year contract with two, six-month extensions and a six-year contract is significant when it comes to community effect. The willingness of employee families to engage in a community—to purchase homes and participate on local boards and in a wide array of community activities is negatively impacted as contracts uncertainty is increased.

Finally, DOE is encouraged to look at aligning the length of a contract with the specific milestones or clean-up objectives of a particular site. For example, ending a contract right as a milestone is approaching, or engaging in two or more five-year contracts for a projected 13-year process demonstrates poor long-term planning and vision.

6.0 Recommendations

In order to best position DOE for the next round of contract competitions, a number of important changes are needed in DOE's approach to acquisition planning, its engagement with the community and the specific approaches in the upcoming contracts and Requests for Proposals. To accomplish these changes, DOE should:

1. **Use contract structures that are based on the highly incentivized contract model that was successful at River Corridor, Rocky Flats, Mound, and Fernald rather than cost caps, fixed price or other high risk/low reward contract structures that are overly complex and have no track record of success**
 - a. Appropriately balance risk and place a high priority on mission completion versus punitive penalties
 - b. DOE behaviors need to match/support the contract structure
 - c. Contractors need sufficient flexibility and discretionary authority to deal with issues in a timely and efficient manner

Energy Communities Alliance
Case for Sensible DOE Acquisition Reform

- d. Although many of the people have retired that worked on the past successful contract structures, DOE needs to ensure that it learns from the past successes and builds capacity to deal with potential high volume of contracts in the procurement system.
- 2. **Actively engage with appropriate host community representatives during the planning phase of each acquisition.**
 - a. Contracts should include community engagement requirements.
 - b. An emphasis should be placed on longer-term contracts (i.e. five years versus three years with two one-year options).
 - c. Include *community* cleanup priorities clearly in the contract scope.
- 3. **Include the subcontracting and small business plans in the evaluation criteria and emphasize use of local and small businesses in the scoring.**
 - a. Staff augmentation should not be a dominant practice.
 - b. Subcontracting plan should address the type of work to be subcontracted out, not just the quantity.
 - c. Build in contract mechanisms that discourage prime contractors from self-performing previously subcontracted work during the term of the contract.
 - d. Allow accounting of small business utilization by non-M&O prime contractors to further encourage the utilization of local businesses
- 4. **Contracts should incentivize development, deployment and eventual transfer of new technologies.**
- 5. **Acquisition planning should originate at the site level and site participation should continue through Source Evaluation Board membership, with DOE headquarters support.**

7.0 Summary

DOE is facing an unprecedented number of potential contract competitions over the next few years and the approach to these new contracts will be vital to the overall nuclear security and nuclear cleanup mission in the United States, the health and viability of the communities that host these sites, the strength of the future workforce and the sustainability of businesses—both small and large—that take on these unique tasks. The Department and the communities that host DOE sites, are best served when there is strong competition among highly qualified companies seeking to implement the most innovative and efficient strategies for success on this work. Over the next few years there will be increasing competition for the attention and commitment of these top companies from numerous other sectors—including the commercial nuclear reactor decontamination and decommissioning market, Department of Defense environmental work and cleanup programs in the U.K., Canada and Japan. It is critical that the Department of Energy put in place acquisition policies that foster competition, drive performance, align with the goals of host communities and support a healthy and sustainable subcontracting base for the long-term.

DOE should use this opportunity to engage directly with local communities and contractors on these issues to develop an agreement on how best to proceed to accomplish the important missions at DOE. ECA has reached out to EM and asked for a meeting on these issues and will invite all contractors and other interested groups – especially state regulators to participate in this important discussion.

Appendix A

Senate Report 108-260 to the FY 2005 National Defense Authorization Act (P.L. 108-375).

The committee notes that the fiscal year 2005 budget request for Environmental Management (EM) will be the last full fiscal year authorization and appropriation for cleanup at the Rocky Flats Environmental Technology Site (Rocky Flats), the Fernald Environmental Management Project (Fernald), and the Miamisburg Environmental Management Project Mound Site (Mound). The committee applauds the level of priority and focus DOE and management within the Environmental Management Program have placed on cleaning up these three EM sites decades ahead of the original baseline schedule and at a savings of tens of billions of dollars.

The committee encourages DOE to reach out to the communities at the 2006 closure sites and determine what lessons can be learned to help accelerate cleanup and thereby reduce the safety and health risks at the remaining major EM sites. In 1995, when a few individuals at Rocky Flats, Fernald, and Mound first began discussing closure of these sites as much as 60 years ahead of schedule, there were many more skeptics than believers in the accelerated closure approach. At that time, the contractors were required to merely meet compliance milestones, not to do cleanup. These three sites have proven that by reducing the highest risks first, the risk of exposure to the workers, environment, and communities was reduced, and accelerated cleanup has significantly reduced the life cycle cost.

Contract Clauses of Particular Community Interest

As agents for DOE in managing its land, facilities and programs, DOE's prime contractors have a major impact in host communities. The economies in these communities have come to depend on them and the DOE funding behind them. Many of the sites are in a state of transition as cleanup programs and weapons production programs wind down and are attempting to work with DOE and/or its prime contractors to understand and manage the physical and socioeconomic impacts associated with those changes. The prime contractors' missions, priorities and behaviors are in turn heavily influenced by the nature of the contract they have with DOE as well as the language in particular sections of those contracts. These impacts include health and pension benefits offered to workers, labor relationships, quantity and quality of subcontracts that utilize local or small businesses, and the timeliness and quality of the efforts to restore lands for beneficial uses. Many different contract clauses have a significant impact on host communities, directly and indirectly. The following provides examples from different contracts, briefly describing and commenting on their significance. It is intended to evolve with assistance from various host communities and the contracting community in order to help inform a dialogue between host communities and the DOE on the next round of prime contracts that can best serve both DOE and the host communities.

The Clauses are categorized below as follows:

- Community Commitment
- Workforce Restructuring; Workforce Transitions; Employee Compensation, Pensions and Other Benefits
- Self-Performed Work (Subcontracting Goals and Practices)
- Labor Relations and Collective Bargaining Agreements
- Contract Types
- General

Notes: RC= River Corridor contract (Washington Closure Hanford is contractor); TOC = Tank Operations Contract (Washington River Protection Solutions is contractor); PRC = Plateau Remediation Contract (CHPRC is contractor); AMWTP = Advanced Mixed Waste Treatment contract

Contract Section	Clause Title	Description	Comments
Community Commitment – Section I			
RC I.108, PRC I. 147, TOC I.146,	Community Commitment (DEAR 970.5226-3 (December 2003))	Makes it clear in the contract that: “It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) Recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above.” This already in most DOE contracts but is applied or enforced differently.	This can be enforced as narrowly, liberally, or strongly as the Head of Contracting desires. Could be used to promote subcontracting practices helpful to community interests (discussed later), or conversely, to discourage harmful practices such as poaching, reverse-auctions, or excessive use of staff augmentation that run counter to community interests.
Workforce Restructuring; Workforce Transitions; Pay, Pensions and Other Benefits – Sections I and H			
RC I.107, TOC I.145, PRC I.146 (See also H clauses and clauses dealing with workforce transitions, pay, benefits, pensions, bargaining agreements, etc.)	Workforce Restructuring (Cites DEAR 970.5226-2)	Provides for managing workforce transitions: “(a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, <i>42 U.S.C. 7274h</i>, in instances where the Department of Energy has determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the contractor agrees to (1) comply with the Department of Energy Workforce Restructuring Plan for the facility, if applicable, and (2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts. (b) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to <i>41 U.S.C. 403</i>) expected to exceed \$500,000.”	Typically this is now used to deal with workforce reductions (displacements). Congress specifically weighed in following the end of the Cold War with the Section 3161 language to address the socioeconomic impacts of stopping production, but much has been accomplished and changed since then. Would be helpful to the communities if DOE were to refresh its objectives to address how far the primes can and should go in working with communities to transition to a workforce of the future, i.e., workforce transitions, through

			planning, training programs, etc. Would be helpful to DOE considering the proliferation in number and types of different primes and subcontractors using employees under a common bargaining agreement greatly complicates labor relations, workforce productivity, and the ability of primes to plan workforce restructuring without impacting other primes. More thought and work needs to go into what changes to contract language and/or collective bargaining agreements are needed to shape the workforce of the future considering needs of all the different prime contractors and their subcontractors
RC H.4, PRC H.11, TOC H.11	Workforce Restructuring	Requires notifications and coordination with DOE of projected workforce reductions and hiring preferences for displaced workers. “The Contractor shall comply with the <i>Hanford Site Workforce Restructuring Plan</i>, as amended, and shall supply workforce restructuring related information and reports as needed by DOE. The Contractor shall extend displaced employee hiring preference in accordance with the Section I Clause entitled, DEAR 952.226-74, Displaced Employee Hiring Preference.	Could be strengthened to proactively address shaping the workforce of the future recognizing changing skill needs and challenges of having multiple primes and subcontractors (i.e., workforce transfers vs reductions) See comments re Section I clauses
PRC H.1, H.2, H.3, H.8; TOC H.1, H.2, H.3, RC H.1, H.2, H.6	Workforce Transition; Incumbent Employee Hiring; Employee Compensation (Pay, Pensions and Other Benefits); Post-Contract Responsibilities; Approval for Subcontractors to Participate in the	Collectively, these clauses significantly affect much of the local workforce (community) who don’t change despite changes in prime contractors and associated senior managers. Affects retirement and health benefits and transition to market based plans (away from what were traditionally fairly generous plans of kinds rarely seen in more recent times)	Need to be evaluated to ensure they are updated to reflect lessons-learned and support current community interests and goals

	Plans		
Self-Performed Work (vs Subcontracting) – Section H			
RC H.13 (see also similar clauses below in other contracts)	Self-Performed Work (<i>requires 60% of work be subcontracted</i>)	This clause has been particularly good for the local community, essentially requiring 60% of the primes work be subcontracted. “(a) Unless otherwise approved in advance by the Contracting Officer, the percentage of work which may be self-performed by the large business(es) of the Contractor team arrangement (as described in FAR 9.601), shall be limited collectively to not more than 40% of the contract value (defined as the sum of Target Cost plus Target Fee). This limitation does not apply to any small business member of the Contractor team arrangement. Unless otherwise approved in advance by the Contracting Officer, the remainder of the work to subcontractors outside of the Contractor team arrangement shall be performed through competitive procurements with an emphasis on fixed-price subcontracts. (b) At least 30% of the total contract value shall be performed by small business. Small business members of the Contractor team arrangement, as well as subcontractors selected after Contract award, count toward fulfillment of this requirement and other small business goals in this Contract.” The issue of how much work should be subcontracted vs self-performed is tricky. The nature and quality of the work subcontracted is as important as the quantity. How work is subcontracted is also important. Bottom line is the quantity, type and process for subcontracting represents a significant opportunity or threat to community businesses, but can also deprive the prime contractor of flexibility, result in inefficiencies, increase labor challenges, cause safety issues, and more. It’s an area ripe for discussion with the objective of defining contract language that can be win-win for DOE, the primes and community businesses	Requirements for the amount of subcontracting should be specified. The nature of subcontracts and principles to guide subcontracting practices should also be specified with the goal of contributing to the Community Commitment requirement of Section I. Bidders should either a) be required to propose an enforceable subcontracting plan showing how subcontracting opportunities will be leveraged to help meet Community Commitment requirements, or b) subcontracting goals, policies and practices should be set jointly by the contractor and DOE after due consideration of a number of factors, e.g., cost, safety, risk, uniqueness of the operation, complexity. One such approach would be to negotiate goals as a component of developing and approving the contract baseline. As an example WCH initiated (and documented) an approach in Aug 2013 for determining when to self-perform vs subcontract. They claim this could only be done several years into the contract without otherwise placing them at risk for penalties because by then they had already built up a considerable margin against the contract subcontracting goals. See also the discussion/comments on Small

			Business under General for ideas on how language used successfully in the AMWTP RFP regarding quality of SB subcontracts could be applied more generally to local businesses
PRC H.20	Self-Performed Work (<i>requires 35% of work be subcontracted including 17% to Small Business</i>)	This clause has been good for the local community even though not as good as the 60% for River Corridor. Language is similar to RC but with different %'s	See comments under H.13 for River Corridor
TOC H.20	Self-Performed Work (<i>requires 30% of work be subcontracted including 15% to Small Business</i>)	This clause has been good for the local community even though not as good as the 60% for River Corridor. Language is similar to RC but with different %'s	See comments under H.13 for River Corridor
RC, TOC, PRC, AMWTP	Small Business Goals	Various clauses	See discussion/comments under General

Labor Relations & Collective Bargaining Agreements – Section H

RC H.3, H.5, H.6, H.7 PRC H.6, H.7 TOC H.6, H.7, H.10	Labor Relations; Collective Bargaining Agreements (CBA's); Implementation of Hanford Site Stabilization Agreement	These clauses typically honor existing labor agreements and prescribe requirements for coordination with DOE prior to any renegotiating. In some cases, these agreements were well suited to prior M&O type contracts wherein there were only one or two major prime contractors on the site. With a proliferation of primes, separation of DOE offices, and rise of subcontracting, the management of labor relations has become increasingly problematic for both the primes and labor. This can go to “bump and roll” type processes where reductions within one primes workforce can result in displacement from others; non-standard training or safety processes/procedures across primes; challenges in workforce planning and mobility; etc.	Labor is a large part of the community whose future is intertwined with the exempt work force and local economies. Some discussion of whether or how changes to these clauses could make them better serve labor, DOE, the primes and the community could be helpful, but is sensitive and tricky from many standpoints. Because the primes hold the contracts with Labor, they negotiate the CBA's but even though DOE is not at the Table, they control what will be reimbursable or otherwise allowed
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RC H.38, PRC H.49, TOC H.53 ,	Project Management Controls, Earned Value Management Systems, Project Management Information Systems	Prescribes considerable reporting requirements whose value may not warrant the resources required to produce, report, track and reconcile the information. Can invite unnecessary or counter-productive DOE micro-management or interventions. Potentially detracts from contractor productivity and efficiency.	Should be evaluated to see if and how the information being reported is actually used or can be streamlined. See also Contract Administration Costs and DOE Interventions and Approvals under the General heading
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Types of Contracts -- Section B (Supplies or Services and Prices/Costs)			
RC B.1 (CPIF)	Type of Contract – Items Being Acquired	Specifies type of Contract - - in this case Cost Plus Incentive Fee (CPIF) whereas most EM contracts are now CPAF. Carefully describes what is being bought as an end product– the scope of the contract. The River Corridor, Rocky Flats and Fernald contracts have been characterized as “closure-type” contracts. RC B.1 states simply “This is a contract ... to achieve a safe and efficient closure of the RC....with incentives to provide a strong financial motivation...” to do so. Within certain limits, the contract ends when the work is done (a scope-type focus) vs being a term-type contract for x years with options to extend. CPIF contracts are distinguished by having target costs and schedules with considerable incentives for the contractor to beat these goals. By focusing on longer-term end states, contractors are typically given more flexibility in how to achieve that end state with relatively less DOE management involvement in the interim. In the River Corridor contract, generally speaking, 20% of what the contractor is able to save the government relative to the target cost makes up the contractors’ incentive fee. Subsequent Clauses B.4 through B.7 define when and how fee payments are calculated and paid. Contractors can more readily be creative in incentivizing the workforce with fee-sharing arrangements than they can in CPAF type contracts	The type and scope of contract can have a profound impact on the cost and schedule of cleanup in addition to how the work is performed and is therefore of considerable impact and interest to the community. Some of EM’s most successful contracts (Rocky Flats, Fernald and River Corridor) have been CPIF types with typically much less DOE supervision/interventions, but CPIF type contracts are not suitable for all kinds of work. Prime contractor may have more incentive and flexibility to work directly with regulators, workforce and community to maximize productivity and efficiencies

TOC B.1,B.2 PRC B.1,B.2 AMWTP B.1, (CPAFs)	Type of Contract and Items Being Acquired (B.1 and B.2 for TOC and PRC and B.1 for AMWTP)	These are performance-based Cost-Plus-Award Fee Contracts (CPAF) to directly support the environmental clean-up mission with a fee structure intended to provide a financial motivation for the Contractor to furnish safe, compliant, cost-effective and energy-efficient services, including completing certain carefully delineated scopes of work, to further the U.S. Department of Energy (DOE) mission. It offers more flexibility to deal with scope of work, budgetary and regulatory uncertainties. Work can be delineated into Contact Line Items (CLINS) with quantitative and subjective incentives that change more with time than CPIF type contracts	CPAF type contracts have generally replaced the former Management and Operations (M&O) type contracts. Many of the Department of Energy Acquisition Regulations (DEAR clauses) are replaced with Federal Acquisitions Regulations (FAR). Generally involve more DOE intervention and involvement in contract management and execution of work activities (including what work gets done annually and when, where and how)
Use of Fixed Price (FP) Type Contracts	Type of Contract	Government procurement policies and practices increasingly favor use of Fixed Price type contracts with the intention of better protecting taxpayer interests. The Department of Defense has apparently used, successfully, FP type contracts for Facility Operations and other services similar to DOE Primes. A 12/3/12 memorandum issued by Deputy Secretary of Energy Poneman directs contracting officers to “first consider the use of a firm-fixed-price type contract to complete work requirements” while acknowledging it may not be suitable for all types of work. DOE contracting officers have taken this guidance to heart, and language indicating this preference is flowed down to prime contractors in their soliciting subcontracts	FP type contracts work well when the scope and risks of work are well understood. There is considerable concern within the primes contacting community however that it is not well suited for DOE prime contracts for a variety reasons. Communities should be concerned for reasons described above and work with EFCOG in addressing the issue
General			
General	Regulatory Requirements and Interactions	Various contract requirements govern the contractor’s flexibility or degree of autonomy in dealing with the regulators. Put differently, the extent of approvals needed from DOE can add considerable time and costs to the cleanup depending on the degree and complexity of DOE involvement (i.e., number and location of different DOE or other federal offices involved --- such as legal, Headquarters, Public Affairs, Intergovernmental, OMB, etc.)	Can significantly affect the time and cost of cleanup, ergo impacts to the community. DOE and regulators are typically responsive to media attention and interests and concerns of the elected officials, public, special interest groups, etc. Depending on the

			contract clauses and specific situation, prime contractors can be insulated from these pressures, or they can be totally subject to them if DOE is the primary interface with the regulators
General	Contract Administration Costs	Contractors have experienced significant growth in administrative overhead costs over the last 6-8 years growth as EM changed its way of doing business. This includes in particular processes for change orders, pricing, and Requests for Equitable Adjustments (REA's), as well as the DOE model for Earned Value Management Systems (EVMS). Similarly, the increase in compliance requirements also demanded additional staffing/processing above what was previously deemed necessary for contract management. The bottom line for communities: the proportion of available funding going to clean-up versus overhead has gone down.	Can significantly affect the time and cost of cleanup, ergo impacts to the community
General	DOE Interventions and Approvals	Various FAR and DEAR requirements govern the how much prior coordination with DOE is required prior to performing work. This can vary from requiring extensive DOE review and approvals or micro-management to complete contractor discretion under certain conditions. Similarly lawsuits, or threats of lawsuits, result in contractors needing to obtain DOE approvals for various actions and communications resulting in added delays and costs in addition to inhibiting open communication with and among the workforce. NOTE: Contrary to other Hanford CPAF type contracts, the RCC CPIF type contract (like Rocky Flats and Fernald) is a good example of how disciplined contract management practices on both sides of the aisle can minimize disruptive sidebar excursions and reinforce focused objectives thereby enabling financial incentives to help get things done. The clauses that set forth these schemes are:	Can significantly affect the time and cost of cleanup, ergo impacts to the community
General	Ability of contractors to share incentives with employees as an allowable cost (see also H.4 and I.107 in RC)	A contributing factor to success at Rocky Flats and River Corridor was ability to share incentives for employees, particularly crafts. However, the cost-reimbursability of certain incentives can be unclear and changed understandings once a contract is underway can cause significantly affect morale and contractor/workforce relations. Incentivizing a workforce to deliver work safely, on schedule, and cost effectively needs to be a firm commitment that once entered into will be sustained throughout the tenure of the contract	Prime contractors need the flexibility to incentivize the workforce to complete work and the workforce needs to be able to understand the effect of completing work will have on their earnings and future careers

General	Performance Evaluation/Fee Determination Clauses	Determine what gets incentivized, how and the processes for determining fee. Can be strictly focused on quantitative, technical aspects of cleanup or include a “softer” more subjective component going to things like managing socioeconomic impacts	The extent to which the contractor is judged on such things as Community Commitment, subcontracting practices, workforce planning, etc., can be significantly influenced by what is specifically in the Performance Evaluation Plan (which is often updated annually). In some cases, contractors may not deliver on “promises” in their bids if follow-up is not enforced by DOE in fee determinations
General	Commercial Practices	As cleanups progress and nuclear hazards are reduced, more work at DOE sites can and should be accomplished using commercial practices vs those more traditionally used for “nuclear” work. DOE has professed a desire to move in this direction but from a contractor’s perspective, actions from DOE have not matched the words (note that regulators and oversight groups such as the DNFSB would have to share the desire to enable execution). Different processes can be used to acquire commercial items and services (FAR Part 12 vs FAR Part 15) than is typically used by DOE and Its primes	A shift to more commercial practices in executing final stages of cleanup could both reduce the cost and time of cleanup as well as enable participation of a wider range of local businesses in the cleanup. Such increased involvement of local businesses (“letting them in the tent”) would help them and local communities transition to sustainable, post-cleanup economies
General	Small Business Goals	A great deal of progress has been made in support of promoting Small and Disadvantaged Businesses. This has included DOE goals for prime contractors to achieve. a) Recent guidance and policies issued by DOE (implementing guidance from the Small Business Administration), restricts DOE from taking credit for the quantity of Small Business Subcontracting by its primes. This has led to concerns about DOE doing more direct contracting to SBs and less subcontracting by the primes. In some cases, SB interests are better served by the primes being better equipped to let and manage	Small Business goals and practices are important to communities. Communities should coordinate with EFCOG and discuss with DOE SB contracting objectives (quantity and quality) and means for achieving those objectives through DOE procurements. Something similar to the

		these contracts. SBs desire both and not one at the expense of the other. b) The quality of SB contracting or subcontracting is as important as the quantity. The 2008 RFP for the current AMWTP contractor included the following evaluation criteria pertaining to the meaningful engagement of small businesses: Approach to small business involvement in significant, complex aspects of the work; the extent of participation of small disadvantaged business concerns; adequacy of proposed small business goals; approach to mentor protégé relationships (if applicable)	AMWTP RFP approach might also be specified for subcontracting to help promote or at least protect the health, sustainability, growth, etc., of local businesses in general (i.e., not just Small Businesses) in the spirit of the Community Commitment clause
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COUNCIL WORKSHOP COVERSHEET

Council Date: 10/27/2015

Department: Energy Services

Key Element: Key I - Financial Stability & Operational Effectiveness

Subject:

Wholesale Power Purchase Decisions (45 minutes)

Summary:

The City of Richland (City) has an agreement with the Bonneville Power Administration (BPA) which conditions the schedule and procedures for purchasing wholesale electric power through year 2028. This is often termed a Regional Dialogue (RD) contract and includes the provision for deciding in four (4) year blocks how much non-federal power the City intends to secure. The next four-year block covers years 2020 through 2024 with notice due from the City to BPA no later than September 30, 2016.

At workshop, Director Hammond using the following attachments will provide background and context related to milestones between now and the September 2016 notice deadline. Each individual policy decision will be processed through the City's Utility Advisory Committee, with resulting recommendations brought to City Council for consideration of approval. The objective of the workshop is to provide City Council members a foundational background to reference as each respective independent decision comes forward over the upcoming months.

The first four attachments are products of the City's participation in the Northwest Energy Management Services (NEMS). NEMS is the LLC formed from the Northwest Requirements Utilities (NRU) which acts to secure power generation for the over twenty (20) NEMS members. The last attachment is a list of acronyms that will be useful both during workshop and for future deliberations between City staff and City Council.

Attachments:

1. Upcoming Resource Decisions in 2016
2. Existing Resource Search Update
3. Proposed Credit and Risk Management Strategy
4. NEMS Project Timelines
5. List of Electric Utility Acronyms

UPCOMING RESOURCE DECISIONS IN 2016

Upcoming Resource Decisions in 2016

Presented to the NEMS, NESC, and NIES Boards
September 2, 2015

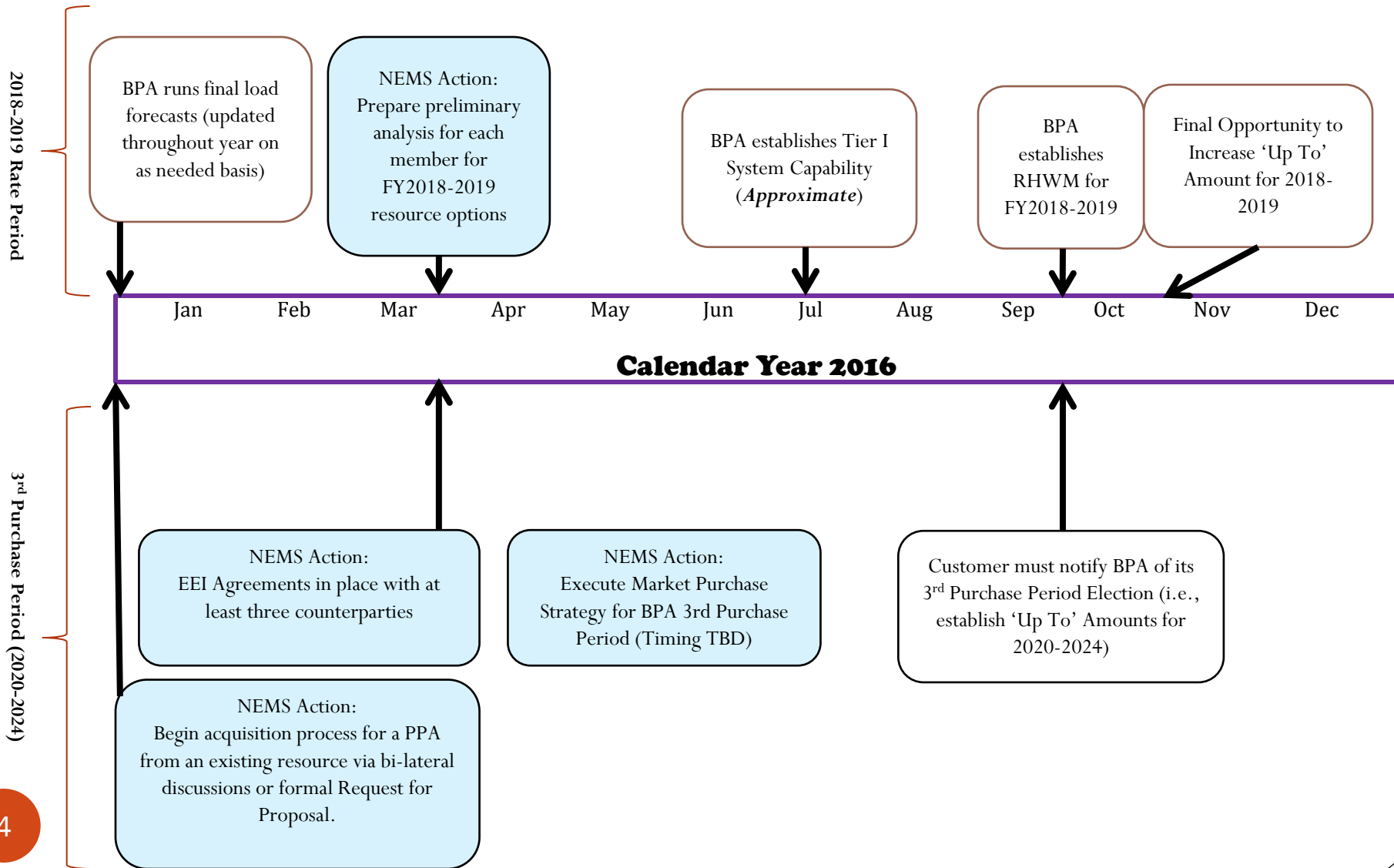
Background

- There are several decisions associated with serving future A-RHWML that need to be made over the next twelve months
- NEMS staff will be providing the members of NESC and NIES with the necessary information they will need to consider to inform their resource decisions
- Today's presentation is a high level update that will describe the types of elections that must be made regarding:
 - FY2018-2019 Rate Period and A-RHWML Service
 - Regional Dialogue 3rd Purchase Period (FY2020-2024)
- Today's presentation will also provide a refresher on terms and timelines

Two Different Timeframes and Decision Points

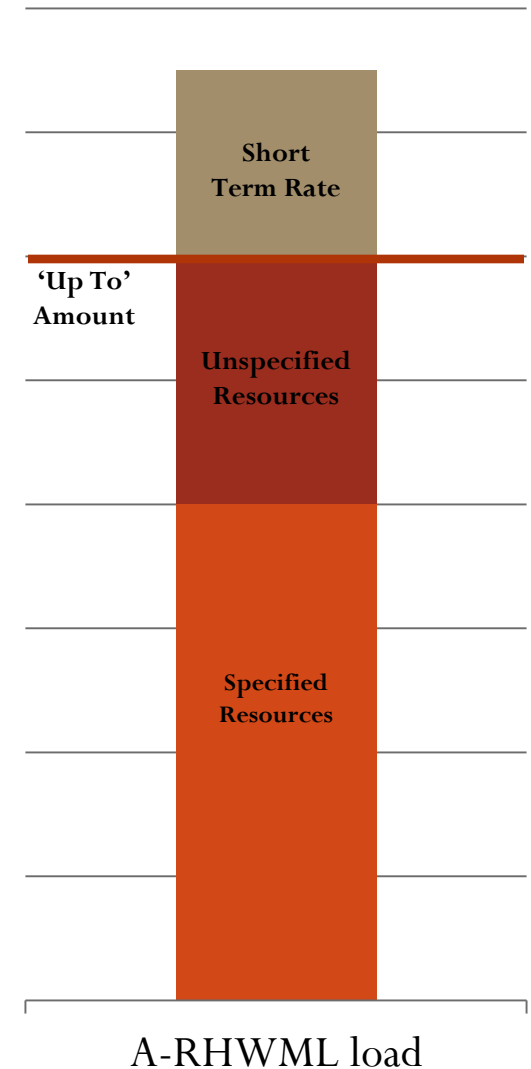
- FY2018-2019 A-RHWML Service
 - Most decisions are already made, but some members will have options to consider depending on their finalized A-RHWML amounts
 - This process should be more familiar since it was conducted during 2014 for the FY2016-2017 rate period
- Regional Dialogue 3rd Purchase Period
 - This is a longer term decision and determines how members will serve A-RHWML in FY2020-2024
 - Acts as a 'Reset Button' in the Regional Dialogue contract—customers elect how to serve A-RHWML with non-federal resource and/or BPA Short Term Rate
 - The last time BPA customers made a similar decision was in 2011, which was for FY2015-2019

Regional Dialogue Resource Decisions and Milestones during 2016



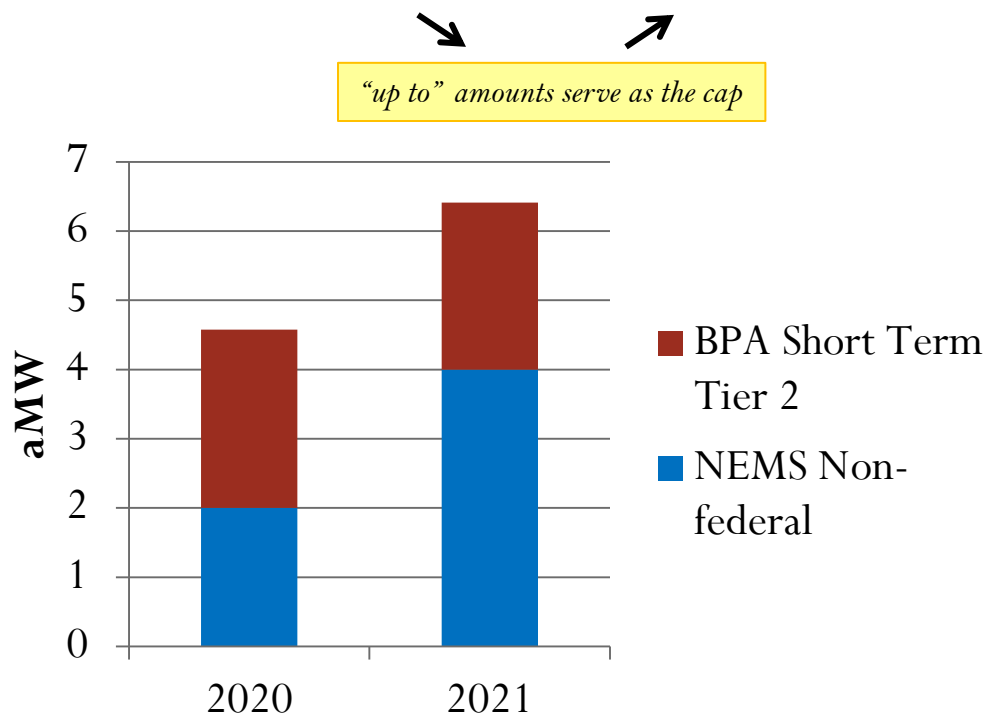
Quick Refresher on Key Terms

- **BPA Short Term Rate**
 - This is the ‘default’ rate used by all NESC and NIES members to serve A-RHWML if non-federal resources are not used
 - Also, all fractional A-RHWML will be served at the Short Term Rate
- **Non-Federal Resources**
 - Specified Resources are customer owned or contracted generating resources used to serve load and may take BPA’s RSS products (may not be removed w/o Administrator’s permission)
 - Unspecified Resources are firm amounts of energy not attributable to a specific generating resource. The existing market purchases made through NEMS are Unspecified Resources.
- **‘Up-To’ Amounts**
 - The maximum A-RHWML that a utility has agreed to serve from Non-Federal Resources
 - A-RHWML above the ‘Up-To’ amount will be served by BPA’s Short Term Rate



Example of how ‘Up To’ Amounts Impact Non-Federal Resource Obligations

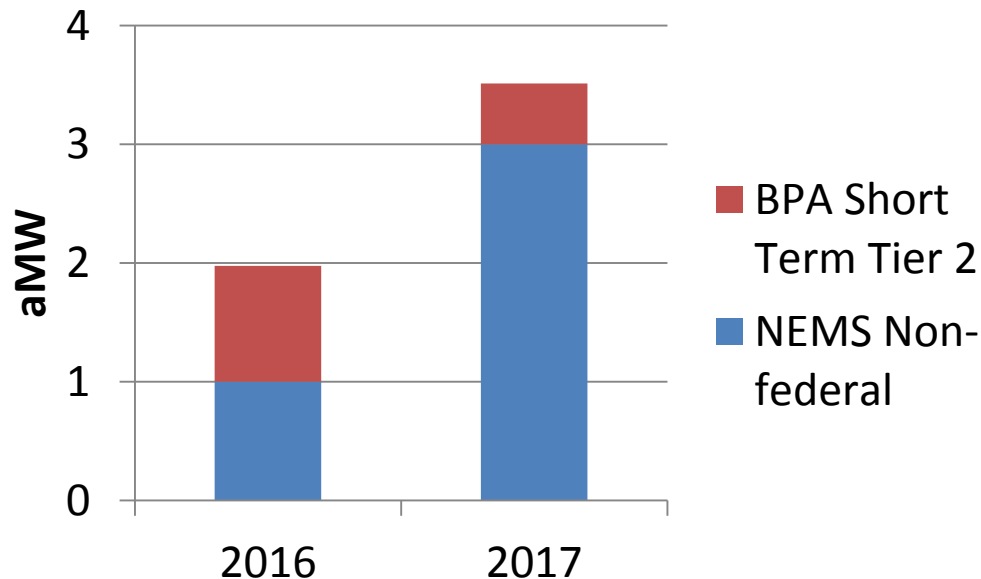
FY	A-RHWML (set by BPA NLT Sept. 2018)	“Up to” Amounts established in 9/30/2016 notice	<i>Actual amount</i> of Non-Federal Resources you are obligated to provide	Remainder is served by BPA Short Term Tier 2 rate
2020	4.578	2	2	2.578
2021	6.412	4	4	2.412



Example of how 'Up To' Amounts Impact Non-Federal Resource Obligations

FY	A-RHWML (set by BPA NLT Sept. 2018)	"Up to" Amounts established in 9/30/2016 notice	<u>Actual amount</u> of Non-Federal Resources you are obligated to provide	Remainder is served by BPA Short Term Tier 2 rate
2020	1.977	2	1	0.977
2021	3.512	4	3	0.512

*you haven't reached the
"Up To" amounts*



FY2018-2019 A-RHWML Service

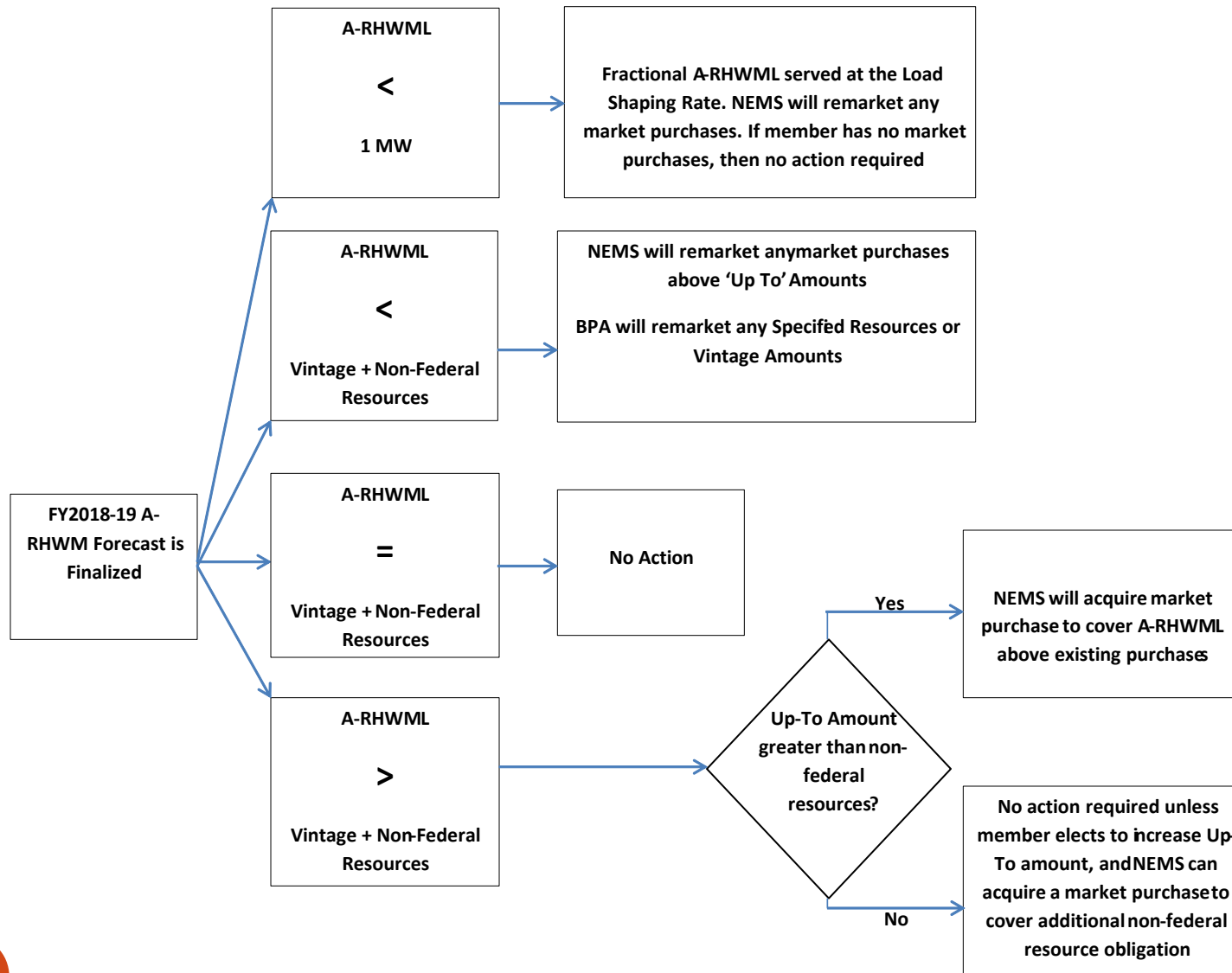
FY2018-2019 A-RHWML Service

- FY2016 is the Forecast Year for the FY2018-2019 Rate Period. This means BPA will finalize the FY2018-2019 A-RHWML amounts by September 30, 2016.
 - BPA (working with customers) should complete the initial load forecasts by January 2016. Customers should provide their best known load information at this time
 - Technically, customers can initiate load forecast updates as late as August 2016, but modifications are generally limited to significant changes (e.g., specific large load change of more than 5aMW)
- BPA will likely set the Tier I system capability in summer 2016. The Tier One System Output can change A-RHWM load amounts!
 - Barring any unforeseen circumstances, we expect the size of the Tier One System to increase by 45MWs from BP-16 to BP-18
 - The most significant drivers changing the size of the Tier One System Output are the implementation of the Biological Opinion and changes to Canadian operations. These are not expected to change
 - The reason for the 45MW increase is the expiration of the WNP#3 settlement energy obligation
 - NEMS has already accounted for this 45MW increase in its forecast assumptions

FY2018-2019 A-RHWML Service

- Some members may have surplus or deficit non-federal resource obligations (see attached spreadsheet)
- Load Following Customers have until October 31, 2016 to:
 - Finalize and notify BPA of their Tier 2 and Non-Federal Resource decisions
 - Add Non-Federal Resources for FY2016-2017 (Specified or Unspecified)
 - Reduce take of Tier 2 Short Term Rate (i.e., Increase 'Up To' Amount)
 - Remove Resources
- Notify BPA of *Increases* to their 'Up To' Amounts
 - Customers have a contractual right to *increase* their 'Up-To' Amounts for FY2016-2017 if they notify BPA prior to October 31, 2014.
 - A customer would make this election if they want to serve A-RHWML from Non-Federal Resources in lieu of the Short Term Rate.

FY2018-2019 A-RHWML Service



Regional Dialogue 3rd Purchase Period

Regional Dialogue 3rd Purchase Period

- NEMS will be preparing each member for its 3rd Purchase Period Notice to BPA (due 9/30/16)
- Each member must:
 - Individually decide what approach to take when it comes to serving A-RHWML during FY2020-2024
 - Determine an “Up To” amount of non-federal resources for each year of the purchase period , which will determine the remaining A-RHWML that will be served by the BPA Short Term Tier 2 rate
 - Submit formal notification to BPA
- NEMS will provide templates for members to use to make the formal notification to BPA (see next slide)

Regional Dialogue 3rd Purchase Period

- Here are the mechanics to define non-federal resource obligations for 2020-2024:
 - Determine “Up To” amount of non-federal resources used to serve A-RHWML
 - Short Term Tier Two Rate takes the swing and fractional amounts
 - In your 9/30/2016 notice to BPA, you will state a certain amount of your load for each year FY 2020-2024 to be served with non-federal resources.
 - A-RHWML *above* this amount will be served by the Short Term Tier 2 rate.
 - You will also request that when BPA sets you’re A-RHWML, it rounds down your non-federal resource amounts to the next whole aMW. This way, NEMS only serves whole aMW.
 - Do this by electing Short Term Tier Two rate “Alternative A – Load Not Otherwise Served” in your 9/30/2016 notice to BPA

Dear BPA:

For the Second Purchase Period FY 2020-2024, I elect to use the Short Term Tier 2 rate “Alternative A – Load Not Otherwise Served.” This chart shows the maximum amount of Dedicated Resources I elect to use in each FY.

Furthermore, I elect to have the amounts of Dedicated Resources rounded down when BPA sets my Above-RHWM Load amounts. Any remaining Above-RHWM Load will be served by the BPA Short Term Tier 2 rate.

Sincerely,

Customer

FY	Dedicated Resource Amounts (aMW)
2020	1
2021	2
2022	4
2023	5
2024	7

Issues to Consider for the 3rd Purchase Period Decision...

- **What will your A-RHWML actually be?** You do not yet know what your actual A-RHWML will be set at during FY2020-2024. There are many unknowns when forecasting A-RHWML:
 - What will the Tier One System Output actually be?
 - A-RHWML could *increase* simply due to the Tier One System Output *decreasing* (perhaps due to changes to fish operations or hydro operations, for example). The outcome of the Biological Opinion may be the biggest unknown impact at this point
 - What will your load growth look like?
 - When and how will the economy recover (if it hasn't already)?
 - How much energy efficiency or distributed generation will you realize?
 - Will you have any new larger loads come online?

Issues to Consider for the 3rd Purchase Period Decision...

- **How aggressive or conservative do you want to be in using non-federal resources?**
 - Members who are committed to solely using non-federal resources may want to consider setting an 'Up To' Amount that is equal to or greater than their forecasted A-RHWML
 - Members who want to diversify between BPA's Short Term Rate and non-federal resources may want to consider setting an 'Up To' Amount that is less than their forecasted A-RHWML
 - Members who wish to rely solely on BPA's Short Term Rate, or are unsure about whether to use non-federal resources may want to consider setting their 'Up To' Amount to zero.
 - The 'Up To' Amount for FY2020-2021 can be increased in between the 2016 deadline and late 2018 assuming that BPA has not made a purchase to cover its Short Term Rate obligation
 - More generally, you should be able to increase your 'Up To' Amount eleven months before each rate period

EXISTING RESOURCE SEARCH UPDATE

Existing Resource Search Update

NEMS, NESC, and NIES Boards of Directors

September 2, 2015

Background

- NEMS and Lands Energy Consulting have been working to define the potential specific resources that the members of NESC and NIES may use to serve future A-RHWML
- The Resource Management Committee was briefed last month on the wide range of available resources in the region as well as other issues to consider in this process
- The RMC requested that NEMS:
 - Provide an update on timing and process for how members will pursue and commit to a specific resource
 - Describe how this effort fits in with the market purchase initiative and Regional Dialogue timelines
 - Continue to 'narrow the field' of resources

How will the existing resource search move forward?

- Lands Energy recommended and the RMC supported the following steps:
 - Enter into preliminary discussions with the generation owners that have been approved by the participating NESC and NIES members
 - This will include initial meetings between Lands Energy, NEMS, and the generation owners, as well as coordination with participating members
 - We will request term sheets with indicative pricing for product structures that are attractive to the members
 - Lands Energy suggested this may take 12 weeks, but this is highly dependent on the number of resources being pursued
 - Participating members who are not interested in moving forward may opt out prior to the next step
 - Next, enter into bilateral negotiations with the generation owners that provide the best fit (i.e., product fit, price)
 - We are assuming 16 weeks to contract execution, though it may take longer if members need more time to review and receive board/council approval

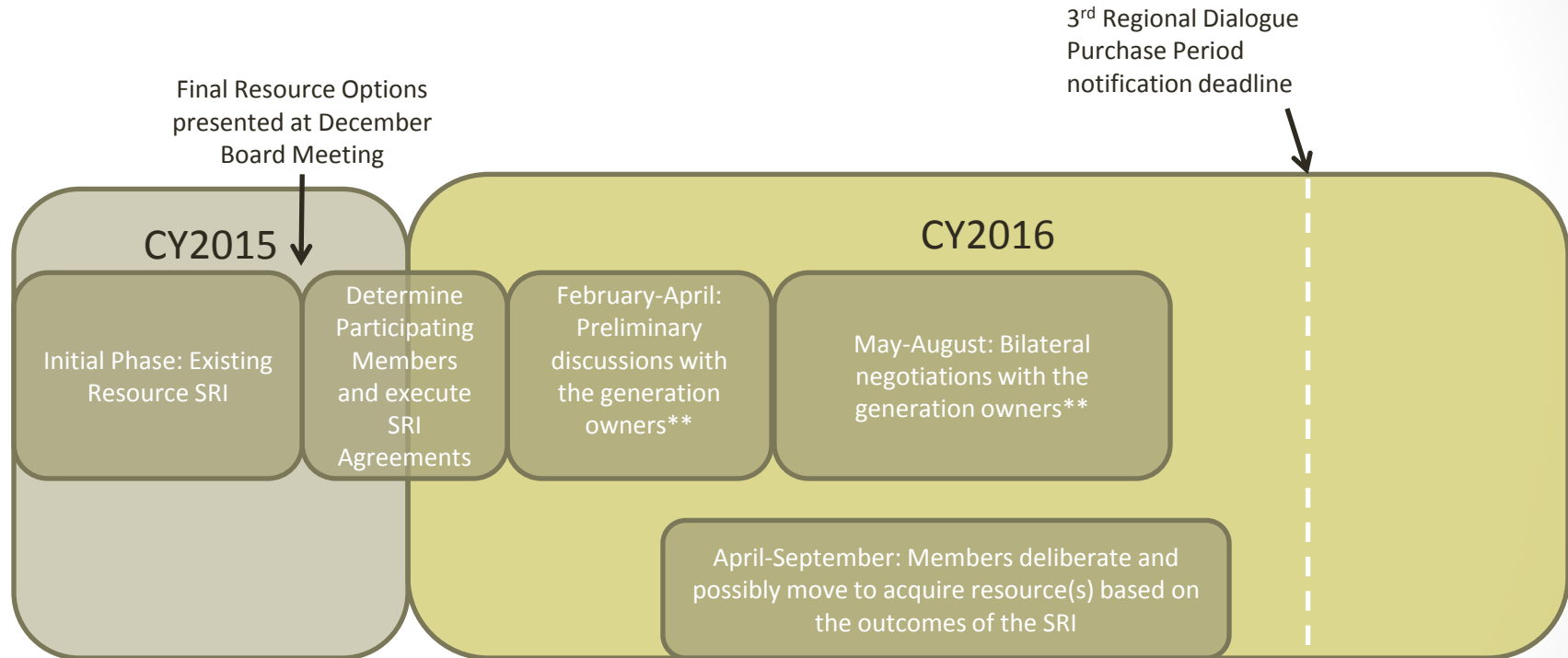
Timing and Commitment

- All NESC and NIES members will have the opportunity to become participating members who will then work directly with NEMS and Lands Energy to help shape the direction of the discussions, negotiations, and execution of Power Purchase Agreements with generation owners
- The Participating Members will fund this process, which will include consulting, legal, and NEMS Staff costs
 - We will continue to refine the budget assumptions, so that members wishing to participate have an understanding of the potential costs. The costs will be dependent by how many generation owners are engaged
- The NESC and NIES Boards have requested that participating members be given an opt out opportunity between the two phases listed on slide #3

Timing and Commitment

- At the November RMC:
 - Present and discuss the attributes of the short list of resources
 - Determine what final resource options will go to the NESC and NIES Boards
 - Review the Specific Resource Investigation Agreement
- At the December Board Meeting:
 - Present final resource options
 - Deliver a final Specific Resource Investigation Agreement
- By January 2016:
 - Request that members interested in moving forward in bilateral discussions execute a Specific Resource Investigation Agreement
- Launch Acquisition Process with Lands Energy:
 - Timing dependent on when the participating members are defined

Proposed Timeline



** - Timing dependent on (1) the number of resources pursued and (2) participating member's board/council review processes

Narrowing the Field of Resources

- The following selection of resources is based on feedback from the RMC, which at a high level, requested that resource options:
 - Must include an option with renewable attributes
 - Try to identify possible distressed resources that may have attractive pricing
 - Identify resources with attractive resource profiles
- The Current Short List
 - Merchant Wind (e.g., EDF, Iberdrola. EWEB also interested in selling wind output)
 - Kerr Hydro (Energy Keepers)
 - Landfill Gas (Klickitat PUD)
 - Seneca Biomass (EWEB)
- Both Energy Keepers and EWEB have already indicated potential interest in possible power sales to NESC and NIES
 - EWEB also interested in selling RECs
- A PPA with Chelan PUD is being included in the market purchase initiative
- We will go into resource specifics at the next RMC (e.g., pros and cons, risks)

Next Steps

- Address NESC and NIES Boards questions associated with timing and process. For example:
 - Are the proposed timelines appropriate given your review/approval processes with your boards and councils?
 - What other information do you need to determine if you'd like to participate in the next phases of the existing resource search?
- It is not too late to add other resources to the short list! We encourage members to bring other options to the next RMC for discussion
- At the next RMC:
 - NEMS will present and discuss the attributes of the short list of resources
 - Determine what final resource options will go to the Boards
 - Work with the RMC to ensure the Specific Resource Investigation Agreement meets the needs of the Boards

PROPOSED CREDIT AND RISK MANAGEMENT STRATEGY

PROPOSED CREDIT AND RISK MANAGEMENT STRATEGY

NEMS Board Meeting ~ September 2, 2015

SETTING THE STAGE

- Existing Credit and Risk Management Policy governs market purchases through end of FY 2019
 - Policy is sufficient and does not need to be revised
- FY 2020 functions as a “reset” year
 - Existing NEMS market purchases expire at end of FY 2019
 - Vintage Tier 2 rate purchases expire at end of FY 2019
 - Projected placement on NEMS starting in FY 2020: upwards of 100 aMW/year
- Robust Credit and Risk Management Policy will strengthen our creditworthiness from counterparties' perspective
- At 8/4 RMC meeting, vetted options and now bringing to Boards for review and feedback

WORK EFFORTS

- Develop a well-vetted, thoughtful Credit and Risk Management Policy applicable to market purchases for FY 2020 and beyond
 - Allow ample opportunity for members to understand nuances of credit support and requirements and decide on the most prudent mechanisms to mitigate risks
 - Provide written documentation to minimize uncertainty or confusion in the future
 - Upon adoption of policy by NESC/NIES, share with counterparties to aid them in their credit and risk analysis of NESC/NIES
- The policies will also provide NEMS with a solid “pitch” to share with counterparties as they evaluate our creditworthiness, and determine their willingness to transact with NESC/NIES
 - Negotiations with counterparties will proceed more quickly once we have a fully vetted and adopted policy

PROPOSED HIGH-LEVEL STRATEGIES

1. Obtain highest Collateral Threshold possible from each Counterparty
2. Establish creditworthiness requirements for transacting with Counterparties
3. Ensure in full and timely payment from all participating members so NESC/NIES can make all payments in full and on time
4. Protect non-participating members from any risk or costs

TO ACCOMPLISH THESE GOALS:

1. Revise Resource Agreement to more clearly delineate member's requirement to perform
2. Adopt Credit and Risk Management Policy governing market purchases for FY 2020 and beyond
 - ✓ Shared with counterparties
3. Adopt internal credit and risk management policy to diversify and mitigate risks
 - ✗ Not shared with counterparties

DELVING INTO THE DETAILS

GOAL: OBTAIN HIGHEST COLLATERAL THRESHOLD POSSIBLE

- AKA: “unsecured credit”
- Collateral Threshold: applicable to each counterparty; stated in the Collateral Annex to the power purchase agreement; based on the party’s creditworthiness.
- A higher Collateral Threshold (a) reduces the chance of being margin called and (b) the amount of the potential margin call
 - A margin call may occur if a counterparty’s potential future exposure exceeds NESCC/NIES’ Collateral Threshold
- To demonstrate our creditworthiness, and thus obtain a higher Collateral Threshold, we plan to provide the following to counterparties to use in their evaluation of our creditworthiness:
 - Members’ financial statements
 - Revised Resource Agreement which more clearly describes a member’s responsibilities proportionate to its purchase amount
 - Credit and Risk Policy showing we have established processes to ensure all bills are paid on time and in full

REVISE RESOURCE AGREEMENT

- Proposing to revise the Resource Agreement by adding the following provisions.
- These obligations already exist in the JRPAA, but adding them to the Resource Agreement will make it easier for counterparties to understand our business relationship as they evaluate our creditworthiness.
 - “Member guarantee” – Member agrees to pay its proportionate share. If member fails to pay, NESCC/NIES will pursue receipt of monies owed from member.
 - Member agrees to follow the billing and invoicing procedures as defined by NEMS.
 - Member agrees to abide by terms, conditions and requirements per Credit and Risk Management Policy.
 - Member agrees to indemnify non-participating NESCC/NIES members for any costs or liabilities arising out of a Resource.
- Will also revise the Resource Agreement to function as an umbrella agreement that only needs to be executed once.
 - Any market purchase transactions Member participates in will be documented in an Exhibit which will be amended for each new transaction.
 - Exhibit will also clearly specify Member cost responsibilities, etc.

CREDIT AND RISK MANAGEMENT POLICY

- Shared with counterparties to enhance their evaluation of our creditworthiness
- Applies to market purchases for FY 2020 and beyond; use existing policy as starting point
- Main points:
 - Cash reserve policy (*see next slide*)
 - Full and timely payment
 - NESC/NIES retain right to call for additional credit support
 - Delegation of authority for NESC and NIES to execute market purchases

PURPOSE OF CASH RESERVE POLICY

- Ensure NESC/NIES can pay all bills on time and in full
- Establish well-documented and vetted payment procedures so all members understand their responsibilities
- Protects NESC/NIES and non-defaulting members in event of member default
 - E.g.: A member fails to pay its bill for two months—sufficient cash in reserves means other members will continue to receive power because NESC/NIES will be able to fully pay counterparty while remarketing power and pursuing payment from defaulting member
- Demonstrates our business strength and maturity

PROPOSED CASH RESERVE POLICY

- Applies to each member that is taking power from NESCS/NIES in the current BPA fiscal year
- Requires member to maintain **Liquid Funds** immediately accessible by NEMS in the amount equal to **one-eighth of its annual payment amount**
- **Liquid Funds =**
 - Cash in a bank account to which NEMS has immediate access; and/or
 - Irrevocable Letter of Credit to the benefit of NESCS/NIES
- **One-eighth of its annual payment amount =**
1.5 x monthly payment

PROPOSED CASH RESERVE POLICY *(CON'T)*

Examples:

Amount of **Liquid Funds** a member would need to carry equal to

1/8th of its annual payment amount

Purchase Amounts in aMW

	FY2020	FY2021	FY2022	FY2023
Member A	5	6	3	3
Member B	10	11	11	12
Member C	0	0	1	2

Purchase Price	\$ 35.30	\$ 37.34	\$ 39.38	\$ 41.42
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Annual Power Expense

	FY2020	FY2021	FY2022	FY2023
Member A	\$ 1,550,376	\$ 1,962,590	\$ 1,034,906	\$ 1,088,518
Member B	\$ 3,100,752	\$ 3,598,082	\$ 3,794,657	\$ 4,354,070
Member C	\$ -	\$ -	\$ 344,969	\$ 725,678

Required **Liquid Funds** (e.g., Cash Reserves): 1/8th of Annual Expense

	FY2020	FY2021	FY2022	FY2023
Member A	\$ 193,797	\$ 245,324	\$ 129,363	\$ 136,065
Member B	\$ 387,594	\$ 449,760	\$ 474,332	\$ 544,259
Member C	\$ -	\$ -	\$ 43,121	\$ 90,710

PROPOSED CASH RESERVE POLICY (CON'T)

- Full and Timely Payment: same as today where members effectively prepay for the delivery month
 - Member pays at the beginning of the month
 - Member pays via ACH electronic funds transfer – allows NEMS to know immediately whether member is delinquent
 - NESC/NIES pays counterparty by the 20th of the month *following* deliveries

INTERNAL CREDIT AND RISK MANAGEMENT POLICY

- Will not be shared with Counterparties
- Will help us manage and mitigate risks by diversifying the number of counterparties we transact with by establishing things like:
 - Methods for limiting exposure to and potential for being margin called by each counterparty (e.g., based on Collateral Thresholds and projected mark-to-market exposures)
 - Minimum credit rating of a counterparty we are willing to transact with
 - Minimum EEI contractual/credit terms (e.g., additional days to meet margin call; collateral threshold amount)
 - Process for (1) responding to and (2) issuing a margin call
 - NEMS to provide ongoing monitoring of and reporting to RMC and Boards of NES/C/NIES positions, potential exposures, creditworthiness of counterparties, etc.

NEXT STEPS

- Mid-October: RMC conference call to receive feedback on
 - Draft external Credit and Risk Management Policy and
 - Draft revised Resource Agreement
 - Drafts will be sent out to the RMC one week before conference call
- November 3rd RMC meeting
 - Final review of external Credit and Risk Management Policy and revised Resource Agreement; recommend for Board approval
 - Discussion of draft internal Credit and Risk Management Policy
- December 9th Board meeting:
 - Adoption of external Credit and Risk Management Policy and revised Resource Agreement (if possible)
 - Review and guidance on draft internal Credit and Risk Management Policy

NEMS PROJECT TIMELINES

NEMS Project Timelines

	July-September 2015	October-December 2015	January-March 2016	April-June 2016
General Resource Investigation (GRI)	- Update forecasted price data based on analysis received from the Existing Resource Search	- Present updated GRI to RMC based on new price data and propose potential changes to the NEMS Resource Strategy (if necessary) - Present potential NEMS Resource Strategy changes to the Boards in December	- Apply updated NEMS price forecast and resource strategy to the market purchase initiative development	- Review 2014 GRI with RMC and update the outdated sections - Review 2014 Modeling Assumptions and Portfolios with RMC and update the outdated sections
Specific Resource Investigations (SRI)	- Existing Resource Search kicked off in July. Report out initial phase results to RMC in August - Present findings to Board (including RMC Feedback)	- Present final resource list and SRI Agreement to Boards - If members are interested in pursuing identified resources, then offer SRI Agreements in December	- Commence acquisition process design and planning (includes outreach to prospective resources) - Begin acquisition process via bi-lateral discussions or formal Request for Proposal.	- Continue acquisition process for an existing resource - Incorporate findings from existing resource search and SRIs into the GRI update
Market Purchase Initiatives	- Complete FY2016 remarketing actions - Finalize Transmission arrangements for 2017-2019 market purchases - Develop draft Credit/Risk policies for 2020 market purchases	- Share Credit/Risk Policy with RMC for feedback via conference call in October - Adopt final Credit/Risk Policy in December - Continue discussions and outreach with potential market purchase counterparties	- Enter into EEI Agreements in order to become enabled with at least three counterparties - Work with the RMC to develop a market purchase strategy for FY2020	- Execute market purchase strategy for FY2020 (dependent on member readiness to execute future market purchase) - Complete FY2017 remarketing actions (if not yet complete)
	RMC: Aug 4 N ³ Board: Sep 2	RMC: Nov 3 N ³ Board: Dec 9	RMC: TBD N ³ Board: TBD	RMC: TBD N ³ Board: TBD

LIST OF ELECTRIC UTILITY ACRONYMS

ACH: Automated Clearing House
AKA: Also Known As
aMW: Average Mega Watts
A-RHWML: Above – Rate High Water Mark Load
BP: Bonneville Power
BPA: Bonneville Power Administration
CY: Calendar Year
DNR: Washington State Department of Natural Resources
EDF: Électricité de France
EEl: Edison Electric Institute
EWEB: Eugene Water & Electric Board
FY: Fiscal Year
GRI: General Resource Investigation
HWML: High Water Mark Load
JRPAA: Joint Resource Power Acquisition Agreement
MW: Mega Watts
MWh: Mega Watt Hour
NEMS: Northwest Energy Management Services (LLC of NRU)
NESC: Northwest Energy Supply Cooperative (subsidiary of NEMS)
NLT: No Later Than
NIES: Northwest Intergovernmental Energy Supply (subsidiary of NEMS)
NRU: Northwest Requirements Utilities
PPA: Power Purchase Agreement
PUD: Public Utility District (WA) or Peoples' Utility District (OR)
REC: Renewable Energy Credit
RHWML: Rate High Water Mark
RMC: Resource Management Committee (committee of NEMS)
RSS: Resource Support Services
SRI: Specific Resource Investigation
WNP#3: Washington Nuclear Plant #3
N3 Board: NEMS / NIES / NESC Boards