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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of the Application No. 2009-01: WHISTLING RIDGE ENERGY LLC WHISTLING RIDGE ENERGY PROJECT	APPLICANT’S REPLY TO FRIENDS OF THE COLUMBIA GORGE AND SAVE OUR SCENIC AREA’S JOINT MOTION TO REOPEN THE ADJUDICATIVE RECORD FOR LIMITED PURPOSE; APPLICANT’S MOTION TO STRIKE
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I. INTRODUCTION

COMES NOW the Applicant, Whistling Ridge Energy LLC (“Whistling Ridge”), by and through its attorneys of record Stoel Rives LLP and Darrel L. Peebles and submits this (i) reply to Intervenor Friends of the Columbia Gorge (“FOCG”) and Intervenor Save Our Scenic Area’s (“SOSA”) (collectively, “Opponents”) joint motion to reopen the adjudicative record for the limited purpose of admitting surrebuttal testimony and attached exhibits from Opponents’ witness about an interim Bonneville Power Administration (“BPA”) policy (“Motion”), and (ii) motion to strike page 3, line 3, though page 6, line 6 of Opponents’ Motion and the entirety of Opponents’ proposed Exhibits 30.26_ to 30.29_.¹

Despite there already being testimony and briefing from the Opponents about this very policy in the adjudicative record, Opponents seek the introduction of surrebuttal testimony from Michaels about this policy and other matters,² plus over one hundred pages of attached exhibits into the record. Because Opponents seek to reopen the record for the “limited purpose” of

¹ Prehearing Order No. 7 identified suffixes for numbering submitted rebuttal testimony and cross-examination exhibits. A suffix for surrebuttal testimony was never identified because surrebuttal testimony was never authorized.

² See, e.g., proposed Ex. 30.26_ at 3:23-4:3 (testimony concerning technological progress “[s]ince filing my testimony”), 5:10-19 (answering question concerning testimony from “other witnesses”).

1 admitting just their evidence, Whistling Ridge and the other parties (and Council members)
2 would not have the opportunity to question Michaels about his surrebuttal testimony or submit
3 their own surrebuttal testimony. Moreover, the BPA documents proffered by Opponents provide
4 a narrow window and one-sided perspective into this issue; a host of energy facility owners,
5 developers, utilities, consumer groups, environmental organizations, and elected officials filed
6 substantial opposing comments into the BPA record. This matter will be resolved by the Federal
7 Energy Regulatory Commission (“FERC”) and federal courts, and the outcome is far from
8 certain. As described below, reopening the adjudication would highly prejudice Whistling
9 Ridge’s (and the other parties’) rights, contravenes established Council procedure, and should be
10 denied.

11 Throughout this entire proceeding FOCG and SOSA have deliberately sought every
12 opportunity to cause undue delays, tax state resources, and unnecessarily drive up attorney fees
13 and costs. The legal foundations for Opponents’ actions have been weak and ill-conceived and
14 repeatedly misconstrued and misrepresented the Council’s actions in prior proceedings.³ This
15 motion represents the most recent example of Opponents’ improper and strategic abuse of this
16 proceeding, which will undoubtedly continue until the Council has issued its recommendation on
17 the Whistling Ridge Wind Energy Project (the “Project”).

18 II. STATEMENT OF MATERIAL FACTS

19 On December 3, 2010, BPA announced its environmental redispatch policy in a
20 “Statement on Environmental Redispatch and Negative Pricing.” Tr. at 1058:24-1059:1.

21
22 ³ See, e.g., Prehearing Order No. 6 (rejecting Opponents’ objections to Prehearing Order No. 4 concerning
23 the Council’s review process); Prehearing Order No. 9 (rejecting Opponents’ continued arguments concerning
24 “matters resolved in prior prehearing decisions;” Opponents’ “argument is not well founded and is denied.”);
25 Prehearing Order No. 10 (rejecting Opponents’ objection to Prehearing Order No. 8 concerning filing and service of
26 evidentiary documents to the parties); Prehearing Order No. 12 (rejecting Opponents’ objection to Prehearing Order
No. 11 concerning discovery); Posthearing Order No. 20 (rejecting Opponents’ attempted incorporation by reference
and finding “[p]articularly troubling is Friends’ acknowledgment that its incorporations by reference are made
expressly to avoid the Council’s briefing limitations, to which it had agreed at the January 20 post-hearing
conference”).

1 Approximately two weeks later, SOSA submitted rebuttal testimony from Michaels. *See*
2 Exs. 30.19r-30.24r. The deadline for submitting cross-examination exhibits was January 3,
3 2011. Prehearing Order No. 15.

4 During the Council's subsequent adjudicative hearing, SOSA's counsel, Mr. Aramburu,
5 cross-examined Howard Schwartz about BPA's proposed environmental redispach policy. Tr.
6 at 1042:4-1043:2, 1053:20-1054:6.

7 Do you know what environmental redispach is?

8 A. Yes.

9 Q. What is it?

10 A. That Bonneville has proposed that in the case where there
11 is overgeneration in the system and it threatens the fish operation
12 towards the operations of the Columbia River system for fish that
13 Bonneville will redispach power within its balancing authority to
14 mitigate the effect of fish operations.

15 Q. And as a practical matter does that mean that Bonneville
16 may refuse to accept wind generation?

17 A. What the proposal says is that in some cases it might, yes.

18 . . .

19 Q. And has Bonneville made a statement about this, about its
20 environmental redispach?

21 A. It has put out – it's written a paper and it has a proposal
22 which will be subject to all sorts of meetings and process.

23 Tr. at 1042:4-25. Mr. Aramburu also cross-examined Cameron Yourkowski about BPA's
24 proposed environmental redispach policy. Tr. at 1239:9-20. A member of the public even
25 submitted comments to the Council that expressly referenced BPA's proposed environmental
26 redispach policy. Public Comment #188 at 12.

During the adjudicative hearing, SOSA attempted to introduce BPA's December 3, 2010
"Statement on Environmental Redispach and Negative Pricing" into the adjudicative record as a
cross-examination exhibit. Tr. at 1058:19-1059:13. Mr. Aramburu claimed that "it's just come
to our attention." Tr. at 1059:8-9. However, because BPA's proposed policy had been issued on

**APPLICANT'S REPLY TO FOCG AND SOSA'S JOINT MOTION TO REOPEN THE ADJUDICATIVE
RECORD FOR LIMITED PURPOSE; APPLICANT'S MOTION TO STRIKE - 3**

1 December 3, 2010, SOSA reasonably could have discovered it before Prehearing Order No. 15's
2 January 3, 2011 deadline for submission of cross-examination exhibits. Tr. at 1059:16-22. Since
3 Mr. Aramburu had not complied with Prehearing Order No. 15, the introduction of this
4 document into the adjudicative record was denied. See Tr. at 1059:15-1060:20 (rejecting
5 proposed Ex. 35.13c).

6 Two months after the close of the adjudicative hearing, to support its argument that the
7 Project did not meet Opponents' purported "need" standard, SOSA expressly referenced BPA's
8 proposed policy in its opening adjudication brief. See SOSA Opening Adj. Brief at 47:1-10.⁴
9 Whistling Ridge argued that Opponents' argument and Michaels' testimony was wholly
10 irrelevant.

11 "Need" is simply not a criteria considered by EFSEC. Michaels'
12 testimony, in its entirety, is irrelevant and aimed at disproving
13 Whistling Ridge's compliance with a standard that does not exist
14 and need not be proven. As such, and given the massive rebuttal
15 testimony filed, Michaels's testimony is entitled to no weight
16 whatsoever.

17 App. Opening Adj. Brief at 52:2-6.

18 On May 13, 2011, BPA finalized its environmental redispach policy. Proposed
19 Ex. 30.27_. This policy will expire on March 30, 2012. *Id.* at 87.

20 III. ARGUMENT

21 Opponents' argument misfires on every issue. Contrary to Opponents' claims, neither
22 RCW 80.50.090 nor RCW 80.50.100(2) authorizes the Council to reopen the record at this time.
23 See Motion at 2:8-10. The Council's actions concerning the Sumas Energy 2 Generation Facility
24 ("SE2") did not concern a "similar matter" that supports Opponents' reasoning. Motion at 2:11.

25 ⁴ FOCG purportedly adopted SOSA's issues and arguments concerning energy demand and supply. See
26 FOCG Reply Brief at 27 n. 24. However, because FOCG's adoption did not cite any portions of SOSA's briefing, it
is unclear exactly what, if anything, FOCG sought to "adopt," in order to circumvent the Council's prohibition on
incorporation by reference. See *id.* at 5 n. 6 (explaining FOCG's "adoption" of SOSA's arguments rather than
incorporation by reference).

1 In fact, the Council’s reasoning in SE2 indicates that the Council should *not* grant Opponents’
2 Motion.

3 Opponents’ motion fails to satisfy the very factors that Opponents themselves identify as
4 being relevant to reopening the record. *See* Motion at 2:20-3:2. BPA’s policy does not qualify
5 as “new evidence,” it is irrelevant to this proceeding, and it is not in the “interests of justice” to
6 admit such surrebuttal testimony. The Council should deny Opponents’ Motion and strike their
7 supplemental legal argument and surrebuttal testimony from the record.

8 **A. Opponents’ Motion misconstrues Washington law and Council precedent**

9 **1. RCW 80.50.090 and RCW 80.50.100(2) do not authorize reopening the
10 record at this time**

11 Opponents begin by misconstruing the Council’s statutory authority under
12 RCW 80.50.090 and RCW 80.50.100(2).⁵ *See* Motion at 2:4-10. RCW 80.50.090 concerns the
13 scheduling of public hearings rather than reopening the record after all the required public
14 hearings have been held. RCW 80.50.100(2) does concern the Council’s authority to reopen but
15 this authority only arises, as is plainly evident from the statute, when (i) the Council has
16 recommended the Governor approve an Application for Site Certification (“ASC”), and (ii) in
17 response, the Governor has directed the Council to reconsider certain aspects of the draft
18 certification agreement the Council submitted with its recommendation. Because the Council
19 has yet to issue its recommendation (in no small part due to the unnecessary delays caused by
20 having to address meritless issues raised by Opponents), RCW 80.50.100(2) provides no
21 authority for the Council to reopen the adjudicative record at this time.

22 **2. The Council’s SE2 decisions indicate that the Council should deny—rather
23 than grant—Opponents’ Motion**

24 Opponents next misconstrue and misrepresent the Council’s decisions concerning SE2, a
25 660-MW natural gas-fired facility originally proposed with diesel oil backup. According to

26 ⁵ RCW 80.50.100(2) will be renumbered as RCW 80.50.100(3) on July 22, 2011. *See* 2011 c. 180 §109.

1 Opponents, in the SE2 adjudicative proceeding the Council “reopen[ed] the record on general
2 principles of ‘law and equity, and pragmatism.’” Motion at 2:11-12 (quoting Council Order
3 No. 758). Simply put, Opponents’ claim lacks any support in these Council orders.

4 **a. The Council recognized that reopening the SE2 record would be “a**
5 **violation of due process and as illegal procedure in violation of our**
6 **own rules;” the same conclusion is appropriate here**

7 As the Council well knows, in that proceeding, the Council recommended that the ASC
8 for SE2, as originally proposed, be denied but agreed to postpone conveying that
9 recommendation to the Governor until it had disposed of an anticipated motion for
10 reconsideration from the applicant. Council Order No. 757 at 1. The Council ultimately denied
11 the applicant’s motion for reconsideration because it proposed “numerous and substantial”
12 changes to the ASC—including the outright elimination of proposed diesel back-up fuel
13 facilities—which the Council determined constituted an untimely and hence prohibited
14 amendment to the ASC. *Id.* at 10-11. In so doing, the Council rejected the applicant’s attempt to
15 introduce evidence regarding the revised proposal and to prevent other parties from responding.

16 The problem with considering any such submission is that it is
17 offered after the record is closed and the factual material has not
18 been subjected to the scrutiny of cross-examination. Other parties
19 would no doubt (indeed, they have informed us that they would)
20 appeal any such process as a violation of due process and as illegal
21 procedure in violation of our own rules.

22 *Id.* at 11. Clearly, the Council rejected the attempt to introduce additional evidence after the
23 adjudicative record had closed and briefing was complete.

24 The same result is warranted here for the same reasons the Council identified in Council
25 Order No. 757. Opponents want the record reopened for the “limited purpose” of admitting just
26 their evidence’s uninformed and incomplete perspective of the BPA proceedings and decision.
Whistling Ridge and the other parties (and Council members) would not have the opportunity to
question Michaels about his surrebuttal testimony or submit their own surrebuttal testimony.

////

1 Admitting surrebuttal testimony without the opportunity to probe the veracity of that information
2 would highly prejudice Whistling Ridge’s due process rights.⁶

3 **b. The Council did not reopen the SE2 record as Opponents claim**

4 Opponents focus their attention on a second aspect of the SE2 decision, in which the
5 Council—necessarily drawing upon its prior quotation of former WAC 463-42-690(1)’s
6 (currently codified at WAC 463-60-116(1)) requirement that ASCs “reflect the best available
7 current information and intentions of the applicant”—found that “RCW 80.50.100, which
8 governs the Council’s responsibilities to the Governor, contemplates that the Council’s
9 recommendation should be based on the best information available to the Council concerning the
10 project.” Council Order No. 757 at 11. Opponents construe this selective quotation as “one of
11 the Council’s primary reasons for reopening the record.” Motion at 2:14. However, had
12 Opponents read the rest of Council Order No. 757, they would have realized that the Council did
13 *not* reopen the record.

14 Instead, because “the interests of efficiency would best be served by transmitting a
15 recommendation to the Governor that is based on the changes that the Applicant is proposing,”
16 the Council identified an alternative. *Id.* at 12.

17 The Council proposes that if the Applicant voluntarily
18 withdraws its current application and re-files an application with
19 the modifications proposed in its motion for reconsideration, the
20 Council will immediately thereafter schedule a prehearing
21 conference to establish an abridged process to consider the revised
22 proposal. This process necessarily will include some additional
23 opportunity for evidentiary hearings and may require some
24 additional opportunity for public comment to be received. . . . It
25 appears that the record on the existing application includes much
26 of what we would consider in evaluating the revised project. *That
record can be adopted for purposes of a new proceeding and*

24 ⁶ It would also violate WAC 463-30-310(2)(a), which contemplates “cross-examination and rebuttal
25 evidence” but not surrebuttal evidence. In addition, the Council has an obligation to avoid unnecessary delay.
26 Prehearing Order No. 9 at 5. This obligation counsels against conducting a second adjudicative hearing to address a
policy that Opponents already addressed through cross-examination and in briefing.

1 *would only need to be supplemented so that the implications of the*
2 *new proposed facility configuration could be fully understood.*

3 *Id.* at 12 (footnote omitted; emphasis added). The Council did not reopen the SE2 adjudicative
4 record as Opponents contend but rather found that if a new ASC was submitted, the existing
5 adjudicative record could simply be adopted into the record for the new ASC for purposes of
6 efficiency.⁷ Because the Council did not reopen the SE2 record, Opponents' Motion is not
7 supported by the Council's decision in SE2.

8 **B. Opponents' "new" evidence fails to satisfy any of RCW 34.05.562(2)(b)'s factors,**
9 **which according to Opponents are "instructive" on the issue now before the Council**

10 Opponents suggest that the Council should evaluate their Motion against
11 RCW 34.05.562(2)(b)'s factors governing judicial remand to an agency for additional fact
12 finding under Washington's Administrative Procedures Act. Motion at 2:20-3:2.

13 Notwithstanding the fact that this statutory provision is wholly inapplicable in this situation,
14 RCW 34.05.562(2)(b) requires that the following three factors be satisfied before remand for
15 additional fact-finding:

- 16 • The fact-finding must concern "new evidence." The parties must not have known
17 about the evidence and either had no duty to discover the evidence or could not have
18 reasonably discovered the evidence until after the agency action.
- 19 • The evidence must "relate[] to the validity of the agency action at the time it was
20 taken." In other words, the evidence must be relevant to the agency's decision.
- 21 • The "interests of justice" must be served by additional fact-finding.

22 *////*

23 ⁷ The Council subsequently affirmed the solution identified in Council Order No. 757, finding that it
24 "was driven by principles of law and equity, and pragmatism. It would be
25 extraordinarily wasteful of the parties' and the Council's resources to blindly
26 recommend denial of this project to the Governor when the Applicant wishes to
27 withdraw its application and submit a revised application that may meet the
28 stated needs of many of the parties and the public."

29 Council Order No. 758 at 3.

1 As described below, Opponents cannot satisfy any of the three factors, much less all three
2 factors. Opponents’ Motion should be denied.

3 **1. A policy that BPA announced two weeks before Opponents submitted**
4 **Michaels testimony, that witnesses testified about during the adjudicative**
5 **hearing, and that Opponents briefed simply *cannot* be “new” evidence**

6 The adjudicative record itself belies Opponents’ claim that they “could not have
7 discovered the policies in time to submit them for the adjudicative record.” Motion at 6:8. BPA
8 announced its environmental redispach policy two weeks before Opponents submitted Michaels’
9 rebuttal testimony. Opponents cross-examined multiple witnesses about BPA’s environmental
10 redispach policy. The Council received public comment that expressly referenced this policy.
11 Opponents relied on this policy in their briefing. Opponents even unsuccessfully tried to
12 introduce an evidentiary exhibit describing BPA’s environmental redispach policy into the
13 record during the adjudicative hearing.

14 Now—over four months after the adjudicative hearing ended and two months after
15 briefing was complete—Opponents attempt to introduce surrebuttal testimony and attached
16 exhibits concerning the very same policy that the Council has already determined Opponents
17 untimely submitted during the adjudicative hearing itself. This utter contempt for the Council’s
18 adjudicative process boggles the mind and should not be allowed. As the Council already
19 recognized, Opponents could have been aware of the policy in December 2010. While BPA
20 finalized the policy recently, there is nothing “new” about this policy that Opponents have not
21 already addressed through cross-examination and briefing. Opponents simply want yet another
22 bite at the apple and continue to seek every opportunity to jack up the cost of these proceedings
23 and cause further delay.

24 **2. BPA’s policy is not relevant to the Council’s decision**

25 Opponents’ “new” evidence can only be relevant to the Council’s decision if “need” is a
26 Council standard. However, the Council has expressly repudiated such a standard.

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1 RCW 80.50.010 requires the council to ‘recognize the pressing
2 need for increased energy facilities.’ For that reason, *applications*
3 *for site certification need not demonstrate a need for the energy*
facility.

4 WAC 463-60-021 (emphasis added); *see also Residents Opposed to Kittitas Turbines v. EFSEC*,
5 165 Wn.2d 275, 321, 197 P.3d 1153 (2008) (upholding the Council’s refusal to analyze the
6 economics of a proposed project); Prehearing Order No. 12 at 3 (“[T]he Council declines to
7 consider the economic attributes of the proposed facility.”).⁸ With no applicable “need”
8 standard, Opponents’ “new” evidence is irrelevant and the Council cannot reopen the record to
9 admit this evidence.

10 Furthermore, BPA’s policy is not relevant because—unlike the transmission agreements
11 for existing and operating wind energy facilities, which did not contemplate the issues raised by
12 BPA’s policy—Whistling Ridge’s transmission agreement could proactively address these issues
13 and concerns, such that the policy may not even apply to the Project. Alternatively, Whistling
14 Ridge could negotiate pricing and other contractual terms in a power purchase contract or other
15 agreements to address this issue proactively. Thus, the policy’s relevancy to the Project is highly
16 questionable.

17 Most importantly, even if the Council determines that a “need” standard exists and if
18 Whistling Ridge had already signed a transmission agreement for the Project, BPA’s policy
19 expires on March 30, 2012, which is less than a year from now. A policy concerning the
20 transmission of electricity that will expire before the Project generates any electricity cannot be
21 relevant to the Council’s decision. For this reason alone, the Council should not reopen the
22 record.

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25 ⁸ The Department of Commerce has similarly stated that “[g]ranting a site certificate is EFSEC’s domain;
26 sales and interconnection depend on other industry processes. It is not the Council’s job to determine whether the WREP will be integrated or what price its power will be sold at, or to whom.” Ex. 106 at 5:1-4.

1 Punctuating the frivolity of Opponents’ Motion, BPA’s environmental redispatch policy
2 responds to a sporadic alignment of very significant Northwest snowpacks and very late spring
3 snow melts, with consequential high flows on the rivers that provide hydroelectric generation.
4 This condition is not only sporadic and brief (likely no more than three weeks per year) but it is
5 temporary, pending system upgrades and the implementation of imminent technological
6 improvements. *See* Proposed Exs. 30.27_ at 13, 16, 64, 84, 87; 30.29_ at 6-8. BPA
7 acknowledges this. *See id.* Temporary, sporadic events that are on a certain path toward
8 resolution, and a BPA action that is heavily disputed, including by the Pacific Northwest’s three
9 largest electric utilities, is utterly irrelevant to this proceeding. *See, e.g.*, Proposed Ex. 30.27_
10 at 22 (noting how Puget Sound Energy, Portland General Electric, and PacifiCorp all commented
11 that BPA’s policy violates the Federal Power Act).

12 **3. The “interests of justice” would not be served by reopening the record**

13 In addition to highly prejudicing all the parties’ (other than Opponents’) due process
14 rights, reopening the record to allow Opponents’ surrebuttal testimony concerning BPA’s policy
15 does not serve the “interests of justice.” PacifiCorp and four wind energy companies have filed a
16 complaint with FERC alleging that BPA’s policy is discriminatory, anticompetitive and violates
17 the Federal Power Act, multiple FERC orders, and transmission agreements. *See Iberdrola*
18 *Renewables, Inc. et al. v. BPA*, FERC Docket No. EL11-44-000 (complaint and motion to
19 intervene attached) . In addition, an appeal of BPA’s environmental redispatch policy will likely
20 be filed in the Ninth Circuit Court of Appeals before the summer is over, and generators will
21 most certainly be seeking damages against BPA in the United States Court of Federal Claims in
22 the coming months. Basing a siting decision upon a transmission policy that will be subject to
23 multiple challenges in difference venues (and that expires in less than a year) is not in

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1 the “interests of justice.”⁹ Most importantly this is a complex federal energy issue that will be
2 resolved in other administrative and judicial venues. It has absolutely nothing to do with the
3 substantive legal issues pending before the Council.

4 Furthermore, accepting Opponents’ reasoning would permanently open the door for
5 parties to supplement the record with “new” information in this proceeding and future
6 adjudicative proceedings. This would set a dangerous precedent by effectively prohibiting the
7 Council from ever closing the record. Parties concerned about a Council recommendation
8 adverse to their interests could successfully move to reopen the record to submit “new”
9 information they claim is “relevant” right before the Council adopts its recommendation. If the
10 Council did not stop to consider that information, parties could argue on appeal that the
11 Council’s recommendation was arbitrary and capricious. Thus, the Council’s ability to close the
12 record and make a recommendation would be severely compromised. *See* RCW 80.50.010(5)
13 (legislative intent that “decisions are made timely and without unnecessary delay”). Already a
14 daunting and expensive venue to seek energy facility approvals, the Council would lose every
15 vestige of predictability and cost control.

16 Finally, while a host of parties dispute the necessity of BPA’s policy, including
17 environmental groups (*e.g.*, “Save Our Wild Salmon ‘urges BPA to withdraw this misguided
18 proposal[.]’”) and consumer groups, from BPA’s perspective this policy neutralizes the potential
19 environmental impacts associated with the sporadic and temporary spring runoff conditions.

20 Proposed Ex. 30.27_ at 77-78, 79. Consequently, the environmental redispach policy does not
21 signal any environmental consequences associated with wind energy or any other generation
22 source—from BPA’s perspective, its action avoids negative effects on fish species. Thus, the

23 ////

24
25 ⁹ Moreover, BPA’s policy concerns electricity transmission between states, which is wholly the province of
26 the federal government under the Commerce Clause. It is not in the Council’s interest to overreach its jurisdiction
over the siting of energy facility and implicate itself in this federal issue.

1 “interests of justice” do not supply any reason to reopen the record to admit the surrebuttal
2 testimony and attached exhibits on this issue.

3 **C. The Council should strike the supplemental legal argument that Opponents have**
4 **submitted under the guise of a procedural motion and strike Michaels’ surrebuttal**
5 **testimony and attached exhibits from the record**

6 Opponents misuse this motion to reopen the record by devoting over two-thirds of their
7 “motion” to provide the Council with supplemental legal argument concerning the substance of
8 BPA’s policy, Michaels’ surrebuttal testimony, and how BPA’s policy purportedly “cast[s]
9 doubts” statements in Whistling Ridge’s ASC. *See* Motion at 3:3-6:6. This is a clear violation
10 of Prehearing Order No. 4’s provision for each party to be afforded two—not three—rounds of
11 written testimony and Post-Hearing Order No. 18’s requirement for simultaneous briefing.¹⁰
12 Whistling Ridge strongly disagrees with Opponents’ legal argument for the reasons already
13 outlined on page 24, line 21, through page 28, line 4 of Whistling Ridge’s adjudicative response
14 brief. But more importantly, *Whistling Ridge strongly objects to Opponents’ abuse of what is*
15 *ostensibly a “motion” to make supplemental legal argument and submit additional testimony*
16 *and evidence on issues raised in the adjudicative proceeding, which is not allowed under*
17 *Prehearing Order No. 4, Post-Hearing Order No. 18, and standing process.* Opponents’
18 supplemental legal argument and Michael’s surrebuttal testimony and attached exhibits should
19 be stricken from the record.

19 **IV. CONCLUSION**

20 Opponents’ Motion, and the grounds alleged to demonstrate a failure to meet a non-
21 existent “need” standard validates the Council’s decision to expressly repudiate a “need”
22 standard for generation facilities. WAC 463-60-021. For generation facilities that have a life
23 span of 20 to 30 years, it would be arbitrary and capricious to deny them based on conditions that
24 are without dispute temporary and will without any doubt be permanently resolved within

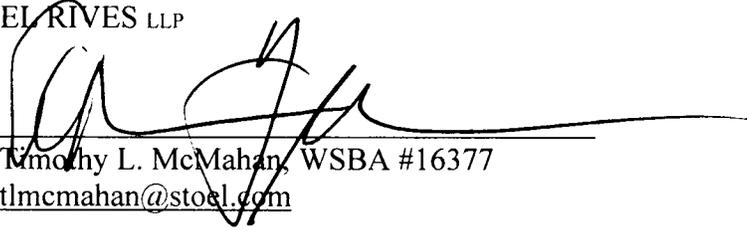
25 ¹⁰ Opponents objection to Post-Hearing Order No. 19 similarly contained supplemental legal argument in
26 violation of Post-Hearing Order No. 18 and standing process. *See* Opp. Obj. at 8 n. 2.

1 several years. This is particularly true where the BPA action is under very significant legal
2 challenge, with the outcome far from certain.

3 For the reasons set forth above, Whistling Ridge asks that the Council (i) to deny
4 Opponents' Motion and (ii) to strike the identified portions of Opponents' Motion and all of the
5 surrebuttal testimony and attached exhibits from the record.

6 DATED: June 14, 2011.

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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Iberdrola Renewables, Inc.;)	
)	
PacifiCorp;)	
)	
NextEra Energy Resources, LLC;)	
)	
Invenergy Wind North America LLC;)	
and)	
)	
Horizon Wind Energy LLC)	
)	Docket No. EL11-___-000
Complainants,)	
)	
v.)	
)	
Bonneville Power Administration)	
)	
Respondent.)	

**COMPLAINT AND PETITION FOR ORDER UNDER
FEDERAL POWER ACT SECTION 211A
AGAINST
BONNEVILLE POWER ADMINISTRATION
REQUESTING FAST TRACK PROCESSING**

June 13, 2011

**UNITED STATES OF AMERICA
BEFORE THE
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Iberdrola Renewables, Inc.;)	
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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Iberdrola Renewables, Inc.;)	
)	
PacifiCorp;)	
)	
NextEra Energy Resources, LLC;)	
)	
Invenergy Wind North America LLC;)	
and)	
)	
Horizon Wind Energy LLC)	
)	
Complainants,)	Docket No. EL11-___-000
)	
v.)	
)	
Bonneville Power Administration)	
)	
Respondent.)	

**COMPLAINT AND PETITION FOR ORDER UNDER
FEDERAL POWER ACT SECTION 211A
AGAINST
BONNEVILLE POWER ADMINISTRATION
REQUESTING FAST TRACK PROCESSING**

Iberdrola Renewables, Inc. (“Iberdrola Renewables”); PacifiCorp; NextEra Energy Resources, LLC (“NextEra”); Invenergy Wind North America LLC; and Horizon Wind Energy LLC (“Horizon”) (collectively, “Complainants”) hereby submit this Complaint and petition for order against the Bonneville Power Administration (“Bonneville” or “BPA”) pursuant to sections 210, 211A, 212, 307, 308 and 309 of the Federal Power Act (“FPA”),¹ and Rule 206 of the

¹ 16 U.S.C. §§ 824i, 824j-1, 824k, 825f, 825g and 825h (2006).

Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) Rules of Practice and Procedure² (the “Complaint”).

I. EXECUTIVE SUMMARY

This case concerns a transmission provider – Bonneville – that is using its transmission market power to curtail competing generators in an unduly discriminatory manner in order to “protect” its preferred power customer base from costs it does not consider “socially optimal.”³ Abandoning adherence to the open access principles set forth in Order Nos. 888,⁴ 890,⁵ and 2003,⁶ Bonneville has adopted a new practice whereby it unilaterally curtails wind generators without compensation, and “substitutes” its own generation for delivery to the wind generators’ customers, in violation of the wind generators’ interconnection contracts with Bonneville and the firm transmission rights associated with the delivery of the output of the wind generators’

² 18 C.F.R. § 206 (2010).

³ *Administrator’s Final Record of Decision, BPA’s Interim Environmental Redispatch and Negative Pricing Policies* at 12, dated May 13, 2011, (“Final ROD”) available at: http://www.bpa.gov/corporate/pubs/RODS/2011/ERandNegativePricing_FinalROD_web.pdf.

⁴ Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. [Regs. Preambles 1991-1996] ¶ 31,036 (1996), on reh’g, Order No. 888-A, FERC Stats. & Regs. [Regs. Preambles 1996-2000] ¶ 31,048 (1997), on reh’g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), on reh’g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff’d in part and remanded in part, sub nom., Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff’d, *New York v. FERC*, 535 U.S. 1 (2002) (“Order No. 888”).

⁵ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, on reh’g, Order No. 890-A, 121 FERC ¶ 61,297 (2007), on reh’g, Order No. 890-B, 123 FERC ¶ 61,299 (2008), on reh’g, Order No. 890-C, 126 FERC ¶ 61,228 (2009) (“Order No. 890”).

⁶ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), on reh’g, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), on reh’g, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), on reh’g, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005); see also *Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004) (“Order No. 2003”).

facilities.⁷ Complainants' contracts permit curtailments on a nondiscriminatory basis to avoid reliability violations, but they do not permit Bonneville to curtail customers simply because the prevailing market price of power is, in Bonneville's opinion, too low. Since Order No. 888, the Commission has consistently and repeatedly held that such undue discrimination is unlawful.

On May 13, 2011, Bonneville issued the Administrator's Final Record of Decision ("Final ROD") on BPA's Interim Environmental Redispatch and Negative Pricing Policies ("Environmental Redispatch Protocol"). The Final ROD authorizes Bonneville to curtail wind generation below scheduled levels and substitute hydropower from the Federal Columbia River Power System ("FCRPS"), or other energy from generation projects in Bonneville's Balancing Authority Area ("BAA"). The Final ROD also states that Bonneville will not pay "negative prices" to induce any type of generator to curtail its output. Bonneville's refusal to pay "negative prices", and its unilateral action to curtail wind generation instead, improperly place the entire burden of its overgeneration situation on one class of customers—those subject to the Environmental Redispatch Protocol.

Since May 18, 2011, Bonneville has invoked the authorities under the Final ROD for several hours almost every day, curtailing more than 60,000 megawatt-hours of wind generation to date and seizing transmission capacity to deliver hydro generation to customers holding contracts to obtain wind power. The curtailments have occurred without exhausting other viable alternatives because doing so would conflict with Bonneville's "negative pricing" policy contained in the Final ROD. As a result, Complainants face significant harm due to forgone

⁷ Bonneville's discriminatory actions affect both interconnection service under the wind generators' Large Generator Interconnection Agreements ("LGIAs") or earlier versions of Bonneville's interconnection agreements and related firm transmission service agreements under the Bonneville Open Access Transmission Tariff ("OATT"). In some cases, the wind generators have reserved firm transmission rights to deliver the output of their facilities to their customers, and in other cases the offtakers hold the firm transmission rights. In either case, the result is the same – Bonneville is appropriating committed transmission service for its own use on an unduly discriminatory basis.

energy sales, including, in some cases, the value of federal Production Tax Credits (“PTCs”) and state Renewable Energy Credits (“RECs”). Bonneville has estimated that the financial impact of the Final ROD with regard to PTCs and RECs could be approximately \$50 million dollars in 2011.⁸ In addition, wind energy generators may forgo revenue associated with lost power sales under Power Purchase Agreements (“PPAs”).⁹

Bonneville will no doubt argue, as it has in the Final ROD, that it is merely “balancing” multiple considerations—reliability, environmental compliance, and open access—and therefore the Commission should defer to its discretion in achieving such a balance. However, its decision evidences no balancing whatsoever because the Final ROD allows Bonneville to implement curtailments any time the market price falls below zero—even when there are no reliability issues and there are other options for addressing environmental concerns. Bonneville has instead chosen to use its transmission system to promote the economic interests of its primary power customer base over the interests of its transmission customers, including utilities inside and outside the Pacific Northwest, wind generators inside Bonneville’s BAA, and, ultimately, retail consumers whose electric power providers have either constructed or procured wind generation.

This undue discrimination is not the result of a reliability or environmental condition. Rather, as the Final ROD indicates, it is an economic choice. Bonneville could address any reliability and environmental concerns by making consensual contractual arrangements to curtail thermal, non-federal hydro, and wind generation, or to store energy outside the region. Instead,

⁸ Final ROD at 20.

⁹ This is because wind energy PPAs typically require that the power be produced by a wind energy generator, rather than a different type of resource. Sourcing the energy from a wind energy facility may also be needed to qualify for state renewable portfolio standard purposes. Accordingly, substitution of wind power with hydro power is problematic under many PPAs.

Bonneville has chosen to forsake rational, economically efficient solutions in favor of a policy that benefits its preferred power customer base. The Commission need only look at its approved organized wholesale power markets to understand how anticompetitive and discriminatory this action is. In organized markets with high amounts of generation, negative prices occur at times *because that is the competitive price necessary to induce curtailment when there is oversupply*. There is no reason to permit discriminatory market rules that preclude such pricing outcomes in the Pacific Northwest bilateral market.

Bonneville's new curtailment priorities are not comparable to Bonneville's treatment of its own generation and are unduly discriminatory and preferential. In the Energy Policy Act of 2005 ("EPA Act 2005"),¹⁰ Congress' enactment of FPA Section 211A put an end to an era where certain entities may have been shielded from the Commission's jurisdiction to eliminate undue discrimination. Specifically, in FPA Section 211A Congress vested the Commission with jurisdiction to eliminate undue discrimination by *any* entity, including Bonneville.

Importantly, because FPA Section 211A(b)(2) applies the very same undue discrimination standard to unregulated transmitting utilities that is applicable to public utilities, the Commission must ask itself whether it would permit a public utility transmission provider to take actions such as those Bonneville is taking under the Environmental Redispatch Protocol. If the Commission would not allow a public utility to curtail competing generators in this manner any time the entity believed such generators were imposing costs it did not consider to be "socially optimal" on its native load customers, then it should not allow Bonneville to take such action.

¹⁰ *Energy Policy Act of 2005*, Pub. L. No. 109-58, 119 Stat. 594 (2005).

The Commission also has authority to order Bonneville to provide interconnection services pursuant to FPA Sections 210 and 212(i). This authority includes the ability to order Bonneville to cease generation curtailments under the Environmental Redispatch Protocol in order to “make effective” the physical interconnections which have been made ineffective as a result of Bonneville’s actions in implementing its Final ROD.¹¹

Bonneville owns 80 percent of the transmission system in the Pacific Northwest, and its transmission policies fundamentally impact all market participants in the region. For the past four years, Bonneville has been moving away from open transmission access and competitive markets, and the Environmental Redispatch Protocol is the most egregious example of undue discrimination thus far. The Commission must act to protect the very foundation of existing bilateral markets in the Pacific Northwest - markets that cannot properly function if a party can abandon its contractual obligations and unilaterally use its transmission system to impose its own operating regime to benefit its preferred power customer base. Moreover, this proceeding is critical to ensuring that Bonneville cannot harm adjoining regions, such as California, by substituting renewable resources with its own hydro generation and thereby subverting the ability of other regions to meet their statutory renewable portfolio standards. Bonneville’s Final ROD also creates substantial disincentives to development of renewable generation in the Pacific Northwest, and is inconsistent with the Obama Administration’s policies on renewable energy resource development.¹²

¹¹ FPA Section 210(a)(1)(B).

¹² *See, e.g.*, Remarks by President Barack Obama, State of the Union Address (Jan. 25, 2011), available at: <http://www.whitehouse.gov/the-press-office/2011/01/25/remarks-president-state-union-address> (last accessed Mar. 11, 2011); *see also* “Secretary Chu Announces Progress on BPA Recovery Act Project,” U.S. Department of Energy Press Release, Aug. 10, 2009, available at: <http://www.energy.gov/news/7784.htm> (last accessed Mar. 11, 2011).

The Commission has broad discretion to fashion a remedy in this case, including a remedy that is appropriate for a federal agency such as Bonneville.¹³ Congress vested the Commission with the power and obligation to prohibit the abuse of transmission market power nationwide, regardless of the nature of the entity that engages in it. The Commission must now use its authority to protect non-discriminatory access to transmission and competitive markets in the Pacific Northwest.

Indeed, the facts surrounding Bonneville's initial curtailments pursuant to the Final ROD – where wind has been repeatedly curtailed at times when significant export capability existed on the Southern and Northern Interties – demonstrate the urgent need for Commission action to cease Bonneville's unduly discriminatory behavior. Congress' specific intent in promulgating FPA Section 211A to remedy undue discrimination cannot be realized if the Commission is unwilling to exercise its authority under such significant circumstances as these.

Complainants request three inter-related forms of relief from the Commission:

- Order Bonneville to immediately revise its curtailment practices to comport with the undue discrimination standards of FPA Section 211A and submit them in a compliance filing for the Commission's approval within 60 days of the date of the Commission order;
- Order Bonneville under FPA Sections 210 and 212(i) to abide by the terms of its interconnection agreements with Complainants by immediately ceasing these unduly discriminatory and preferential practices; and
- Order Bonneville, pursuant to FPA Section 211A, to remedy its unduly discriminatory and preferential practices by filing an OATT for Commission

¹³ The Commission has concluded that its "discretion is at its zenith in fashioning remedies for undue discrimination." Order No. 888 at p. 31,676.

approval within 120 days, and to maintain a Commission-approved OATT on file.

The first remedy — reforming the curtailment practices — is necessary to halt the immediate and significant harm being caused by the Environmental Redispatch Protocol. The second remedy — compliance with the terms of its interconnection agreements — is necessary to ensure that Bonneville does not simply replace its Final ROD with a similarly discriminatory curtailment regime that achieves a similar end by different means. The third form of relief — filing an OATT for Commission approval — is necessary to assure that non-discriminatory open access is available in the Pacific Northwest on a long term basis. In light of the fact that Bonneville has already begun curtailing wind under the Final ROD, Complainants request that the Commission grant this complaint on an expedited basis — within sixty (60) days if at all possible.

II. CORRESPONDENCE AND COMMUNICATIONS

All correspondence and communications concerning the above-captioned proceeding should be addressed to the following persons:¹⁴

¹⁴ Complainants request waiver of Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3) (2010), to the extent necessary to permit more than two persons to be included on the official service list on their behalf in this proceeding.

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III. BACKGROUND

A. Description of Complainants

1. Iberdrola Renewables, Inc.

Iberdrola Renewables is a non-transmission owning public utility engaged, directly and through its subsidiaries and affiliates, in the development and operation of wind, solar, biomass and thermal energy facilities, natural gas and electric marketing, gas storage and hub services, and in providing other energy services. Iberdrola Renewables, with its affiliates and subsidiaries, is the second largest wind energy generator in the United States, with nearly 5,000 megawatts (“MW”) of operating wind energy generating capacity. More than 1,300 MW of this wind energy is located within Bonneville’s BAA and Iberdrola Renewables purchases a significant amount of interconnection and transmission service under Bonneville’s tariff for these renewable energy projects. Iberdrola Renewables’ interconnection and transmission agreements have been subject to the Environmental Redispatch Protocol.

2. PacifiCorp

PacifiCorp, an indirect, wholly-owned subsidiary of MidAmerican Energy Holdings Company, is a vertically-integrated public utility primarily engaged in the business of providing retail electric service to approximately 1.7 million customers in the following states: Utah, Oregon, Wyoming, Washington, Idaho and California. PacifiCorp provides electric transmission service pursuant to a Commission-approved OATT and operates an integrated system spanning two BAAs, PacifiCorp East and PacifiCorp West. PacifiCorp purchases a significant amount of transmission service under Bonneville’s tariff. Two of PacifiCorp’s wind energy facilities are located within the Bonneville BAA and have been subject to the Environmental Redispatch Protocol.

3. NextEra Energy Resources, LLC

NextEra is a leading clean and renewable energy provider with over 18,000 MW of generation capacity from wind, solar, hydroelectric, natural gas, oil, and nuclear power plants. NextEra's facilities are located in 26 states, including in markets operated by regional transmission organizations or independent system operators (jointly, "RTOs"), in non-RTO regions, and in several provinces in Canada. NextEra is the largest wind energy generator in the United States, with approximately 8,000 MW in operation. Two of NextEra's wind energy facilities, with a total capacity of 115 MW, have interconnection agreements with Bonneville and both have been subject to Environmental Redispatch.

4. Invenergy Wind North America LLC

Invenergy is a limited liability company organized and existing under the laws of the state of Delaware and having its principle place of business in Chicago, Illinois. Together with its affiliates, the Invenergy companies are leading clean energy companies focused on the development, ownership, operation and management of large-scale electricity generation assets in the North American and European markets, including nearly 700 MW in the Pacific Northwest region. Invenergy and its affiliates currently have over 2,200 MW of natural gas-fueled electric generating projects in operation and, as the sixth largest owner of wind generation assets in the United States, wind generation projects totaling over 2,000 MW in construction or operation across the country. Invenergy's interconnection agreements have been subject to the Environmental Redispatch Protocol.

5. Horizon Wind Energy LLC

Horizon is a Delaware limited liability company that develops, owns, and operates, through wholly- or partially-owned subsidiaries, wind-powered electric generation facilities

throughout the United States. Horizon has developed more than 3,600 MW and operates over 3,400 MW of wind farms, of which approximately 300 MW is interconnected to the Bonneville system. Horizon also has approximately 900 MW of projects under development in the Bonneville BAA. As the upstream owner and developer of significant wind generation capacity in the Bonneville BAA, Horizon is directly affected by Bonneville's Environmental Redispatch Protocol.

B. Bonneville and Its Environmental Redispatch Protocol

1. Bonneville's Dominant Position as a Transmission Provider in the Pacific Northwest

Bonneville holds a dominant position as a transmission provider in the Pacific Northwest. Bonneville is the Federal power marketing agent for all wholesale electric power generated at the Federal hydroelectric projects in the Pacific Northwest. The Federal projects in the region generate approximately 8,862 aMW annually,¹⁵ and Bonneville's power sales account for approximately 45 percent of the electric power consumed in the entire Pacific Northwest.¹⁶ Since the 1970s, Bonneville has routinely sold surplus power produced during times of high flows (typically in the spring and summer) to utilities in the Pacific Northwest and California.¹⁷ These surplus sales normally represent approximately one-fifth of Bonneville's total annual revenues.¹⁸ Bonneville also operates over 15,000 miles of high-voltage transmission lines,¹⁹ constituting 80 percent of the transmission network in the Pacific Northwest.²⁰

¹⁵ See *Bonneville Power Administration*, "2009 BPA facts," available at: http://www.bpa.gov/corporate/about_BPA/Facts/FactDocs/BPA_Facts_2009.pdf. Bonneville's wholesale power customers in the Pacific Northwest include 29 public utility districts, 42 municipal utilities, 57 cooperative utilities, and 7 Federal agencies in a service area size of approximately 300,000 square miles.

¹⁶ *Locational Exchanges of Wholesale Electric Power*, Docket No. RM11-9-000, Comments of the Bonneville Power Administration at 1, dated April 25, 2011.

¹⁷ Final ROD at 7.

¹⁸ See *Bonneville Power Administration*, "2010 Annual Report" at 2, available at: http://www.bpa.gov/corporate/finance/a_report/10/AR2010.pdf.

2. Bonneville's Environmental Redispatch Protocol

On May 13, 2011, Bonneville adopted the Environmental Redispatch Protocol, whereby Bonneville will unilaterally curtail generation from wind generators interconnected to its system, take firm transmission service purchased by wind generators or their contractual offtakers, and use that transmission to instead deliver Bonneville's hydro power to the wind generators' customers.²¹ Specifically, Bonneville will order wind generators to curtail output, in part or completely, during Environmental Redispatch events. To the extent Bonneville curtails these wind generators, Bonneville then supplants the generator's scheduled quantity of power with FCRPS energy, which will be transmitted across the firm transmission paths reserved for the output of the wind generators and delivered to the wind generators' loads. Bonneville does not alter the original e-Tag,²² leaving the receiving party unaware of Bonneville's "substitution" of power sources. As a result, the offtaker under a PPA for wind energy instead gets non-wind energy, regardless of whether this is permitted under the PPA. The offtaker is also deprived of the renewable attributes it has purchased from the wind generator, and if the seller is eligible for PTCs, it cannot claim those for the FCRPS energy.²³

Bonneville's stated reason for the Environmental Redispatch Protocol concerns

¹⁹ *Version One Regional Reliability Standard for Transmission Operations*, Docket No. RM09-14-000, Comments of the Bonneville Power Administration at 1, dated Feb. 25, 2011.

²⁰ *Id.* Bonneville's service territory covers Washington, Oregon, Idaho, western Montana, and portions of California, Nevada, Utah and Wyoming.

²¹ The Final ROD states that the Environmental Redispatch Protocol will remain in place until March 30, 2012. In ruling on this Complaint, the Commission should be aware that Bonneville has not created any new policy that will take effect after March 30, 2012, nor is there any guarantee that Bonneville will not face overgeneration issues in the future. In fact, it is highly likely that Bonneville will face overgeneration issues in the future. Accordingly, the situation described in this Complaint may recur in the future and the Commission should adjudicate this matter accordingly.

²² Final ROD at 71.

²³ Bonneville is impacted in the same way as other offtakers to the extent it holds wind PPAs and the wind generation is curtailed under the Environmental Redispatch Protocol. However, the impact to Bonneville as an offtaker under a PPA does not alter the fact that Bonneville is not providing comparable transmission service to its customers.

compliance with Total Dissolved Gas (“TDG”) levels at FCRPS projects. Water levels in the Columbia River system are high during spring runoff, and under some circumstances Bonneville is unable to spill water because of TDG limits.²⁴ Accordingly, Bonneville states it must run the water through its generators. This in turn generates power, which must be delivered to a load, and the delivery of the energy to the load requires transmission. However, Bonneville lacks both the load and the transmission needed to accomplish these power deliveries. To solve its problem, it unilaterally appropriates for its own use the load and transmission of the curtailed wind generators—thereby delivering “substituted” FCRPS power to the wind generators’ load.

Bonneville claims that its Environmental Redispatch Protocol “does not affect” transmission rights and is only a limitation on the ability of a generator interconnected to the FCRPS to generate.²⁵ Bonneville argues in the Final ROD that transmission service is unaffected because the quantity of energy the transmission customer schedules is delivered using the customer’s transmission rights.²⁶ Bonneville contends that the substitution is similar to the delivery of imbalance energy (although Bonneville does not consider itself to be delivering under one of its imbalance schedules) and repeatedly suggests that delivery of the “substituted” energy ensures firm transmission rights are “maintained.”²⁷

²⁴ Complainants note that some environmental groups dispute Bonneville’s “need” to generate under these circumstances and in fact urge Bonneville to spill *more* water to protect salmon. *See, e.g.*, “Comments on the Draft Record of Decision on Environmental Redispatch and Negative Pricing Policy” submitted by Save Our Wild Salmon (March 11, 2011) (“The salmon community has often called on the federal agencies to spill more water over the dams – not less – to help young salmon make their way safely to the ocean. While BPA has adamantly opposed spill increases because they can reduce electricity production, increased spill also creates capacity for wind energy on our regional power grid while at the same time assisting young salmon on their migration to the sea. . . . As noted above and explicated further in the comments from RNP and NVEC, many other options exist with which BPA can address these overgeneration events when they occur. Moving forward with this proposal would be harmful both to Columbia and Snake River salmon and to the burgeoning wind industry in our region.”).

²⁵ Final ROD at 43 (“Environmental Redispatch is a limitation on the ability of a generator interconnected to the FCRTS to generate, and does not affect a transmission customer’s transmission rights. If BPA curtailed transmission service, the transmission customer would not receive the energy that was curtailed.”).

²⁶ *Id.* at 25.

²⁷ *Id.* at 25-26.

Bonneville goes to great lengths in the Final ROD to justify why, instead of manually curtailing wind generators, it does not economically induce wind and other generators to self-curtail through payment of some amount of negative prices consistent with basic principles of supply and demand. If Bonneville did so, it might create additional markets for its power within and outside the region and avoid the need to curtail wind. Bonneville, however, states that this would give generators too much leverage, would inappropriately shift costs to Bonneville's ratepayers, impose a burden on Bonneville's fish and wildlife costs, and could even adversely affect development of renewable energy resources in the region by fueling its power customers' opposition to wind generation.²⁸

Bonneville began implementing its Environmental Redispatch Protocol on May 18, 2011, during off-peak hours, when approximately 270 MW of wind generation was forced off the system at a time when:

- 2900 MW of export capability was available on the Southern Interties (AC and DC),
- 1100 MW of export capability was available on the Northern Intertie, and
- approximately 560 MW per hour of other generation was being imported from the East.²⁹

Substantial export capability has also been available during each of Bonneville's subsequent curtailments under the Environmental Redispatch Protocol.

There are a number of actions Bonneville could take to alleviate the overgeneration problem, yet Bonneville has declined to do so. These actions include:

- entering into storage arrangements with entities in British Columbia,

²⁸ *Id.* at 12, 18-21. Bonneville argues that “paying negative prices to displace renewable generation to ensure BPA’s environmental responsibilities are met is neither *socially optimal* nor consistent with traditional principles of cost causation.” Final ROD at 12 (emphasis added).

²⁹ *See* Affidavit of Stephen Swain, Attachment B.

- entering into agreements with regional investor-owned utilities for displacement of thermal and non-thermal generation outside the Bonneville BAA, and
- paying some degree of negative prices to induce owners of generators in the region, including wind generators, to back down generation.

Parties within and outside the region approached Bonneville before it began implementing the Final ROD to indicate interest in exploring such arrangements, but Bonneville rejected these discussions because there is a cost to Bonneville associated with putting these measures in place, and Bonneville is unwilling to pay to alleviate the problem because it believes that it can shut off wind generators at no cost to Bonneville.³⁰ Bonneville has stated it refuses to take such actions to address the overgeneration problem because such actions may create costs for its preference customers, and has instead allocated all of the costs of its actions to the curtailed wind and other non-federal generators.

C. Applicable Legal Framework for Transmission Service by Bonneville

Several different statutes define Bonneville's authorities and obligations related to the sale and delivery of electricity. These statutes and obligations are important because Bonneville, in large part, attempts to justify its Environmental Redispatch Protocol based on its statutory obligations. However, Bonneville's attempted justification fails to recognize the Commission's statutory authority over Bonneville.

1. Federal Statutes Specific to Bonneville

Bonneville was established pursuant to the Bonneville Project Act of 1937 to dispose of electric energy generated by the hydroelectric facilities at the Bonneville Project located in

³⁰ Bonneville claims that it is working to ensure thermal displacement (Final ROD at 13), but these efforts cannot be successful if Bonneville is not willing to compensate thermal generators for displacement.

Washington and Oregon along the Columbia River.³¹ In addition to the Federal dams created through the Bonneville Project Act, several other Federal projects were built by the Army Corps of Engineers (“Corps”) and the Bureau of Reclamation (“Bureau”). These facilities, and the transmission lines that Bonneville built to move the power generated by the Federal projects, generally became known as the FCRPS.³² Under the 1974 Federal Columbia River Transmission System Act (“Transmission System Act”), Bonneville’s authority expanded to include the responsibility of being “the marketing agent for all electric power generated by Federal generating plants in the Pacific Northwest, constructed by, under construction by, or presently authorized for construction by the Bureau of Reclamation or the United States Corps of Engineers.”³³

As the primary marketer of electric energy for the FCRPS, Bonneville must adhere to several requirements dictating the terms and conditions of the sale, delivery, and exchange of electric energy both within and outside the Pacific Northwest.

The Pacific Northwest Consumer Preference Act (“Preference Act”) provides that Bonneville may sell power outside the Pacific Northwest region, but only if it has surplus energy to do so.³⁴ Bonneville must also make transmission service available to third parties under the Preference Act so long as Bonneville’s transmission is not needed for the transmission of Federal Energy.³⁵ In addition, with regard to firm transmission commitments on the Federal system, the Preference Act states “[n]o contract for the transmission of non-Federal energy on a firm basis

³¹ 16 U.S.C. § 832.

³² See, e.g., H.R. Rep. No. 976, 96th Cong., 2d Sess., pt. 2, at 26; 16 U.S.C. § 839a(10)(A).

³³ 16 U.S.C. § 838f. The Transmission System Act also removed Bonneville from the Congressional appropriations process and instead placed Bonneville on a “self-financing” basis.

³⁴ 16 U.S.C. § 837a. Bonneville typically engages in robust surplus energy sales. See Bonneville’s Surplus Power Sales Transactions Quarterly Reports, *available at*: http://www.bpa.gov/corporate/finance/surp_power_sales/index.cfm.

³⁵ 16 U.S.C. § 837a.

shall be affected by any increase, subsequent to the execution of such contract, in the requirements for transmission of Federal energy, the energy described in section 837h of this title, or other electric energy.”³⁶ Under the Transmission System Act, Bonneville is directed to “make available to all utilities on a fair and non-discriminatory basis,” any capacity in the Federal transmission system which it determines to be in excess of Bonneville’s needs.³⁷

In 1980, Congress passed the Pacific Northwest Electric Power Planning and Conservation Act (“Northwest Power Act”)³⁸ in order to further define Bonneville’s authority and obligations. The Northwest Power Act defines the sales, rates, and planning processes involved in Bonneville’s marketing obligation. While Bonneville is asked to generally assure the Pacific Northwest of adequate, efficient, economical, and reliable power under the Northwest Power Act, it is also specifically obligated to encourage the development of renewable resources within the Pacific Northwest.³⁹ Other purposes of the Northwest Power Act include allowing participation and consultation from local governments, consumers, and customers, as well as protecting fish and wildlife.⁴⁰

In terms of allocating costs and benefits for the power Bonneville markets and delivers in the Pacific Northwest, the Northwest Power Act Section 7(g) provides:

Except to the extent that the allocation of costs and benefits is governed by provisions of law in effect on December 5, 1980, or by other provisions of this section, *the Administrator shall equitably allocate to power rates*, in accordance with generally accepted ratemaking principles and the provisions of this chapter, *all costs and benefits not otherwise allocated under this section, including, but not limited to, conservation, fish and wildlife measures, uncontrollable events, reserves, the excess cost of experimental resources acquired under section 839d of*

³⁶ 16 U.S.C. § 837e.

³⁷ 16 U.S.C. § 838d.

³⁸ 16 U.S.C. § 839.

³⁹ *Id.*

⁴⁰ *Id.*

this title, the costs of credits granted pursuant to section 839d of this title, operating services, *and the sale of or inability to sell excess electric power.*⁴¹

Complainants note that while the costs Bonneville objects to paying in its Final ROD appear to be costs that are contemplated by the Northwest Power Act as costs that are to be specifically allocated to Bonneville's power rates pursuant to the terms of the Northwest Power Act, Bonneville refused to treat the costs in that manner in the Final ROD.⁴²

2. The Commission's Jurisdiction Over Bonneville

As relevant to this complaint, the Commission has jurisdiction over Bonneville under Section 211A of the FPA, which enables the Commission to order Bonneville to provide transmission and interconnection services on terms and conditions that are comparable to those it provides itself and that are not unduly discriminatory or preferential.⁴³

⁴¹ 16 U.S.C. § 839e (emphasis added).

⁴² Final ROD at 12.

⁴³ While the Commission has had authority since 1992 to order non-jurisdictional utilities, including Bonneville specifically, to provide interconnection and transmission services under sections 210, 211 and 212 of the FPA, EPAct 2005 strengthened and clarified this authority by adding FPA section 211A. To that end, with the addition of this section, Congress granted the Commission the discretion to require "unregulated transmitting utilities" to provide comparable, non-discriminatory access to their transmission systems similar to the requirements currently imposed on public utilities. In enacting Section 211A ("FERC Lite") Congress' stated intent was to grant FERC the discretion "to require unregulated transmitting utilities to provide open access to their transmission systems." S. Rep. No. 109-78, at 49 (June 9, 2005). *See also* 151 Cong. Rec. S7465 (daily ed. June 28, 2005) (statement of Sen. Kyl); statement of Jon Kyl also submitted Nov. 25, 2003, S15903 ("the Energy bill expands jurisdiction over those stakeholders in electric markets that were previously unregulated by the Commission. The 'FERC-lite' provision that addresses the Federal Energy Regulatory Commission's efforts to provide open access over all transmission facilities in the United States again, in my mind, strikes the right balance."). This purpose is consistent with:

(1) the characterization of the provision by the Commission's then-General Counsel Cynthia A. Marlette in her March 2005 written responses to questions posed by the House Subcommittee on Energy and Air Quality: "The provisions in section 1231 of the Discussion Draft would provide helpful authority to ensure that non-public utilities provide non-discriminatory access to their transmission systems similar to the requirements currently imposed on public utilities." H.R. Ser. No. 109-1, at 226 (2005) (Statement of Cynthia A. Marlette, General Counsel, Federal Energy Regulatory Commission); and

(2) The recommendations of the United States General Accounting Office (now the "Government Accountability Office") to Congress that they needed to expand FERC's jurisdiction to enable the Commission to require unregulated transmitting utilities to provide open access, in order to facilitate the Commission's efforts to expand wholesale power markets. U.S. Gen. Accounting Office, *Lessons Learned from Electricity Restructuring: Transition to Competitive Markets Underway, but Full Benefits Will Take Time and Effort to Achieve* 45-48 (2002), available at <http://www.gao.gov/new.items/d03271.pdf> (last accessed April 15, 2011).

In particular, FPA Section 211A(b) states:

[T]he Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services (1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and (2) on terms and conditions (not relating to rates) that are comparable to those under which the unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.⁴⁴

FPA Section 211A applies to any “unregulated transmitting utility,” which is defined as an entity selling more than four million megawatt-hours of electricity per year that “(1) owns or operates facilities used for the transmission of electric energy in interstate commerce; and (2) is an entity described in section 201(f).”⁴⁵ Bonneville sells in excess of four million megawatt-hours of electricity per year and owns and operates facilities used for the transmission of electric energy in interstate commerce and is an entity described in FPA Section 201(f). Thus, Bonneville satisfies the definition of an “unregulated transmitting utility,” and the Commission accordingly has jurisdiction over Bonneville under FPA Section 211A.

In its Order No. 890, the Commission explained that Congress has authorized, but not required, the Commission to order non-public utilities (or “unregulated transmitting utilities”) to provide open access transmission services under new FPA Section 211A.⁴⁶ The Commission noted that the language of FPA Section 211A “does not limit the Commission to ordering transmission services only to the public utility from whom the non-public utility takes transmission services, but rather permits the Commission to order the non-public utility to provide ‘open access’ transmission service, *i.e.*, service to all eligible customers.”⁴⁷ Further, the Commission declined to adopt in the Order No. 890 proceeding a generic rule to implement the

⁴⁴ 16 U.S.C. § 824j-1(b).

⁴⁵ 16 U.S.C. § 824j-1(a).

⁴⁶ Order No. 890 at P 164.

⁴⁷ *Id.*

new FPA Section 211A by requiring non-public utilities to file an OATT with the Commission, but stated that it would apply the provisions of FPA Section 211A on a case-by-case basis, and that a transmission customer may file an application with the Commission seeking an order compelling an unregulated transmitting utility to provide transmission service that meets the standards of FPA Section 211A.⁴⁸ As discussed herein, FPA Section 211A refers to transmission service broadly, and the Commission has held that interconnection is an element of transmission service.⁴⁹

The Commission also has jurisdiction to order Bonneville to provide transmission and interconnection service pursuant to FPA Section 212(i), which provides:

[t]he Commission shall have authority pursuant to section 210, section 824i of this title, section 824j of this title, this section and section 824l of this title, to (A) order the Administrator of the Bonneville Power Administration to provide transmission service and (B) establish the terms and conditions of such service.⁵⁰

3. The Commission's Order Nos. 888 and 890

Since the issuance of Order No. 888, the Commission has dedicated itself to eradicating discriminatory practices from the electricity industry and ensuring open transmission access to all customers. Specifically, the Commission stated that: “[t]he legal and policy cornerstone of [Order No. 888] is to remedy undue discrimination in access to the monopoly owned transmission wires that control whether and to whom electricity can be transported in interstate commerce.”⁵¹ The Commission then sought to remedy any opportunity for undue discrimination

⁴⁸ *Id.* at P 192.

⁴⁹ Order No. 2003 at P 20 (“[i]nterconnection is an element of transmission service”); *Tennessee Power Co.*, 90 FERC ¶ 61,238 at 61,761, *reh’g dismissed*, 91 FERC ¶ 61,271 (2000).

⁵⁰ 16 U.S.C. § 824(k)(i).

⁵¹ Order No. 888 at 31,634.

under Order No. 888, and increase nondiscriminatory access to the grid.⁵² In Order No. 890, the Commission stated that it has authority under FPA Section 211A “to order [a] non-public utility to provide ‘open access’ transmission service, *i.e.*, service to all eligible customers.”⁵³

The Commission did not see these continuing efforts as merely a worthwhile goal or general policy, but rather as part of the Commission’s statutory obligation to remedy undue discrimination.⁵⁴ Further, the Commission has stated that its “discretion is at its zenith in fashioning remedies for undue discrimination.”⁵⁵ Accordingly, the Commission concluded that it “must determine whether any rule, regulation, practice or contract affecting rates for . . . transmission or sale for resale is unduly discriminatory or preferential, and must prevent those contracts and practices that do not meet this standard.”⁵⁶

4. Bonneville’s OATT and LGIA

Order No. 888 established safe harbor procedures for the filing of reciprocity tariffs by non-public utilities such as Bonneville.⁵⁷ While the Commission did not have the authority to directly require non-public utilities to comply with its open access rules, the reciprocity construct was developed as a tool to indirectly achieve non-discriminatory open access service across the United States. Absent a safe harbor filing, the reciprocity concept was “enforced” by the Commission’s refusal to require public utilities to provide open access transmission service to any non-public utility who does not offer it in return.

⁵² Order No. 890 at PP 1-2.

⁵³ Order No. 890 at P 164.

⁵⁴ Order No. 888 at 31,635.

⁵⁵ *Id.* at 31,676.

⁵⁶ *Id.* at 31,669.

⁵⁷ Order No. 888 at 31,760-63; Order No. 888-A at 30,285-87, 30,288-90; Order No. 888-B at 62,077-79.

a. Bonneville's OATT Reciprocity Status

For some time, Bonneville did attempt to provide open access transmission service. Bonneville maintained a reciprocity tariff from 1997⁵⁸ until 2009, when Bonneville declined to incorporate certain OATT changes required by Order No. 890. Specifically, Bonneville: (1) proposed deviations from the Order No. 890 *pro forma* tariff for conditional firm service; (2) omitted revisions to section 23.1 of its tariff (under which the transmission provider charges or credits the reseller for the difference between the price reflected in the reseller's service agreement with the transmission provider and the price reflected in the reseller's service agreement with the assignee); (3) stated that it could not implement a simultaneous window process for the submission of certain transmission requests; and (4) omitted generator imbalance provisions under *pro forma* tariff schedule 9 for generator imbalance service.⁵⁹ In July 2009, the Commission found that Bonneville's proposed tariff modifications did not substantially conform to the Order No. 890 *pro forma* OATT, and denied Bonneville's request for continued safe harbor reciprocity status.⁶⁰ Accordingly, the Commission directed Bonneville to submit a compliance filing to incorporate the necessary provisions in order to regain its safe harbor reciprocity status.

⁵⁸ In 1997, in accordance with the Order No. 888 procedure, and at the behest of the Department of Energy, Bonneville voluntarily submitted an OATT to the Commission and requested a declaratory order finding that the tariff satisfied the Commission's comparability (non-discrimination) standards. The Commission found that the terms and conditions of Bonneville's tariff substantially conformed with or were superior to those in the *pro forma* OATT, deemed it to be an acceptable reciprocity tariff and required public utilities to provide open access transmission service upon request to Bonneville as a result. See *United States Dep't of Energy – Bonneville Power Admin.*, 80 FERC ¶ 61,119 (1997), *order on reh'g*, 81 FERC ¶ 61,165 (1997) (finding reciprocity tariff to be acceptable with modifications); *United States Dep't of Energy – Bonneville Power Admin.*, 84 FERC ¶ 61,068 (1998), *reh'g denied*, 84 FERC ¶ 61,250 (1998) (finding reciprocity tariff to be acceptable with further modifications); *United States Dep't of Energy – Bonneville Power Admin.*, 86 FERC ¶ 61,278 (1999) (finding reciprocity tariff to be acceptable); *United States Dep't of Energy – Bonneville Power Admin.*, 87 FERC ¶ 61,351 (1999) (finding amended open access tariff acceptable and dismissing complaint).

⁵⁹ See *United States Dep't of Energy – Bonneville Power Admin.*, 128 FERC ¶ 61,057 at PP 13, 22, 25, 41 (2009).

⁶⁰ *Id.* at P 1.

Bonneville declined to do so and instead filed a request for rehearing. In December 2009, Bonneville posted for public comment an “Order No. 890 Reciprocity Questionnaire and Initiative Timeline.” In its “questionnaire,” Bonneville sought public comments to evaluate the level of regional consensus on the specific Order No. 890 OATT deviations that the Commission had rejected in its 2009 order, as well as comments regarding whether Bonneville should request a technical conference related to its reciprocity status more generally. Several of the Complainants submitted comments in that proceeding, recognizing that, while maintaining Bonneville’s reciprocity safe harbor status may present both administrative and financial challenges, Bonneville’s reciprocity status is extremely important and is fundamental to Bonneville’s business relationships with its transmission customers.⁶¹

Bonneville took no action in response to industry comments other than to request that the Commission allow it additional time to make a decision on whether to hold a technical conference.⁶² In the meantime, Bonneville also declined to make the OATT changes required pursuant to Order No. 739,⁶³ announced that it would not be filing changes to its OATT with the

⁶¹ *United States Department of Energy – Bonneville Power Administration*, Docket No. NJ09-1-001, Answer of Iberdrola Renewables, Inc. in Opposition to Bonneville Power Administration’s Motion for Stay, dated Dec. 8, 2010; *United States Department of Energy – Bonneville Power Administration*, Docket No. NJ09-1-001, Answer of the Northwest & Intermountain Power Producers Coalition in Opposition to Bonneville Power Administration’s Motion for Stay, dated Dec. 8, 2010; *United States Department of Energy – Bonneville Power Administration*, Docket No. NJ09-1-001, Motion for Late Intervention of Northwest Wind Group and Answer in Opposition to Bonneville Power Administration’s Motion for Stay, dated Dec. 8, 2010; *United States Department of Energy – Bonneville Power Administration*, Docket No. NJ09-1-001, Comments of the American Wind Energy Association and Renewable Northwest Project in Support of the Answer of Iberdrola Renewables, Inc. in Opposition to Bonneville Power Administration’s Motion for Stay, dated Dec. 8, 2010.

⁶² On November 24, 2010, Bonneville filed with the Commission a Request for Stay in Docket No. NJ09-1, stating: “BPA has had discussions with its customers. However, BPA continues to review the Commission’s order internally and expects to have additional discussions. BPA will decide whether to request a conference as soon as possible. Therefore, BPA asks the Commission to refrain from acting finally on BPA’s petition for declaratory order and request for rehearing before BPA has made a filing with the Commission indicating whether it is requesting a conference on its petition.”

⁶³ *Promoting a Competitive Market for Capacity Reassignment*; Order No. 739, 132 FERC ¶ 61,238 (2010).

Commission while it considered its desire to seek reciprocity status in the future, and instead undertook to modify its OATT through business practices.⁶⁴

On December 20, 2010, the Commission granted Bonneville's request for additional time to make a decision on whether to hold a technical conference and gave Bonneville until January 31, 2011 to take action with regard to its tariff.⁶⁵ On January 28, 2011, Bonneville indicated to the Commission that it would not hold a technical conference with its customers, and on April 12, 2011, the Commission denied Bonneville's request for rehearing regarding the requested Order No. 890 deviations, stating:

Bonneville's amended tariff omits provisions required by Order No. 890. The Commission finds that these tariff provisions are an integral part of open access transmission service and a tariff lacking these provisions cannot substantially conform with, or be superior to, the Order No. 890 *pro forma* tariff provisions.⁶⁶

Accordingly, the Commission concluded that Bonneville has chosen not to maintain a reciprocity tariff.

b. OATT Section 9 and Bonneville's Efforts to Change its Tariff Through Business Practices

Since the issuance of Order No. 890 in 2007, Bonneville has not only avoided deciding whether to provide reciprocity service in the future, but it has also attempted to circumvent and

⁶⁴ See *Conferring with customers on BPA's transmission tariff and reciprocity status from FERC*, Bonneville Power Administration at 6, available at: http://www.bpa.gov/corporate/pubs/Reciprocity_Report_-_Feb_16_2011-FINAL.pdf. (February 2011) (stating that Bonneville has not made additional tariff filings at FERC since 2009) ("Bonneville's Transmission Tariff Issues Handout"). Bonneville's Transmission Tariff Issues Handout is attached hereto as Attachment C.

⁶⁵ Specifically, the Commission directed Bonneville to take one of the following three actions by January 31, 2011 in its reciprocity proceeding: (1) file a tariff that conforms with the Commission's requirements for reciprocity; (2) ask the Commission to convene a conference for the purposes stated in Bonneville's request for rehearing; or (3) ask the Commission to rule on Bonneville's request for rehearing without convening a conference. *U.S. Dep't of Energy – Bonneville Power Admin*, Docket No. NJ09-1-001, Notice Establishing Time for Filing, dated Dec. 20, 2010.

⁶⁶ *United States Department of Energy – Bonneville Power Administration*, 135 FERC ¶ 61,023 at P 11 (2011).

disregard the specific terms and conditions of *pro forma* transmission service through its business practice process.⁶⁷ Bonneville has begun to rely on this business practice process to institute OATT changes that should have been approved by the Commission. Despite the fact that a business practice is not supposed to contradict or supersede a tariff provision, Bonneville has been promulgating business practices and other policies that are inconsistent with its OATT, and has acknowledged that it is effectively making OATT changes in this manner because Bonneville is not currently filing OATT changes with the Commission.⁶⁸ Some of Bonneville's current business practices – its implementation of Dispatch Standing Order (“DSO”) 216,⁶⁹ in particular – discriminate against wind generation in a manner that is similar to the Environmental Redispatch Protocol, but are less obviously discriminatory on their face.

Bonneville has attempted to evade the Commission's approval requirements in the past and was met with significant opposition. In particular, in 2008, Bonneville discussed and

⁶⁷ See *BPA Transmission Services Business Practices Website*, Bonneville Power Administration, available at: http://transmission.bpa.gov/ts_business_practices/. Some of the most recent business practices that purport to change the terms of Bonneville's OATT include: Environmental Redispatch (effective May 13, 2011), Resale of Transmission Service (effective May 12, 2011), Scheduling Transmission Service (effective May 12, 2011), Large Generator Interconnection (effective March 4, 2011), Redispatch and Curtailment Procedures (effective December 2, 2010), and Netting Wind Resources for DSO 216 (effective June 7, 2010).

⁶⁸ See Bonneville's Transmission Tariff Issues Handout.

⁶⁹ DSO 216 is an operational mechanism to curtail wind when generation imbalance reserves for wind reach certain levels. When 85 percent of wind reserves are deployed, Bonneville issues a warning to wind generators that DSO 216 implementation is imminent. When 90 percent of wind reserves are deployed, Bonneville issues an order limiting wind generation to schedule. When 100 percent of wind reserves are deployed, wind generation is curtailed. All of these actions can occur when other imbalance reserves are available, and all of these actions can occur in the absence of any reliability issue. See DSO 216 at Attachment D. Bonneville has attempted to include the authority to implement DSO 216 in its unilateral LGIA amendments implementing the Environmental Redispatch Protocol. See sample Bonneville letter attempting to unilaterally LGIA amendment at Attachment E.

requested comments on whether it should revise Section 9 (“Regulatory Filings”)⁷⁰ of its tariff to eliminate the requirement that Bonneville obtain Commission approval for tariff changes—and instead allow Bonneville to unilaterally change the tariff after a public process involving transmission customers and interested parties.⁷¹ At the time, Bonneville explained that removing the Commission approval provisions from its tariff would mean that Bonneville could amend its tariff unilaterally, but that making a unilateral change without Commission approval would sacrifice its reciprocity status, and it “therefore would not make such a change lightly.”⁷²

Bonneville also argued that, even if it removed Section 9, its tariff modification process would not automatically change. Rather, Bonneville claimed that it would continue to file its OATT with the Commission as it always had in order to keep its reciprocity status. Thus, Bonneville reasoned that as long as it continued filing all proposed tariff changes and agreed with and followed Commission directives related to those changes, then it would keep its reciprocity status and nothing would change, despite the removal of Section 9 of its OATT. However, Bonneville explained that, if the Commission disagreed with a Bonneville proposed change and Bonneville adopted that change anyway, Bonneville would then sacrifice reciprocity and,

⁷⁰ Section 9 of Bonneville’s current OATT states that “Nothing contained in the Tariff shall be construed as affecting in any way the right of the Transmission Provider to unilaterally propose a change in rates, terms and conditions, charges or classification of service. The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the rates that apply to transmission service under such Service Agreement pursuant to applicable law. The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the terms and conditions of this Tariff upon, and only upon, a determination by the Commission that (i) such change is just and reasonable and not unduly discriminatory or preferential, or (ii) such change meets the non-public utility reciprocity requirements pursuant to a request for declaratory order under 18 CFR § 35.28(e). Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission’s rules and regulations promulgated thereunder.”

⁷¹ Bonneville discussed this potential Section 9 change at the June 9, 2008 meeting of the Transmission Issues Policy Steering Commission (“TIPSC”). Bonneville later issued a document, Attachment F, entitled “Response to Questions Raised at TIPSC Regarding Proposal to Modify Section 9 of Bonneville’s Tariff,” dated September 2008, (hereinafter “Response to Questions at TIPSC”) which described these proposed changes and answered customer questions regarding those proposed changes.

⁷² Response to Questions Raised at TIPSC, Attachment F at 3.

therefore, have little reason to continue filing tariff amendments with the Commission thereafter.⁷³

In the context of that 2008 process to consider revising Section 9, Bonneville reviewed the history of Section 9 of its OATT.⁷⁴ Bonneville explained that, historically it had entered into bilateral contracts with customers where each contract contained the terms and conditions of transmission service. Bonneville could amend a contract only with the consent of the other party. However, Bonneville also adopted the *pro forma* tariff, with some deviations, in order to obtain safe harbor reciprocity status. The *pro forma* tariff allows Transmission Providers to unilaterally propose changes to their OATT, but such changes only become effective if the Commission determines that they are “consistent with or superior to” the *pro forma* tariff.⁷⁵ Given that customers were concerned about giving Bonneville the right to unilaterally change the tariff, as part of the 1996 Final Transmission Terms and Conditions Proposal, Bonneville reached a compromise with its customers and adopted its own version of Section 9.⁷⁶ To that end, Bonneville included a Section 14 in its initial tariff that provided:

BPA may impose subsequent Tariff changes upon Customers who have executed Service Agreements only upon a determination by the Commission that the changes are just and reasonable, not unduly discriminatory or preferential, unless otherwise agreed in writing. Though not required to do so under law, BPA agreed to this as part of the Transmission Settlement.⁷⁷

In addition, Bonneville also included the following provision in its Standard Form of Service Agreement:

⁷³ *Id.*

⁷⁴ *Id.* at pages 2-3.

⁷⁵ *See, e.g.*, Order No. 890 at P 14.

⁷⁶ *Bonneville Power Administration*, FERC Docket No. NJ97-3-000, Petition for Declaratory Order Regarding Transmission Terms, Conditions and Rates for Open Access Transmission Service, dated Dec. 16, 1996.

⁷⁷ *Id.* at 27-28.

Unless otherwise mutually agreed in writing by the parties, Bonneville may change the terms and conditions of the Tariff upon, and only upon, a determination by the Commission that such change is just and reasonable and not unduly discriminatory or preferential.⁷⁸

In 2001 Bonneville held another terms and conditions proceeding, in which it amended a number of tariff provisions.⁷⁹ As part of that process Bonneville removed the above language from the service agreement and incorporated similar language in Section 9 of its tariff, which is still in effect today. Thus, currently, if the Commission does not approve a proposed Bonneville tariff change, it will not take effect.

The Commission's "rule of reason" policy requires that "utilities must file 'those practices that affect rates and service significantly, that are reasonably susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous.'"⁸⁰ Thus, where a utility adopts certain practices that condition or otherwise significantly affect rates on its system, those practices must be set forth expressly in its tariff.⁸¹ Further, putting proposed changes through a "business practice" process or through a terms and conditions case process similar to the Northwest Power Act Section 7(i) rate process is not an acceptable alternative to Commission review under the current requirements of OATT

⁷⁸ *Id.* at Attachment 2, Bonneville Power Administration Point-to-Point Transmission Service Tariff, TC-96-FS-BPA-02 at 64; *Id.* at Attachment 2, Bonneville Power Administration Network Integration Service Tariff, TC-96-FS-BPA-01 at 44.

⁷⁹ On March 15, 2000, Bonneville filed a Federal Register Notice of "Proposed Open Access Transmission Tariff; Public Hearing and Opportunities for Public Review and Comment." 65 Fed. Reg. 14,098 (2000) ("BPA's Transmission Business Line (TBL) is proposing open access non-rate terms and conditions for transmission service over the Federal Columbia River Transmission System (FCRTS). Such terms and conditions are proposed to be effective October 1, 2001. By this notice, the TBL is announcing commencement of a formal administrative proceeding, procedures for intervention, and a comment period for non-party participants.").

⁸⁰ *See, e.g., KeySpan Ravenswood, LLC v. FERC*, 474 F.3d 804, 811 (D.C. Cir. 2007) (citing *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985)).

⁸¹ *See Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,269 at P 26 (2010) ("We find that because the price used for settlements has a direct impact on rates, this provision should be included in the tariff."). *See also Cal. Indep. Sys. Operator Corp.*, 131 FERC ¶ 61,280 at PP 60-61 (2010) (requiring CAISO to include a table explaining demand curves for ancillary service products, as the table constituted a practice, rule, and regulation that affected rates).

Section 9. However, Bonneville has continued to use its “business practice” process of implementing amendments to its OATT, thus moving further away from the Commission’s *pro forma* tariff.

In February 2011, Bonneville undertook what it is calling its “Bonneville OATT” or “BOATT” process, whereby Bonneville is meeting with regional entities to discuss the future of its tariff status. As part of this process, Bonneville has produced a handout that describes 19 provisions of its current tariff that it is not currently complying with, as well as 22 proposed provisions that deviate from the Commission’s *pro forma* tariff, and which it would propose to seek approval for deviation in the event that it decided to attempt to maintain reciprocity status.⁸² Bonneville’s handout also notes that there are a number of “[d]ifferences in policy where BPA questions whether it is worth the effort and expense to comply with the [*pro forma*] tariff.”⁸³ Complainants and others have raised objections to the BOATT process and pointed out that the process will only facilitate Bonneville’s drift away from transmission service that comports with the Commission’s terms and conditions for non-discriminatory open access service.⁸⁴

On May 13, 2011, Bonneville sent letters to its interconnection customers asserting a unilateral revision to Appendix C of each existing LGIA to insert language permitting

⁸² Bonneville’s Transmission Tariff Issues Handout at 12. Refer to Attachment C at p. 12 for a list of these provisions.

⁸³ *Id.* at 3.

⁸⁴ *United States Department of Energy – Bonneville Power Administration*, Docket No. NJ09-1-001, Answer of Iberdrola Renewables, Inc. in Opposition to Bonneville Power Administration’s Motion for Stay, dated Dec. 8, 2010; *United States Department of Energy – Bonneville Power Administration*, Docket No. NJ09-1-001, Answer of the Northwest & Intermountain Power Producers Coalition in Opposition to Bonneville Power Administration’s Motion for Stay, dated Dec. 8, 2010; *United States Department of Energy – Bonneville Power Administration*, Docket No. NJ09-1-001, Motion for Late Intervention of Northwest Wind Group and Answer in Opposition to Bonneville Power Administration’s Motion for Stay, dated Dec. 8, 2010; *United States Department of Energy – Bonneville Power Administration*, Docket No. NJ09-1-001, Comments of the American Wind Energy Association and Renewable Northwest Project in Support of the Answer of Iberdrola Renewables, Inc. in Opposition to Bonneville Power Administration’s Motion for Stay, dated Dec. 8, 2010.

implementation of the Environmental Redispatch Protocol and DSO 216.⁸⁵ Specifically, Bonneville stated that it was unilaterally revising Appendix C of the LGIAs to “clarify” the generators’ ongoing obligation to comply with Dispatch Orders includes complying with orders to reduce generation in accordance with Bonneville’s Environmental Redispatch Business Practice(s). Bonneville’s attempted unilateral revision would provide: “Transmission Provider’s Control Area requirements include compliance with operating instructions issued in accordance with Transmission Provider’s dispatch standing orders, including, but not limited to, Dispatch Standing Order 216 and orders to reduce generation in accordance with Transmission Provider’s Environmental Redispatch Business Practices, as such dispatch orders may be amended from time to time.”⁸⁶ Additionally, Bonneville made its business practice on its Environmental Redispatch Protocol effective on May 13, 2011.

IV. ARGUMENT

Bonneville’s Environmental Redispatch Protocol constitutes transmission service on terms and conditions that are not comparable to those under which Bonneville provides transmission services to itself and that are unduly discriminatory and preferential, and for the very same reasons, also violates the terms and conditions of Bonneville’s OATT and LGIA contracts with Complainants.⁸⁷

⁸⁵ Refer to Attachment E for a representative example of Bonneville’s letter attempting to unilaterally amend Complainants’ existing LGIAs and interconnection agreements.

⁸⁶ In at least once instance Bonneville also attempted to unilaterally delete an additional provision of Appendix C, which provided “6. Revisions. This Appendix C may be revised or replaced from time to time by the mutual agreement of the Parties.” Bonneville did not show this attempted deletion in redline, nor did it discuss the deletion in the accompanying letter or in the revised Appendix C provided by Bonneville.

⁸⁷ See Attachment A referencing language of Complainants’ LGIAs and other interconnection agreements.

Bonneville does not have a safe harbor reciprocity tariff on file with the Commission,⁸⁸ and Bonneville asserts that it has the right to implement the Environmental Redispatch Protocol under the terms of its existing tariff and LGIAs,⁸⁹ and that it further has the right to unilaterally modify its tariff and LGIAs to expressly permit implementation of the Environmental Redispatch Protocol.⁹⁰ Complainants request the Commission:

- Order Bonneville to immediately revise its curtailment practices to comport with the undue discrimination standards of FPA Section 211A and submit them in a compliance filing for the Commission’s approval within 60 days of the date of the Commission order;
- Order Bonneville under FPA Sections 210 and 212(i) to abide by the terms of its interconnection agreements with Complainants by immediately providing effective and nondiscriminatory interconnection service; and
- Order Bonneville, pursuant to FPA Section 211A, to remedy its undue discriminatory and preferential practices by filing an OATT for Commission approval within 120 days, and to maintain a Commission-approved OATT on file.

A. The Commission Can and Should Remedy Undue Discrimination in Transmission Service through Section 211A

Bonneville’s current undue discriminatory practices warrant Commission action under FPA Section 211A. The Commission initially gained authority to order non-public utilities – including Bonneville, specifically – to provide open access transmission service under the

⁸⁸ See FERC Docket No. NJ09-1-000, *et al.*

⁸⁹ Final ROD at 16-17, 35-37, and 41-44.

⁹⁰ *Id.* at 17, 38-40; See Attachment E for representative example of Bonneville’s attempt to unilaterally amend Complainants’ LGIAs and interconnection agreements.

Energy Policy Act of 1992,⁹¹ which allowed eligible customers to seek a FPA Section 211 order for transmission service from the Commission after submitting a Good Faith Request⁹² for transmission service to the transmission provider, and failing to receive the requested service. The original FPA Section 211 process was cumbersome and time-consuming, and in 2005 Congress sought to expand the Commission's authority to order non-public utilities to provide comparable, non-discriminatory transmission access.⁹³ As a result, Congress created a streamlined alternative to the lengthy FPA Section 210 and 211 processes with the new FPA Section 211A, which broadened the Commission's authority to ensure that non-public utilities provide non-discriminatory access to their transmission systems.⁹⁴

FPA Section 211A permits the Commission to adopt a rule generally requiring all non-public utilities to file an open access tariff with the Commission. However, in Order No. 890, the Commission declined to adopt a generic rule requiring non-public utilities to file an open access tariff and stated it would apply FPA Section 211A on a case-by-case basis in response to a transmission customer request.⁹⁵ Specifically, where a non-public utility fails to provide non-discriminatory transmission service, the Commission invited transmission customers to file an application seeking an order compelling a non-public utility to provide transmission service that

⁹¹ *Energy Policy Act of 1992*, Pub. L. No. 102-486, 106 Stat. 2776 (1992).

⁹² 18 C.F.R. 2.20 (discussing good faith requests for transmission service and good faith responses by transmitting utilities).

⁹³ *Supra*, n. 43.

⁹⁴ *See, e.g.*, Order No. 890 at P 441.

⁹⁵ *Id.* at P 192.

meets the standards of FPA Section 211A.⁹⁶ Significantly, the Commission’s authority is at zenith when addressing undue discrimination.⁹⁷

While there have been other requests that the Commission exercise its authority under FPA Section 211A to require unregulated utilities to provide open access, this filing represents the first real test of the Commission’s willingness to exercise the authority granted by Congress in EAct 2005. This case involves a non-public utility that controls 80 percent of the interstate transmission grid in a large region of the country but has taken several steps away from the principles of open access.

The Commission must fulfill Congress’ intent in promulgating Section 211A of the FPA and take action to eradicate undue discrimination by non-public utilities, particularly where, as here, the undue discrimination is blatantly anticompetitive, breaches multiple contracts, interferes with functioning bilateral markets, and threatens to destroy the current and future development of renewables in the Pacific Northwest. If the Commission would not permit a public utility to engage in the conduct Bonneville is currently engaging in, then it should not permit Bonneville to do so. If the Commission is unwilling to exercise its FPA Section 211A authority in these circumstances, it is hard to envision a case in which the Commission would use this authority. Section 211A would become a dead letter in the FPA—surely not the result Congress intended. As this Complaint will demonstrate, Complainants have met the requirements for a FPA Section 211A order, and the Commission must act to remedy undue discrimination.

⁹⁶ *Id.*

⁹⁷ Order No. 888 at 31,635. For instance, while there may be a general rule that the Commission’s authority to order open access is limited, the Federal Power Act, like the Natural Gas Act, makes an exception to that rule where the Commission finds undue discrimination. *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 686-687 (D.C. Cir. 2000); *See also Associated Gas Distribs. v. FERC*, 824 F.2d 981, 998 (D.C. Cir. 1987) (finding that the Natural Gas Act “bristles with concern for undue discrimination” and through Congress, the Natural Gas Act gives “the Commission power to stamp out undue discrimination”).

Complainants explain below how Bonneville discriminates against wind generators and fails to provide Complainants with comparable, non-discriminatory transmission service, but emphasize at the outset the common source of all of the violations—the undue discrimination inherent in curtailing a competing generator because of prevailing market prices, as opposed to reliability considerations. There is nothing in Order Nos. 888, 890 or 2003 that even remotely sanctions such an action. For the very same reasons, the conduct constitutes undue discrimination that is inconsistent with FPA Sections 210, 211A and 212 and therefore supports an order requiring Bonneville to immediately cease such undue discrimination and provide service that meets the Commission’s comparability and undue discrimination standards. The Commission has long held that the central purpose of the OATT and LGIA is to eradicate undue discrimination, and therefore a violation of those terms is sufficient to form the basis for relief under FPA Sections 210, 211A and 212.

Bonneville’s discriminatory actions affect interconnection service provided under LGIAs and transmission service provided under OATT service agreements. Importantly, FPA Section 211A refers to transmission service broadly, a term the Commission interprets to include interconnection service.⁹⁸ Congress is deemed aware of agency interpretations when it amends an agency’s statutory authority and it is therefore reasonable to construe FPA Section 211A as encompassing transmission and interconnection service. It would have been an empty gesture for Congress to provide the Commission authority to direct the provision of comparable transmission service to competing generators, but allow a transmission provider the ability to

⁹⁸ Order No. 2003 at P 20 (“[i]nterconnection is an element of transmission service”); *Tennessee Power Co.*, 90 FERC ¶ 61,238 at 61,761, *reh’g dismissed*, 91 FERC ¶ 61,271 (2000).

deny those generators access to the grid under the guise of providing only “interconnection” service.⁹⁹

In the event the Commission declines to interpret FPA Section 211A to include interconnection service as a subset of transmission service, Complainants further request the Commission to direct Bonneville to provide interconnection service pursuant to FPA Sections 210 and 212(i). The pre-EPA Act 2005 grant of authority to the Commission states “[t]he Commission shall have authority pursuant to section 210, section 824i of this title, section 824j of this title, this section and section 824l of this title, to (A) order the Administrator of the Bonneville Power Administration to provide transmission service and (B) establish the terms and conditions of such service.”¹⁰⁰ In this case, where the wind generators are already interconnected to the grid, Commission action would entail making effective such interconnections by directing Bonneville to comply with the non-discriminatory curtailment terms of its LGIAs and other interconnection agreements with wind generators.

FPA Section 211A is intended to enable the Commission to require non-jurisdictional utilities to provide open access to their transmission systems,¹⁰¹ and to avoid the cumbersome process associated with requesting a transmission service order prior to EPA Act 2005.¹⁰² Further, FPA Section 211A provides the Commission with authority to remedy undue discrimination for both interconnection and transmission service. In the event the Commission disagrees, however,

⁹⁹ *Id.* Similar to FPA Section 211A, Congress used the exact same words – “transmission of electric energy in interstate commerce” – in describing the Commission’s authorities under FPA Section 201, and the Commission has interpreted this to include interconnection and promulgated interconnection orders, such as Order No 2003, pursuant to this authority. 16 U.S.C. § 824(a); *see also* Order 2003 at P 20 (“The Commission has identified interconnection as an element of transmission service that is required to be provided under the OATT. Thus, the Commission may order generic interconnection terms and procedures pursuant to its authority to remedy undue discrimination and preferences under Sections 205 and 206 of the Federal Power Act.”).

¹⁰⁰ 16 U.S.C. § 824k(i)(1).

¹⁰¹ *Supra*, n. 43.

¹⁰² *See, e.g.*, Order No. 890 at P 1296.

the Commission has the ability to remedy Bonneville's unduly discriminatory conduct related to transmission service under FPA Section 211A, and related to interconnection service under FPA Sections 210 and 212.

B. Bonneville's Economic Redispatch Protocol is Not Comparable to the Service it Provides Itself and is Unduly Discriminatory and Preferential under FPA Section 211A

Bonneville's Environmental Redispatch Protocol constitutes transmission service on terms and conditions that are not comparable to those under which Bonneville provides transmission services to itself and that are unduly discriminatory and preferential. Under the Environmental Redispatch Protocol, Bonneville unilaterally curtails wind generation and then takes the firm transmission service associated with the output of such wind generation and uses it to serve such generators' customers with Bonneville's hydro power instead. This proposed action is unduly discriminatory and preferential, in that it blatantly discriminates against wind generation.¹⁰³ Since issuing Order No. 888, the Commission has consistently held that undue discrimination in this form is unlawful.¹⁰⁴

FPA Section 211A's comparability and non-discrimination standard requires transmission providers to provide service to others on terms and conditions that are comparable

¹⁰³ While thermal generators also are affected by the Environmental Redispatch Protocol, thermal generators have an economic incentive to take the no-cost federal hydro power and voluntarily curtail their units. Therefore, wind generators are disproportionately affected and harmed by the protocol.

¹⁰⁴ See, e.g., Order No. 888, Order No. 888-A, Order No. 888-B, Order No. 888-C, *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000); No. 890, Order No. 890-A, Order No. 890-B, Order No. 890-C; 16 U.S.C. §§ 824e, 824j-1, and 825e.

to the service it provides itself.¹⁰⁵ Bonneville does not subject its own generation or its own transmission to similar treatment, and therefore does not satisfy the comparability standard.¹⁰⁶

1. Bonneville Impermissibly Uses Transmission Rights That Belong to its Customers

Bonneville attempts to dismiss and evade arguments that it is providing unduly discriminatory transmission service by asserting that it is only limiting generation and not affecting transmission service, but Bonneville's explanation fails to acknowledge what Bonneville is actually doing. Bonneville is *forcing competing generators off the system and using such generators' or offtakers' firm transmission rights to deliver Bonneville's own energy*. Bonneville rationalizes this by claiming "Environmental Redispatch does not affect a Transmission Customer's transmission rights, as all energy deliveries will be made,"¹⁰⁷ and claiming it is "ensur[ing] firm transmission rights are maintained by delivering the quantity of energy scheduled using those rights."¹⁰⁸

Complainants are unaware of any provision in Bonneville's OATT or any Commission precedent that permits another entity to unilaterally use a transmission customer's firm transmission rights so long as the interfering party delivers the quantity of energy the transmission customer has originally scheduled. It is clear that the transmission customer is being deprived of its firm transmission rights, not only because Bonneville is delivering its own energy across those rights, but because Bonneville's improper use also prevents the customer from exercising its other contractual rights, such as its ability to reassign the capacity to alternate

¹⁰⁵ 16 U.S.C. § 824j-1(b).

¹⁰⁶ *American Electric Power Service Corp.*, 67 FERC ¶ 61,168 at 61,490 (1994) (finding that "[A]n open access tariff that is not unduly discriminatory or anticompetitive should offer third parties access on the same or comparable basis, and under the same or comparable terms and conditions, as the transmission provider's uses of its system.").

¹⁰⁷ Final ROD at 17.

¹⁰⁸ *Id.* at 25.

points of delivery, or to resell the capacity to a third party. This is entirely inconsistent with Section 13 of Bonneville's OATT, which specifies the terms and conditions of point-to-point transmission service.

Further, Bonneville does not compensate the curtailed wind generators for its appropriation of their right to serve their customers or the use of the firm transmission rights reserved for their output. Turning this concept around, Bonneville states in its defense that it will compensate the curtailed generators by providing them the hydropower at zero cost for serving their customers, but this is an offer that the wind generators have no power to refuse.¹⁰⁹ Bonneville is thus forcing delivery of a different "substitute" product that neither the offtaker nor the generator necessarily want. Since Bonneville's objective is to dump power, the delivery of Bonneville's power to the wind generators' customers is in fact a further harm, rather than a remedy.

2. Bonneville's Curtailment and Redispatch is Unduly Discriminatory and Preferential, and Violates Bonneville's OATT

Bonneville's OATT permits curtailment of firm transmission service in order to maintain system reliability, but such curtailment must be made "on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint."¹¹⁰ Bonneville does not attempt to reconcile its behavior with these curtailment provisions and instead insists it has the right to unilaterally amend its contracts to "clarify" that it can implement the Environmental Redispatch Protocol.¹¹¹

¹⁰⁹ The Final ROD states that "In this situation, where the provision of open access contributes to the problem we are addressing here, it is unreasonable to expect that BPA should do even more than it has proposed here, which is the offering of free Federal hydropower as a temporary substitute for other generation when necessary to avoid exceeding TDG limits." *Id.* at 31-32.

¹¹⁰ BPA OATT Section 13.6.

¹¹¹ Final ROD at 17.

In fact, Bonneville is turning the concept of “redispatch” that is embodied in the Commission’s open access policies on its head. The OATT permits the redispatch of generation, but it is the redispatch of the *Transmission Provider’s* generation resources to *maintain* the schedules and reservations of *transmission customers*, not the curtailment of customer generation to maintain the dispatch of Transmission Provider resources. For example, Section 13.5 of Bonneville’s OATT requires that, if a request for firm Point-to-Point transmission service cannot be granted out of existing transmission capacity, the Transmission Provider must upgrade its system to accommodate that request or “[t]o the extent the Transmission Provider can relieve any system constraint *by redispatching the Transmission Provider’s resources*, it shall do so.” This is commonly referred to as “planning redispatch.” Section 33.2 of the OATT also addresses “reliability redispatch” for Network customers, which requires that:

To the extent the Transmission Provider determines that the reliability of the Transmission System can be maintained by redispatching resources, the Transmission Provider will initiate procedures pursuant to the Network Operating Agreement to redispatch all Network Resources and the Transmission Provider's own resources on a least-cost basis *without regard to the ownership of such resources*. Any redispatch under this section *may not unduly discriminate* between the Transmission Provider's use of the Transmission System on behalf of its Native Load Customers and any Network Customer's use of the Transmission System to serve its designated Network Load.

There is therefore nothing in the OATT that remotely would allow Bonneville to “redispatch” a non-Network customer’s generation resources under any circumstance. Moreover, even in the case of a Network customer’s generation, any such redispatch must be for reliability reasons only and, even in that limited situation, must be nondiscriminatory. Bonneville’s Environmental Redispatch Protocol is not implemented for reliability reasons, and provides for curtailment in a manner that is inconsistent with Bonneville’s OATT requirements, and that is blatantly discriminatory against wind generation as a class.

3. Bonneville's Curtailments Provide Economic Preferences for its Own Customers at the Expense of its Interconnection and Transmission Customers

Bonneville states in the Final ROD that it will not pay negative prices when it needs to generate to comply with environmental responsibilities.¹¹² Bonneville argues that paying negative prices would give generators too much leverage, would inappropriately shift costs to Bonneville's ratepayers, and impose a burden on Bonneville's fish and wildlife costs. Bonneville elaborates by stating that "the sale of power at negative prices inappropriately shifts the cost burden associated with the PTC and RECs to BPA ratepayers."¹¹³

Bonneville's argument against negative pricing is misleading, as it relies on an either-or false dilemma, where either (1) all of the lost revenue of wind generators under their PPAs is paid for by Bonneville, or (2) the wind generators themselves must absorb all of the losses due to Environmental Redispatch. Bonneville opts for the latter, and to justify its choice, Bonneville ignores a third, reasonable option: offering some degree of negative pricing as needed to find new markets for its power, including outside its region.

Were Bonneville to be more flexible and accept some degree of negative pricing as needed, it might find new buyers for its power throughout the Pacific Northwest. Even modestly negative pricing could induce owners of various generators to self-curtail and instead take deliveries of the corresponding amount of FCRPS power. By finding its own customers for its oversupply of power, Bonneville could avoid disrupting power sales by wind energy generators. Wind energy generators could continue selling power under their PPAs and receive the associated revenue stream, including PTCs and RECs. Some wind energy generators might also choose to accept the FCRPS power with negative pricing, if it is commercially feasible for them

¹¹² Final Rod at 18.

¹¹³ Final ROD at 20.

to resell the power to their offtakers under their PPAs. Bonneville eliminates these possibilities by refusing to pay any degree of negative pricing to find new customers for its power. Instead of seeking new customers for its power, and allowing pricing to determine who curtails, it simply appropriates the customers of wind energy generators.

Bonneville suggests that its Environmental Redispatch Protocol is not discriminatory because it applies to other non-federal generators, such as thermal generators, in addition to wind generators.¹¹⁴ Applying the protocol to thermal generation may alter the appearance of discrimination, but it does not diminish the discriminatory effect and disproportionate impact on wind generators. Unlike offtakers of thermal power, offtakers of wind power lack the flexibility to accept power from alternative sources having purposely purchased renewable generation for environmental reasons. Thermal generators are not harmed if they back down and receive free replacement power that they can instead deliver to their offtaker in a negative price market because that is the economically rational thing to do in light of fuel costs.¹¹⁵ Bonneville's Environmental Redispatch Protocol is targeted at wind generators because, if market forces are left undisturbed, wind generators are the only generation type in the BAA that Bonneville would have to affirmatively pay in order to induce them to back down.

Bonneville suggests in the Final ROD that negative pricing is unacceptable, but experience show that it is not unusual for the organized regional power markets that are

¹¹⁴ *Id.* at 15.

¹¹⁵ Bonneville acknowledges that thermal generators will likely have accepted low-cost or free FCRPS generation and should already be offline at the time of redispatch. *Id.* There may be instances when a thermal plant is not backed down to minimum generation due to a need for regulating reserves, and times when a thermal plant is not taken off line due to start up constraints and the need for generation during peak hours.

integrated into systems operations to produce a negative power price at times.¹¹⁶ In a competitive market, on the margin, a power supplier should offer power into the market at approximately the net marginal cost of supply. These offers are typically at positive prices and the market will produce a positive price. There are situations where a power plant might choose to bid below the short term marginal price in order to stay in the market and avoid shutting down. It can be economically rational for operators of less responsive generation units to offer negative prices in order to avoid the costs of shutting down for a short period of time and then starting up again when load increases. Prices that are near zero or negative typically occur when energy load is very low.

Even without an organized market in the Pacific Northwest, conditions with high generation and low loads can occur, and can result in negative market prices at market trading hubs such as Mid-C.¹¹⁷ The likelihood of such a condition is increased in the Northwest by the presence of significant hydroelectric generation (particularly during spring runoff), combined with a large amount of installed wind capacity. Accordingly, contrary to Bonneville's

¹¹⁶ See *ERCOT West Balancing Energy in Negative Range*, Energy Trader, March 10, 2010 (“During periods of relatively low demand such as in the spring and fall, negative prices in ERCOT’s West zone are not unusual for certain times of the day.”); Leticia Vasquez, *ERCOT System Prices Fall Below \$0MWh*, Vol. 14, No. 77, Megawatt Daily 1, April 23, 2009; *Energy Prices in Midwest Decline in July: MISO*, Energy Trader, August 20, 2009 (“Surplus generation in the western part of the MISO footprint contributed to some congestion in the eastern areas, which led to negative price spikes in early morning hours, according to Patton’s report.”); Milena Yordanova-Kline, *Power Price, Reliability Take Back Seat: Panelists*, Energy Trader, November 12, 2009 (“Paul Sotkiewicz, senior economist for the PJM Interconnection, also said that PJM tries ‘not to favor or disadvantage wind,’ and has recently allowed wind to bid into the market at a negative price if its cost is in fact negative.”).

¹¹⁷ See Hillary Costa, *NW Power Takes Early Dive Into Negative Prices*, Electric Power Daily, March 31, 2011 (“Northwest power typically falls into negative prices during spring runoff conditions, when the region’s hydroelectric dams are running full strength.”); *Snow Melt Drives Mid-C Negative Prices*, Electric Power Daily, June 23, 2008 (“Negative off-peak pricing at Mid-Columbia in the Northwest has been caused by an overabundance of water that has come nearly all at once from the long-delayed mountain snow melt . . . Nighttime power prices have dropped because ‘the market is keenly aware that there is a lot of water out there. Everyone knows the Northwest is inundated . . . when there is oversupply, prices drop, no matter what is the commodity.’”); *It Was all About Fundamentals, Which Sent Dailes on a Wild Ride, Dominated Forwards*, Platts Power Markets Week, April 2, 2007 (“Riders on the old Mid-C said the pricing ups and downs so common to the hydroelectric generators along the Columbia River basin could hit rock bottom as the region attempts to deal with tributaries already at flood stage, with mountain snowpack at lower elevations beginning to melt in warmer-than-usual wet weather . . . Northwest traders predicted the mega-dams on the Columbia soon would begin offering off-peak power at negative prices.”).

suggestions in the Final ROD, negative pricing is and can be part of a functioning power market in the Pacific Northwest.

If Bonneville offers power at negative prices, it can allow wind energy generators to make their own decisions regarding when to curtail, which decisions will be based in part on each generator's PTC and REC revenue stream. It must be noted that PTCs and RECs are legitimate, lawful Federal and state incentives, and despite Bonneville's apparent disdain for wind power sales outside its BAA, it does not have the unilateral authority to deprive wind generators of the lawful benefits of their contracts or of legitimate market prices. Further, PTC and REC costs do not apply to all wind generation in the Bonneville BAA. While some wind generation has PTC and/or RECs associated with it, there is also a substantial amount of merchant wind and wind generation that has, in lieu of tax credits, received grants that are not related to generation output. Bonneville's Environmental Redispatch Protocol bluntly forces all wind offline and ignores the fact that there may be wind energy generators that are more willing to curtail than others because of their respective PTC or REC revenues. There is no reason the normal laws of supply and demand should not be followed in such circumstances.

Bonneville's Final ROD, however, significantly overstates the magnitude of its exposure to negative prices by assuming high cost PTCs and RECs apply to all wind generation, and implements a discriminatory curtailment regime without regard to the commercial solutions and contract rights that currently exist.

Bonneville claims that this action is taken for reliability or environmental reasons, but it is clear that Bonneville can meet its reliability and environmental requirements without the Environmental Redispatch Protocol, and Bonneville is taking these actions solely for the economic benefit of its power customers.

Bonneville acknowledges in its Final ROD that it is interfering with legitimate market forces in order to protect the financial interests of its power customers, stating:

[P]aying negative prices to displace renewable generation in order to ensure BPA’s environmental obligations are met is neither socially optimal nor consistent with traditional principles of cost causation, as BPA’s statutory preference customers would end up paying the costs of displacing renewable generation that is almost entirely serving the loads of utilities outside the BPA Balancing Authority Area.¹¹⁸

The use of traditional market mechanisms involving the sale of zero cost hydropower does not appear to be a viable strategy for displacing renewable generation that faces the loss of federal and state production incentives when not producing power.¹¹⁹

There is no statutory prohibition on Bonneville allocating the costs of meeting its environmental responsibilities to its power customers. Indeed, the opposite is true – section 7(g) of the Northwest Power Act specifically provides that Bonneville’s fish and wildlife costs, as well as the costs associated with “the sale or inability to sell excess electric power,” are to be allocated to its power rates.¹²⁰ In fact, the Northwest Power Act specifically requires Bonneville to allocate these costs to power rates: “the Administrator *shall* equitably allocate to power rates...” There is no discretion for the Administrator to refuse this allocation. Indeed, Bonneville currently allocates its other fish and wildlife costs to power rates.¹²¹ The costs at issue in this proceeding are similar and should be similarly allocated to power rates. But instead of doing so, Bonneville deprives customers of the benefits of transmission and interconnection

¹¹⁸ *Id.* at 12.

¹¹⁹ *Id.* at 13.

¹²⁰ 16 U.S.C. § 839e(g) (“Except to the extent that the allocation of costs and benefits is governed by provisions of law in effect on December 5, 1980, or by other provisions of this section, the Administrator shall equitably allocate to power rates, in accordance with generally accepted ratemaking principles and the provisions of this chapter, all costs and benefits not otherwise allocated under this section, including, but not limited to, conservation, fish and wildlife measures, uncontrollable events, reserves, the excess costs of experimental resources acquired under section 839d of this title, the cost of credits granted pursuant to section 839d of this title, operating services, and the sale of or inability to sell excess electric power”).

¹²¹ See 2010 BPA Rate Case Wholesale Power Rate Final Proposal Revenue Requirement Study, WP-10-FS-BPA-02 at 45-49 (July 2009), available at https://www.bpa.gov/secure/RateCase/openfile.aspx?fileName=WP-10-FS-BPA-02_Web.pdf&contentType=application%2fpdf.

service that it has granted on its system, and thereby engages in unduly discriminatory and preferential practices. Bonneville is simply trying to avoid any additional cost pressure on its rising power rates.¹²² This is not, however, a lawful reason for Bonneville to promulgate, or this Commission to countenance, the Environmental Redispatch Protocol.

Bonneville's policy threatens to harm adjacent regions depriving them of access to renewable generation in order to protect regional power customer rates from costs that such customers should lawfully bear.¹²³ Bonneville's Environmental Redispatch Protocol is not comparable to the transmission service Bonneville provides itself, and is unduly discriminatory and preferential.

C. Bonneville's Proposal Violates Complainants' Firm Transmission Contracts and LGIAs and is Inconsistent with OATT Requirements

Contrary to its broad statements in the Final ROD,¹²⁴ Bonneville does not have the contractual right to implement its Environmental Redispatch Protocol under the LGIAs, other interconnection agreements, or its OATT. In addition, Bonneville does not have the right to unilaterally amend the LGIA or its other interconnection agreements to grant itself the authority to implement the Environmental Redispatch Protocol or other unduly discriminatory curtailment practices, such as DSO 216. Finally, Bonneville's OATT and LGIAs do not permit curtailment as contemplated by the Environmental Redispatch Protocol.¹²⁵ Bonneville's insistence on nevertheless implementing the Environmental Redispatch Protocol demonstrates its preferential

¹²² Bonneville is proposing an approximately 9.2 percent average rate increase for power customers in its 2012-13 rate case. *See* Bonneville Power Administration Fiscal Year (FY) 2012-2013 Proposed Power rate Adjustments Public Hearing And Opportunities for Public Review and Comment, 75 Fed. Reg. 70744 (November 18, 2010); NRU Direct Testimony, BP-12-E-JP02-01 at p. 2 lines 11-12.

¹²³ 16 U.S.C. § 839e(g).

¹²⁴ Final ROD at 16-17, 34-37, 42-43.

¹²⁵ *See* Bonneville OATT Sections 13.6, 33.4, and 33.5; Bonneville LGIA Article 9.7.2.

treatment of its own power deliveries, as Bonneville's hydro generation customers have not had their contractual rights degraded in such a manner.

1. Bonneville Does Not Have an Existing Right to Enforce Its Environmental Redispatch Protocol under Current LGIA Provisions

Bonneville states that it has the right to enforce its proposed Environmental Redispatch Protocol based on Article 4.3 of the LGIA,¹²⁶ which states:

4.3 Performance Standards. Each Party shall perform all of its obligations under this LGIA in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, and to the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this LGIA for its compliance therewith.

This section falls woefully short of providing Bonneville the authority to implement its Environmental Redispatch Protocol. First, Article 4.3 states that a party will not be found in breach of the LGIA if it is *required* to take certain actions in accordance with applicable laws and regulations. Nowhere in the Final ROD has Bonneville provided support for the argument that Bonneville is *required* to implement the Environmental Redispatch Protocol in order to comply with its environmental compliance requirements. Bonneville has several other options available to ensure compliance with those requirements, including entering into storage agreements outside its BAA (*e.g.*, in British Columbia), arranging for thermal displacement, and payment of negative power prices. In addition, the Final ROD shows that economics are driving the proposed protocol, not reliability or statutory compliance,¹²⁷ further demonstrating that Bonneville is not *required* to implement the Environmental Redispatch Protocol.

Second, Article 4.3 does not state – or even imply – that the provisions of the LGIA can be modified unilaterally under the auspices of compliance with statutory requirements, such as

¹²⁶ Final ROD at 35-36.

¹²⁷ *Id.* at 12.

those of the Endangered Species Act¹²⁸ or Clean Water Act.¹²⁹ Third, the Environmental Redispatch Protocol does not actually specify which obligations Bonneville would not be able to perform under the LGIA (for which it could not be found in breach of the contract, allegedly pursuant to Article 4.3) in the event it implements its Environmental Redispatch Protocol when overgeneration occurs.

Tellingly, Bonneville’s primary explanation in its Final ROD for its “right” to implement the Environmental Redispatch Protocol pursuant to Article 4.3 is not based on a potential violation of environmental or reliability requirements, but on a potential violation of its responsibility to “keep rates low consistent with sound business principles and to recover its costs”, which it claims will be imperiled because parties will engage in market manipulation:

When BPA is in a must-run condition, parties know that BPA is in a situation where BPA must dispose of the energy. If BPA were to pay any price to dispose of the energy, it would provide opportunities for parties to hold BPA hostage by holding out until the price reached levels that would allow parties to reap a significant profit. As explained in [the] Final ROD, such a result would threaten BPA’s ability to keep rates low consistent with sound business principles and to recover its costs, as mandated under BPA’s authorizing legislation. Thus, the payment of negative prices so that generators will voluntarily reduce generation is not an option that BPA can take to meet its environmental responsibilities.¹³⁰

Bonneville attempts to justify its Final ROD based on the possibility that Commission-regulated generators will manipulate the market. Market manipulation of the sort suggested by Bonneville above is prohibited by FPA Section 222, and can carry penalties of up to \$1 million per violation per day.¹³¹ In the event such behavior occurred, Bonneville could refer the activity to the Commission for investigation and appropriate remediation.¹³² The Commission is charged

¹²⁸ *Endangered Species Act of 1973*, Pub. L. No. 93-205, 87 Stat. 884 (1973).

¹²⁹ *Clean Water Act of 1977*, Pub. L. No. 95-217, 91 Stat. 1566 (1977).

¹³⁰ Final ROD at 35.

¹³¹ 16 U.S.C. § 825o-1(b).

¹³² *Prohibition of Energy Market Manipulation*, Order No. 670, 114 FERC ¶ 61,047 at P 16 (2006).

with enforcing market manipulation rules, and Bonneville cannot use the possibility that parties will engage in conduct prohibited by the Commission's rules – or the suggestion that the Commission will ignore or fail to remedy such behavior – as a basis to violate its contractual obligations or to engage in transmission practices that are not comparable and are unduly discriminatory and preferential.

Bonneville also argues that it has an existing right to enforce its Environmental Redispatch Protocol based on the Force Majeure provisions of the LGIA.¹³³ However, the issue of whether compliance with environmental requirements qualifies as a Force Majeure event under the LGIA is irrelevant here, as Bonneville has not demonstrated that its Environmental Redispatch Protocol is in fact required by statute or regulation. Bonneville has only shown that its actions are driven by economics. In particular, “Force Majeure” is defined as a “cause beyond a Party’s control.”¹³⁴ Indeed, Section 16.1.1 of the LGIA specifically provides that “[e]conomic hardship is not considered a Force Majeure event.” Thus, to the extent that the proposed Environmental Redispatch Protocol reflects Bonneville’s response to the costs of complying with environmental laws, the Force Majeure provisions of the LGIA do not authorize such policies. Further, the Force Majeure provisions only relieve a party of its contractual obligations to the extent that a Force Majeure event actually prevents a Party from fulfilling its obligations under the interconnection agreements.¹³⁵ As noted above, however, compliance with environmental obligations does not *require* Bonneville to utilize the Environmental Redispatch Protocol, and the ability of Bonneville to comply with its statutory obligations is wholly within

¹³³ Final ROD at 17 (seemingly referring to Article 16 of the LGIA); Final ROD at 36-37 (discussing specifically Article 16 of the LGIA).

¹³⁴ LGIA Article 1.

¹³⁵ LGIA Article 16.1.2.

its control. Therefore, Bonneville cannot assert a Force Majeure argument to justify Environmental Redispatch Protocol implementation.

2. Bonneville Does Not Have an Existing Right to Enforce Its Environmental Redispatch Protocol under the Bonneville OATT

Bonneville's OATT does not give Bonneville the right to implement its Environmental Redispatch Protocol. Bonneville is obligated to properly plan and expand its transmission system to appropriately integrate generation.¹³⁶ In accordance with this obligation, Bonneville should have considered its obligations when it evaluated and granted wind generators' interconnection requests and firm transmission service requests. To that end, Bonneville's OATT and Good Utility Practice provide a process for evaluating generation interconnection and transmission service requests.

If Bonneville has granted interconnection and transmission service requests without sufficient transmission capacity, Bonneville cannot then engage in blatantly discriminatory practices by simply forcing the resulting costs incurred during overgeneration events upon the last generators to interconnect to the Bonneville system, the last transmission customers to request service across the Bonneville system, or even more egregiously, upon wind generators as a class. Thus, if Federal transmission needs arise after a firm contract is signed, Bonneville cannot unilaterally displace the firm contract rights and use those rights for its own marketing purposes. This is inconsistent with both Bonneville's OATT obligations and Bonneville's statutes.¹³⁷ Further, this creates an inappropriate cost shift in the opposite direction than that described in the Final ROD, *i.e.*, it creates a discriminatory shift of system costs to a single class

¹³⁶ See, e.g., Bonneville OATT Sections 13.5, 15.4, 28.2, Part III Preamble, and Attachment K.

¹³⁷ Of particular relevance here, Section 6 of the Pacific Northwest Consumer Preference Act states: "[n]o contract for the transmission of non-Federal energy on a firm basis shall be affected by any increase, subsequent to the execution of such contract, in the requirements for transmission of Federal energy, the energy described in section 837h of this title, or other electric energy." 16 U.S.C. § 837e.

of customers (wind) when operational costs are high because of operational restrictions created by conditions that Bonneville should have considered during the interconnection and transmission service request process.

In the Final ROD, however, Bonneville states that it will “explore in a separate process whether to amend its OATT to more specifically delineate the effect of BPA’s environmental and related statutory obligations on Transmission Service in order to be absolutely clear regarding the terms and conditions of Transmission Service.”¹³⁸ Any unilateral tariff modification to permit the Environmental Redispatch Protocol would not be a “clarification” – it would be a repudiation of the existing OATT terms and conditions. As noted above, the terms and conditions of service under Bonneville’s tariff and business practices have been consistently moving away from the *pro forma* OATT for the past four years, and Bonneville’s Final ROD reveals its intent to continue this impermissible departure.

3. Bonneville Does Not Have the Right to Unilaterally Modify the Terms of Existing LGIAs or Its *Pro Forma* LGIA to Grant Itself the Authority to Implement Its Environmental Redispatch Protocol

Bonneville argues that it has the right under Commission precedent to unilaterally modify the Complainants’ LGIAs to include control area requirements based on a 2005 Commission order approving certain requested deviations to Bonneville’s LGIA.¹³⁹ However, Bonneville’s argument drastically overstates the application of this order and ignores both the well-settled

¹³⁸ Final ROD at 17.

¹³⁹ *Id.* at 17, 38-39 (citing *Bonneville Power Admin.*, 112 FERC ¶ 61,195 at P 20 (2005)).

Commission policy against making retroactive changes to LGIAs already in effect and the express language of the LGIAs, which require mutual consent to modify terms.¹⁴⁰

In the cited 2005 proceeding, Bonneville requested a deviation from the Commission’s *pro forma* LGIA Article 9.4,¹⁴¹ which requires, among other things, that interconnection customers operate their generation facilities and interconnection facilities in a safe and reliable manner and in accordance with the LGIA and all applicable requirements of the relevant Control Area, as set forth in “Appendix C – Interconnection Details” of the LGIA. Bonneville requested approval to amend Article 9.4 to specify that Bonneville – and not the interconnection customer – will modify Appendix C in order to remove the potential for the interconnection customer to argue that it must agree to changes in the Control Area reliability requirements.

However, nothing in the Commission’s response to Bonneville’s request grants any party the right to amend Appendix C to the LGIA unilaterally:

An executed LGIA is a service agreement under a Transmission Provider’s OATT and, as such, the Transmission Provider is primarily responsible for identifying the applicable reliability criteria. While the Interconnection Customer does have the right to agree to modifications to the agreement, the LGIA should be read as granting the Transmission Provider the right to determine the applicable reliability criteria. Moreover, under LGIA article 9.3 (Transmission Provider Obligations), the Transmission Provider has the responsibility for establishing the Interconnection Customer’s operating instructions and operating protocols and

¹⁴⁰ See *Cities of Anaheim, Azusa, Banning, Colton and Riverside, California v. California Independent System Operator Corporations, Salt River Project Agricultural Improvement and Power District v. California Independent System Operator Corporations, California Independent System Operator Corporations*, 102 FERC 61,274 at P 43 (2003) (rejecting an Offer of Settlement because it effected a retroactive tariff revision against a non-settling party). See also, *Interconnection for Wind Energy*, Order No. 661, FERC Stats & Regs 31,186 (2005) (“Further, consistent with our approach in Order No. 2003 and as discussed above, we are not requiring retroactive changes to wind plant interconnection agreements that are already in effect.”); Order No. 2003 at P 911.

¹⁴¹ Article 9.4 states in full: “Interconnection Customer shall at its own expense operate, maintain and control the Large Generating Facility and Interconnection Customer’s Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA. Interconnection Customer shall operate the Large Generating Facility and Interconnection Customer’s Interconnection Facilities in accordance with all applicable requirements of the Control Area of which it is part, as such requirements are set forth in Appendix C, Interconnection Details, of this LGIA. Appendix C, Interconnection Details, will be modified to reflect changes to the requirements as they may change from time to time. Either Party may request that the other Party provide copies of the requirements set forth in Appendix C, Interconnection Details, of this LGIA.”

procedures. Because these instructions, protocols, and procedures will include reliability requirements, article 9.3 already gives the Transmission Provider responsibility for modifications to Appendix C. The same provision gives the Interconnection Customer the right to propose changes for the Transmission Provider to consider, but not the right to make unilateral changes.¹⁴²

In its order, the Commission merely indicates that the “Transmission Provider has the responsibility for establishing the Interconnection Customer’s operating instructions and operating protocols and procedures.” Nothing in this statement provides Bonneville a right to amend Appendix C to the LGIA unilaterally, particularly when an amendment to implement the proposed Environmental Redispatch Protocol would not concern reliability criteria, operating instructions or operating protocols or procedures. That is, as discussed above, the Environmental Redispatch Protocol attempts to cloak its proposals as necessary and lawful due to “reliability” requirements or to statutory fish and wildlife obligations, but the true nature of the proposal is evident – the Environmental Redispatch Protocol is a bold attempt to shift Federal system costs to wind generators. Bonneville stretches this false reliability-related justification even further in an attempt to give itself the authority to unilaterally amend LGIA Appendix C to “clarify” its “existing” right to implement the Environmental Redispatch Protocol.

Not only is Bonneville’s application of the Commission’s 2005 order misplaced, but Bonneville also ignores the language of the Complainants’ LGIAs and well-established Commission precedent when it claims it has the authority to modify interconnection agreements unilaterally. Of particular relevance here, LGIA Article 30.9 states “[t]he Parties may by *mutual agreement* amend this LGIA by a written instrument duly executed by the Parties,” and LGIA Article 30.10 states “[t]he Parties may by *mutual agreement* amend the Appendices to this LGIA by a written instrument duly executed by the Parties. Such amendment shall become effective

¹⁴² *Bonneville Power Admin.*, 112 FERC ¶ 61,195 at P 20 (2005).

and a part of this LGIA upon satisfaction of all Applicable Laws and Regulations.”¹⁴³ Further, the Commission has a well-established policy not to make retroactive changes to interconnection agreements that are already in effect.¹⁴⁴

Thus, if Bonneville wishes to propose an amendment to existing LGIAs to implement its Environmental Redispatch Protocol, or any other curtailment scheme, then it must work with its interconnection customers to reach a mutually-acceptable amendment. Without that mutual agreement, Bonneville cannot make such changes. Bonneville’s only other recourse would be to propose amendments to its *pro forma* LGIA to allow it to implement its Environmental Redispatch Protocol in agreements going forward. In order to do so, Bonneville must follow the normal course for such changes, *i.e.*, it must file such proposed changes with the Commission and request that the Commission find the changes “substantially conform with” or are “superior to” the *pro forma* LGIA.¹⁴⁵

Similarly, as noted above, the Final ROD also states that Bonneville will “continue to explore in a separate process whether to amend its OATT to more specifically delineate the effect of BPA’s environmental and related statutory obligations on Transmission Service in order to be absolutely clear regarding the terms and conditions of Transmission Service.”¹⁴⁶

¹⁴³ Emphasis added.

¹⁴⁴ See, e.g., *Integration of Variable Energy Resources*, 133 FERC ¶ 61,149 at P 64 (2010) (not allowing retroactive changes to interconnection agreements currently in effect); *Interconnection for Wind Energy*, Order No. 661, FERC Stats. & Regs. ¶ 31,186 at PP 1, 111-116, 120 (2005) (not allowing retroactive changes to interconnection agreements that are already in effect when adopting standard procedures and technical requirements for the interconnection of large wind plants and allowing for a transition period, over Bonneville’s objection, in order to have the proposed changes apply to interconnection agreements executed some time after FERC issuance of its final rule); *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 910 (2003).

¹⁴⁵ See, e.g., Bonneville OATT Section 9 (requiring FERC approval for tariff amendments); Bonneville LGIA Article 3.1 (requiring the filing with FERC of amendments to the LGIA); Order No. 2003 at P 843 (finding that a non-public utility that has a safe harbor tariff may add to its tariff an interconnection agreement and interconnection procedures that substantially conform or are superior to the *pro forma* LGIA and *pro forma* LGIP if it wishes to continue to qualify for safe harbor treatment).

¹⁴⁶ Final ROD at 17.

Bonneville must obtain Commission approval for any such changes in accordance with Section 9 of its OATT.¹⁴⁷

4. Bonneville's OATT and LGIA Do Not Permit Curtailment As Contemplated By the Environmental Redispatch Protocol

Bonneville's OATT and LGIA do not permit curtailment as contemplated by the Environmental Redispatch Protocol. For instance, Section 13.6 of Bonneville's OATT provides, in relevant part, as follows with regard to curtailment of Firm Transmission Service:

In the event that a Curtailment on the Transmission Provider's Transmission System, or a portion thereof, is required to maintain reliable operation of such system and the system directly and indirectly interconnected with Transmission Provider's Transmission System, Curtailments will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint.

Similarly, Section 14.7 of Bonneville's OATT provides, in relevant part, as follows with regard to curtailment of Non-Firm Transmission Service:

The Transmission Provider reserves the right to Curtail, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for reliability reasons when an emergency or other unforeseen condition threatens to impair or degrade the reliability of its Transmission System or the systems directly or indirectly interconnected with Transmission Provider's Transmission System.

In addition, under LGIA Section 9.7.2, Bonneville can interrupt interconnection service for the following reasons:

Interruption of Service. If required by Good Utility Practice to do so, Transmission Provider may require Interconnection Customer to interrupt or

¹⁴⁷ Section 9 of Bonneville's OATT states: "Nothing contained in the Tariff shall be construed as affecting in any way the right of the Transmission Provider to unilaterally propose a change in rates, terms and conditions, charges or classification of service. The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the rates that apply to transmission service under such Service Agreement pursuant to applicable law. The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the terms and conditions of this Tariff upon, and only upon, a determination by the Commission that (i) such change is just and reasonable and not unduly discriminatory or preferential, or (ii) such change meets the non-public utility reciprocity requirements pursuant to a request for declaratory order under 18 CFR § 35.28(e). Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder."

reduce deliveries of electricity if such delivery of electricity could adversely affect Transmission Provider's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System.

Bonneville's Environmental Redispatch Protocol violates both the OATT and LGIA curtailment and interruption provisions, because transmission or interconnection service is interrupted in an unduly discriminatory manner (only for wind generators) and for reasons unrelated to reliability.

D. The Commission Also Has Authority to Order Bonneville to Provide Interconnection Service Pursuant to FPA Sections 210 and 212

In the event the Commission declines to order Bonneville to provide comparable and non-discriminatory transmission service, including interconnection service, pursuant to FPA Section 211A, Complainants further request the Commission direct Bonneville to provide interconnection service pursuant to FPA Sections 210 and 212(i). Prior to EPAct 2005, the Commission had the authority to order Bonneville to provide interconnection service: “[t]he Commission shall have authority pursuant to section 210, section 824i of this title, section 824j of this title, this section and section 824l of this title, to (A) order the Administrator of the Bonneville Power Administration to provide transmission service and (B) establish the terms and conditions of such service.”¹⁴⁸

FPA Section 210 provides that, upon application of any “electric utility”¹⁴⁹ the Commission may issue an order requiring:

(A) the physical connection of . . .the transmission facilities of any electric utility, with the facilities of such applicant;

¹⁴⁸ 16 U.S.C. § 824k(i).

¹⁴⁹ “Electric utility” is defined as “a person or Federal or State agency . . . that sells electric energy.” 16 U.S.C. § 796.

(B) such action as may be necessary to make effective any physical connection described in subparagraph (A), which physical connection is ineffective for any reason, such as inadequate size, poor maintenance, or physical unreliability,

Each of the Complainants meets the definition of “electric utility” for the purposes of Section 210. While interconnection has already occurred under the existing LGIAs between Bonneville and the Complainants, the Commission has authority under Section 210(a)(1)(B) to order “such action as may be necessary to make effective any physical connection . . . which is ineffective for any reason.” This language would permit the Commission to find that Bonneville cannot unilaterally amend the LGIAs and order Bonneville to cease generation curtailments under the Environmental Redispatch Protocol in order to “make effective” the physical interconnections which have been made ineffective as a result of Bonneville’s actions implementing its Final ROD.

Section 210(c), however, limits the Commission’s ability to order interconnection:

No order may be issued by the Commission under subsection (a) unless the Commission determines that such order –

- (1) is in the public interest,
- (2) would –

- (A) encourage overall conservation of energy or capital,
- (B) optimize the efficiency of use of facilities and resources, or
- (C) improve the reliability of any electric utility system or Federal power marketing agency to which the order applies, and

- (3) meets the requirements of section 212.

Section 212(c) provides that, before issuing a final order under section 210, the Commission shall issue a proposed order setting a reasonable time for the parties to agree to terms and conditions for carrying out the order, including the apportionment of costs between them and compensation or reimbursement reasonably due to any of them. Any terms and conditions agreed to by the parties shall be subject to the approval of the Commission, and if the parties fail to agree, the Commission shall prescribe the terms and conditions of the final order.

1. Ordering Bonneville to Provide the Requested Interconnection Service Is In the Public Interest

The Commission has determined that the availability of transmission and interconnection service, “as a general matter, enhances competition in power markets by increasing the power supply options of buyers and the power sales options of sellers and leads to lower costs to consumers.”¹⁵⁰ In ordering the Tennessee Valley Authority to provide interconnection service to East Kentucky Power Cooperative, Inc. (“EKPC”), the Commission found that the request met the statutory criteria for an order directing interconnection under section 210(c) because the requested interconnection would: (1) enable EKPC to enlarge its membership and to optimize the use of system resources, (2) encourage the conservation of energy and capital by providing Warren Rural Electric Cooperative Corporation with access to more economical sources of power; and (3) optimize the use of existing facilities by allowing increased competition.¹⁵¹

Bonneville’s Final ROD limits competition and limits the power supply options available within and outside the Pacific Northwest. The Final ROD also unnecessarily raises wholesale power prices in the region. By ordering Bonneville to cease implementing discriminatory curtailments and provide the requested interconnection service – transmission service in accordance with the terms and conditions of existing LGIAs – the Commission will act in the public interest to enhance competition and increase the power supply options for buyers and sellers.

¹⁵⁰ *Florida Municipal Power Agency v. Florida Power & Light Company*, 65 FERC ¶ 61,125 at 61,615, *reh’g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *reh’g denied*, 74 FERC ¶ 61,006 (1996); *Illinois Municipal Electric Agency v. Illinois Power Co.*, 86 FERC ¶ 61,045 at 61,176 (1999).

¹⁵¹ *East Kentucky Power Cooperative, Inc.*, 111 FERC ¶ 61,031 at P 38, n.24 (2005), *order directing the filing of interconnection agreement*, 112 FERC ¶ 61,160 (2005), *final order directing interconnection*, 114 FERC ¶ 61,305 (2006).

2. **Ordering Bonneville to Provide the Requested Interconnection Service Will Encourage Conservation of Energy and Capital and Enhance Efficiency**

The Commission has found that providing access to wind power will “encourage the conservation of energy and capital.”¹⁵² Bonneville’s Final ROD targets wind generation for discriminatory curtailment, and purports to unilaterally substitute Bonneville’s hydropower as a substitute for wind generation. Granting the requested interconnection order would allow wind energy to access the system and to operate in accordance with the laws of supply and demand. Similarly, in requiring Bonneville to utilize legitimate market solutions, the Commission will optimize the efficiency of the use of facilities and resources, and facilitate sales between regions when such sales are economical.¹⁵³ By ordering the requested relief, the Commission can both encourage conservation of energy and enhance efficiency. However, the Commission need only find that the requested service meets one of these criteria in order to meet the requirements of FPA Section 210(c).

FPA Section 211A was intended to require unregulated transmitting utilities to provide comparable, non-discriminatory and non-preferential transmission service,¹⁵⁴ and to avoid the cumbersome process associated with requesting a transmission service order prior to EPAct 2005.¹⁵⁵ While Complainants maintain that FPA Section 211A provides the Commission with broad authority to remedy undue discrimination for both interconnection and transmission

¹⁵² *Aero Energy LLC*, 115 FERC ¶ 61,128 at P 16 (2006) (“We also find that the requested interconnection would encourage the conservation of energy and capital by providing the citizens of California with access to this wind power.”).

¹⁵³ *Brazos Electric Power Cooperative, Inc.*, 118 FERC ¶ 61,199 at P 35 (2007) (“We find that ordering the requested interconnection and transmission service will optimize the efficiency of the use of facilities and resources because it will allow Brazos and Western Farmers to use Hugo Unit 2 to sell energy and ancillary services into both ERCOT and SPP and will allow the sale of energy and ancillary services from other generators between the ERCOT and SPP regions when it is economic to do so.”).

¹⁵⁴ *Supra*, n. 43.

¹⁵⁵ *See, e.g.*, Order No. 890 at P 1296.

service, in the event the Commission disagrees, it has the ability to remedy Bonneville's unduly discriminatory conduct related to interconnection service under FPA Sections 210 and 212.

3. Bonneville's Environmental Redispatch Protocol is Not Required In Order to Meet Fish and Wildlife Obligations

Complainants acknowledge that Bonneville has certain legal requirements regarding spill and water quality constraints. Bonneville can meet these requirements, however, without implementing the Environmental Redispatch Protocol. Bonneville has several commercial options, as discussed more fully below, which can alleviate any operational impacts associated with environmental restrictions. Complainants' contracts with Bonneville permit pro rata curtailment for reliability reasons, including, presumably, actual reliability issues that occur as a result of the need to comply with environmental restrictions. It is not uncommon for environmental restrictions to impact the operation of generation facilities,¹⁵⁶ but the need to operate within such restrictions does not provide transmission providers with an ability to abrogate contracts or engage in anticompetitive behavior.

During periods of high water flows, when load is low and/or generation within Bonneville's BAA is high, Bonneville has several options to minimize or avoid the possibility of exceeding requirements for TDG levels.¹⁵⁷ In the event water levels are such that TDG cannot be kept within the required levels, Bonneville also has options to ensure its hydro generation is maximized, which can excuse TDG exceedance.

¹⁵⁶ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,157 at P 291 (2004) (accepting the Midwest Independent Transmission System Operator, Inc.'s Transmission and Energy Markets Tariff, including its System Supply Resource program, which must address the costs related to, and limitations enforced by, any applicable laws, regulations, orders, or settlements addressing environmental concerns); *New England 2005 Triennial Review of Resource Adequacy*, ISO New England Inc. at 18-24, dated Nov. 29, 2005 (discussing the reliability impacts resulting from proposed fuel supply and environmental restrictions), available at: http://psc.ky.gov/pscscf/2007%20cases/2007-00477/OCI%20Workpapers%20II/newengland_2005triennial_review.pdf.

¹⁵⁷ "Comments on the Draft Record of Decision on Environmental Redispatch and Negative Pricing Policy" submitted by Save Our Wild Salmon (March 11, 2011).

Bonneville's options include:

- entering into storage arrangements with entities in British Columbia,
- entering into agreements with regional investor-owned utilities for displacement of thermal generation outside the Bonneville BAA, and
- paying negative prices to induce wind generators to back down generation.

Sufficient load is often available within the Western Electricity Coordinating Council ("WECC") area to enable Bonneville to fully load its hydro turbines if Bonneville is willing to execute transactions to incent required exports or voluntary curtailment of generation. The facts surrounding Bonneville's implementation of the Environmental Redispatch Protocol clearly demonstrate that Bonneville has chosen not to exhaust its options for avoiding violation of the TDG standards. For instance, during the Environmental Redispatch event on May 18, 2011:

- 2,900 MWs of export capability was available on the Southern Interties (AC and DC);
- 1,100 MWs of export capability was available on the Northern Intertie; and
- approximately 560 MW per hour of other generation was being imported from the East.¹⁵⁸

In only 31 days, Bonneville's implementation of the Environmental Redispatch Protocol has unnecessarily and unlawfully curtailed thousands of MWh of wind generation.

E. Bonneville Cannot Blame its Situation on Open Access

Many utilities have to meet environmental requirements, and such requirements may change over time, necessitating changes in operations. These operational issues should be taken into account when new generation interconnection or transmission requests are made, properly

¹⁵⁸ See Affidavit of Stephen Swain, Attachment B.

studied by the transmission provider, and, when appropriate, addressed in the final agreements. In some cases, restrictions can affect generating resources and costs or losses of efficiency may occur. Utilities must meet these requirements and properly allocate the costs associated with such efforts to power or transmission rates depending on the nature of the issue and the ratemaking rules that apply. Bonneville is refusing to do this and instead attempting to unilaterally push the costs on wind generators in a manner that violates contracts and laws, in order to avoid increasing rate pressure for its power customers.

In its Final ROD, Bonneville blames its voluntary open access tariff for the situation it now finds itself in, suggesting that the tariff has somehow allowed “unfettered” amounts of wind to interconnect to the Bonneville system.¹⁵⁹ Yet in each case, Bonneville has evaluated the specific interconnection or transmission request and granted access to its system. Bonneville acknowledges in its Final ROD that overgeneration conditions historically occur during the spring,¹⁶⁰ so Bonneville must have been aware of this operational condition when it entered into its LGIAs and firm transmission contracts.¹⁶¹ Bonneville entered into these firm commitments and cannot now blame others for the operational situation in which it finds itself. Bonneville was the entity with knowledge about the constraints, and the entity responsible for studying and evaluating its ability to reliably interconnect and/or transmit the wind generation.¹⁶² Bonneville cannot blame its tariff or the Commission’s open access rules for its own failure to anticipate and

¹⁵⁹ Final ROD at 27-28.

¹⁶⁰ *Id.* at 9-10.

¹⁶¹ Constraints on the Bonneville system are well known to all interested stakeholders. For the past several years, wind generators and other market participants have engaged in ongoing discussions with Bonneville in an effort to proactively address expansion of the Bonneville system before a situation like the one at issue in this Complaint arose.

¹⁶² *See, e.g.* BPA OATT sections: Section 19.1 (Notice of Need for System Impact Study), Section 19.3 (System Impact Study Procedures), Section 19.4 (Facilities Study Procedures), Section 28.2 (Transmission Provider Responsibilities), 32.1 (Notice of Need for System Impact Study), 32.3 (System Impact Study Procedures), 32.4 (Facilities Study Procedures), and Attachment C (Methodology to Assess Available Transfer Capacity); BPA *pro forma* LGIP sections: 6 (Interconnection Feasibility Study), and 7 (Interconnection System Impact Study).

properly address these environmental restrictions or the operational issues associated with high spring runoff levels.

Complainants maintain that these environmental costs should be properly borne by Bonneville's power customers, as required by the Northwest Power Act, and cannot affect existing interconnection or transmission service agreements. But even if any restrictions on interconnection or transmission service may be appropriate, such restrictions must be mutually agreed to and cannot be unilaterally inserted into existing agreements. If the Commission would not allow a public utility transmission provider to take such actions, then it cannot permit Bonneville to do so.

It has been fifteen years since the issuance of Order No. 888, and for the past four years Bonneville has been going backward, away from open transmission access and competitive markets. In Order No. 890, the Commission urged transmission customers to file an application for an order compelling an unregulated transmitting utility to provide transmission service that meets the standards of FPA Section 211A.¹⁶³ Bonneville owns 80 percent of the transmission in the Pacific Northwest, and its transmission policies fundamentally impact all market participants. As this Complaint demonstrates, Bonneville's Final ROD, and its transmission practices generally, are not comparable to the transmission services it provides to itself, and are unduly discriminatory and preferential. It is not an understatement to say that the future of renewables development, open access and competitive markets in the Pacific Northwest depend upon the Commission's action now to remedy undue discrimination both in the short-term, and in the long term. FPA Section 211A(b)(2) applies the very same undue discrimination standard to unregulated transmitting utilities that it applies to public utilities, and if the Commission would

¹⁶³ Order No. 890 at P 192.

not permit a public utility to engage in the curtailment practices Bonneville is engaging in, then it should not allow Bonneville to take such action.

V. RELIEF REQUESTED

Complainants request that the Commission:

- Order Bonneville to immediately revise its curtailment practices to comport with the undue discrimination standards of FPA Section 211A and submit them in a compliance filing for the Commission’s approval within 60 days of the date of the Commission order;
- Order Bonneville under FPA Sections 210 and 212(i) to abide by the terms of its interconnection agreements with Complainants by immediately ceasing these unduly discriminatory and preferential practices; and
- Order Bonneville, pursuant to FPA Section 211A, to remedy its unduly discriminatory and preferential practices by filing an OATT for Commission approval within 120 days, and to maintain a Commission-approved OATT on file.

In light of the fact that Bonneville has already begun curtailing wind under the Final ROD and Complainants are experiencing continuing harm under Bonneville’s Environmental Redispatch Protocol, Complainants request that the Commission grant this complaint on an expedited basis—within sixty (60) days if at all possible.

VI. Other Matters

A. Identification of Violation of Regulatory Requirement (18 C.F.R. § 385.206(b)(1)).

Complainants have identified above the statutory and tariff violations committed by Bonneville. Specifically, Bonneville has violated (1) the prohibition against non-comparable, unduly discriminatory or preferential service found in Order Nos. 888 and 890, as well as Section 211A of the FPA; and (2) the terms and conditions of Bonneville's OATT and LGIAs with Complainants.

B. Explanation of the Violation (18 C.F.R. § 385.206(b)(2)).

As described more fully throughout this Complaint, Bonneville, as a dominant transmission provider in the Pacific Northwest, is providing transmission and interconnection service that is not comparable to the service it provides itself and that is unduly discriminatory and preferential. Further, Bonneville is using its transmission market power to unilaterally curtail competing generators whenever it desires to protect its power customers from costs it does not consider to be "socially optimal."

C. Economic Interest Presented (18 C.F.R. § 385.206(b)(3)).

Absent Commission action to order Bonneville to provide transmission services to Complainants on terms and conditions that are comparable to those it provides itself and that are not unduly discriminatory or preferential, Complainants will not be compensated for the foregone energy sales, including the value of federal PTCs and state RECs. Further, if the wind generation output has been sold under a PPA, the displacement costs may also include forgone revenue associated with lost generation, as payment under many PPAs is based on actual metered output from the wind generation facilities.

D. Financial Impact (18 C.F.R. § 206(b)(4)).

Complainants are unable to accurately estimate the financial impact Bonneville's Environmental Redispatch Protocol will have – in part because Bonneville has retained such broad discretion to exercise its redispatch authority – however, Bonneville estimates in its Final ROD the financial impact associated with lost PTCs and REC's for 2011 to be approximately \$50 million dollars.¹⁶⁴

E. Practical Impact (18 C.F.R. § 385.206(b)(5)).

The practical and other non-financial impacts associated with Bonneville's Environmental Redispatch Protocol include inefficient market operation and participation, loss of confidence in markets and market operations, disincentives to develop renewable generation, frustration of the Obama Administration's policies on variable energy resource development, and negative precedent that will enable Bonneville to continue to deviate further away from the Commission's long-standing initiatives envisioned in Order Nos. 888 and 890.

F. Other Pending Proceedings (18 C.F.R. § 385.206(b)(6)).

The issues presented in this complaint are not pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party.

G. Relief Requested (18 C.F.R. § 385.206(b)(7)).

Complainants have described the relief they are requesting from the Commission in Section IV of this complaint.

H. Attachments (18 C.F.R. § 385.206(b)(8)).

Complainants have attached, herein labeled as Attachments A-G, all attachments referenced within this complaint.

¹⁶⁴ Final ROD at 20.

I. Other Processes to Resolve Complaint (18 C.F.R. § 206(b)(9)).

Complainants have worked with Bonneville on these issues for more than a year. Some of the Complainants have participated in meetings and discussion groups with Bonneville, and have submitted formal comments regarding the February 18, 2011, “Administrator’s Draft Record of Decision on Environmental Redispatch and Negative Pricing Policy.” On May 26, 2011, Complainants participated in mediation with Bonneville facilitated by the Commission’s Dispute Resolution Service. Complainants have not contacted the Enforcement Hotline. Complainants believe this Complaint presents the most appropriate avenue for resolving this issue and is necessary to protect their rights.

J. Notice of Complaint (18 C.F.R. § 385.206(b)(10)).

A form of notice is attached hereto as Attachment G.

K. Requests for Fast Track Processing (18 C.F.R. § 385.206(b)(11)).

As noted above, Bonneville has already begun curtailing wind under the Final ROD and Complainants are experiencing significant and continuing harm under Bonneville’s Environmental Redispatch Protocol. As such, Complainants request that the Commission grant this complaint on an expedited basis within sixty (60) days if at all possible.

VII. Conclusion

Based on the foregoing, Complainants respectfully request that the Commission grant the relief requested in the Complaint.

Respectfully Submitted,

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Dated: June 13, 2011
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ATTACHMENT A

COMPLAINANTS' SAMPLE

LGIA LANGUAGE

Attachment A

Complainants' LGIA Language

Complainants' contracts, as listed below, contain curtailment language that is identical or substantially the same as the language found in the Bonneville *pro forma* OATT, Standard Large Generator Interconnection Agreement, at section 9.7.2 "Interruption of Service." In this section, Bonneville's *pro forma* language is identical to the Commission's *pro forma* language.

Contracting Party	Bonneville Contract No.
Big Horn Wind Project LLC, affiliate of Iberdrola Renewables, Inc.	05TX-11964
Big Horn II Wind Project LLC, affiliate of Iberdrola Renewables, Inc.	10TX-14740
Hay Canyon Wind LLC, affiliate of Iberdrola Renewables, Inc.	08TX-13441
Juniper Canyon Wind Power LLC, affiliate of Iberdrola Renewables, Inc.	10TX-14739
Klondike Wind Power, LLC, affiliate of Iberdrola Renewables, Inc.	06TX-12409
Klondike Wind Power II, LLC, affiliate of Iberdrola Renewables, Inc.	06TX-12288
Klondike Wind Power III, LLC, affiliate of Iberdrola Renewables, Inc.	06TX-12261
Klondike Wind Power III, LLC, affiliate of Iberdrola Renewables, Inc.	06TX-12406
Leaning Juniper Wind Power II LLC, affiliate of Iberdrola Renewables Inc.	10TX-14753
Pebble Springs Wind LLC, affiliate of Iberdrola Renewables, Inc.	06TX-12356
Star Point Wind Project LLC, affiliate of Iberdrola Renewables, Inc.	09TX-14511
Windtricity Ventures, LLC, affiliate of PacifiCorp	06TX-12139
Leaning Juniper Wind Power LLC, affiliate of PacifiCorp	05TX-11934
Willow Creek Energy LLC, affiliate of Invenergy Wind North America LLC	08TX-13109
Grays Harbor Energy LLC, affiliate of InvenergyWind North America LLC	06TX-12426
Sagebrush Power Partners, LLC, affiliate of Horizon Wind Energy LLC	08TX-13725
Arlington Wind Power Project LLC, affiliate of Horizon Wind Energy LLC	05TX-11935
Wheat Field Wind Power Project LLC, affiliate of Horizon Wind Energy LLC	08TX-13477

ATTACHMENT B

AFFIDAVIT OF STEPHEN SWAIN

1 UNITED STATES OF AMERICA
2
3 U.S. DEPARTMENT OF ENERGY
4 BEFORE THE
5 FEDERAL ENERGY REGULATORY COMMISSION
6

7
8 Iberdrola Renewables, Inc.;)
9 PacifiCorp;)
10 NextEra Energy Resources, LLC;)
11 Invenergy, LLC)
12 Horizon Wind Energy LLC)
13 Complainants,) Docket No. EL11-___-000
14 v.)
15)
16 Bonneville Power Administration)
17 Respondent.)
18

19 AFFIDAVIT
20 OF
21 STEPHEN SWAIN

22 State of Oregon)
23) ss
24 County of Multnomah)
25

26 I, Stephen Swain, being first duly sworn, do now depose and say:

27 1. I am currently employed by Iberdrola Renewables, Inc., and my title is
28 Managing Director, Structuring and Market Analysis. As part of my duties in this
29 position, I monitor and analyze the operational conditions on the Pacific Northwest
30 transmission grid, including the available transmission capability on the Bonneville
31 Power Administration (“Bonneville”) network and intertie facilities. I have reviewed the
32 operational conditions on Bonneville’s network and intertie facilities at times when
33 Bonneville has implemented its Environmental Redispatch Protocol. This review shows
34 that, according to data from Bonneville’s website, during the first Environmental
35 Redispatch Protocol event from hours ending 0100 to 0500 on May 18, 2011,
36 approximately 270 megawatts (“MW”) per hour on average of wind generation was
37 curtailed at a time when over 2900 MW per hour on average of export capability was
38 available on Bonneville’s Southern Interties (AC and DC), over 1100 MW per hour on

1 average of export capability was available on Bonneville's Northern Intertie, and over
2 560 MW per hour on average of other generation was being imported into Bonneville's
3 balancing authority area from the East.

4 2. All of the matters stated in my testimony and qualification statement are
5 true and correct to the best of my personal knowledge and belief.

6 Dated this 10th day of June 2011.

7 

8 _____
9 Stephen Swain

10
11 Subscribed and sworn to me on JUNE 10, 2011, by Stephen Swain.

12 



Notary Public

My Commission expires: 7/22/2011

ATTACHMENT C

BONNEVILLE'S TRANSMISSION TARIFF ISSUES HANDOUT

Conferring with customers on BPA's transmission tariff

And reciprocity status from FERC

Crews are extending a new transmission line through the heart of wind power country in eastern Oregon and Washington, thanks to an innovative new process called Network Open Season. The Bonneville Power Administration pioneered this approach to sift speculative placeholders from its clogged queue of new transmission requests and finance and build needed new transmission for wind farms and other generators.

Network Open Season works well for the Northwest. BPA appreciates the Federal Energy Regulatory Commission's approval of Network Open Season and FERC's praise for the process as a promising model to efficiently manage and study new requests for transmission service. As BPA continues to move forward with Network Open Season, however, questions remain about how the process can work routinely with the standard tariff FERC uses to ensure open access, non-discriminatory transmission service. For example, FERC's standard tariff includes timelines that differ from those of Network Open Season. BPA must determine whether it can integrate Network Open Season with FERC's standard processes in a way that preserves the benefits of Network Open Season for the agency and its customers.

As a government utility, BPA is not subject to the same FERC jurisdiction and standards applied to jurisdictional "public utilities" (essentially, investor-owned utilities) under the Federal Power Act. BPA voluntarily files its tariff with FERC to confirm that it substantially conforms or is superior to FERC's national model. This is called seeking "reciprocity" status.



The federal Bonneville Power Administration provides three-fourths of the high voltage transmission in the Pacific Northwest. BPA's transmission customers include consumer-owned and investor-owned utilities, independent power producers and power marketers across the Western United States, British Columbia and Alberta.

Voluntarily filing its tariff with FERC is one way for BPA to demonstrate its strong commitment to open access, non-discriminatory transmission service. But there are other ways as well, and attempting to conform to FERC's national model has created some difficulties for effective management of BPA's transmission system.

Some BPA customers assert that the agency's consistency with FERC's national model is important to their own business needs. Some want to ensure that FERC has an opportunity to override BPA's proposed changes to its tariff and that BPA makes changes to conform to the model tariff. Others suggest that reciprocity is necessary to assure that BPA maintains open access transmission.



When polled, BPA customers disagree on how high a priority the agency should put on seeking reciprocity, compared to other regional priorities such as developing new wind integration tools. Some customers have expressed concerns about the amount of staff time and money BPA must spend to fully comply with FERC's national model. BPA is also concerned about its ability to develop tariff terms and practices that work effectively for the region and that are consistent with the laws BPA administers.

BPA believes it needs an open, comprehensive dialogue with customers and stakeholders on a broad range of tariff issues before it decides whether to continue to seek reciprocity status. We seek to chart a course that will best:

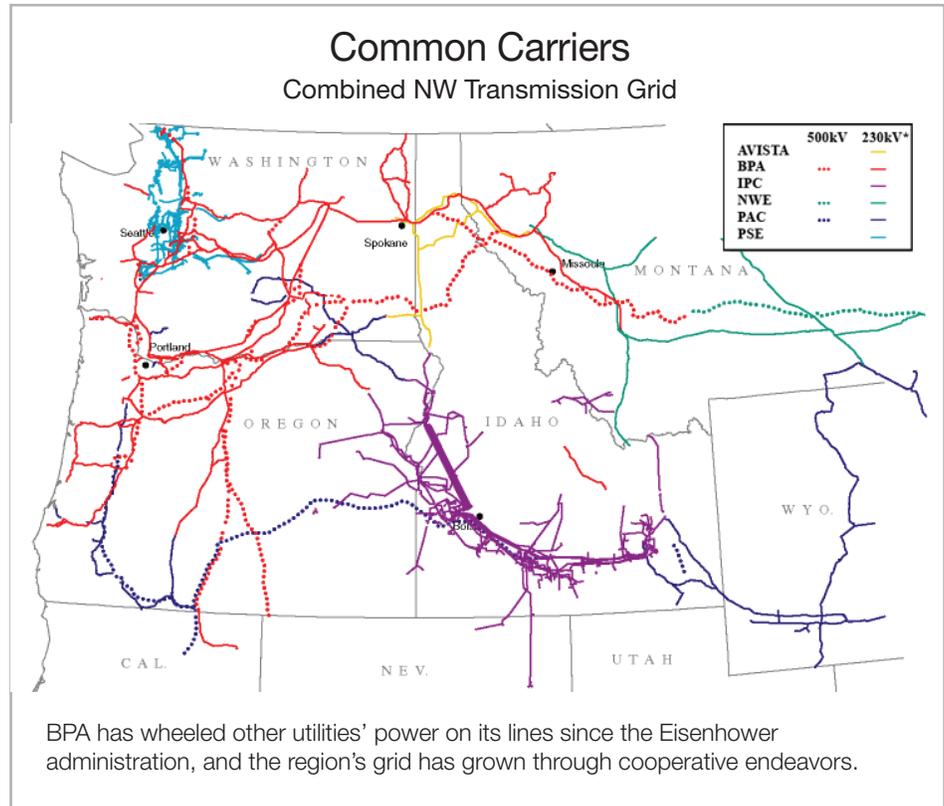
- Promote the long-term welfare of our region's economy and environment, given its unique environmental, transmission and power needs.
- Maintain open, non-discriminatory transmission access.
- Provide customers a high level of commercial certainty and predictability on the essential attributes of their transmission service.
- Maintain reciprocity status if that can be done reasonably and consistent with meeting the region's economic and environmental needs.
- Ensure continuing consistency with BPA's statutory obligations.
- Recognize the high value BPA places on its relationship with FERC.

WHAT IS RECIPROCITY?

Open access transmission was established in 1996 by the Federal Energy Regulatory Commission to provide uniform open, non-discriminatory access to transmission. FERC created a national tariff,* which is required of jurisdictional utilities and which includes the terms, conditions and descriptions of transmission services.

The tariffs of government and consumer-owned utilities are not subject to FERC tariff approval under the Federal Power Act standards applicable to FERC jurisdictional utilities. They may voluntarily file their tariffs with FERC to seek approval for purposes of reciprocity. This is the only purpose for which a non-jurisdictional utility may file its tariff with FERC for approval under standards similar to those applicable to jurisdictional utilities. The jurisdictional utilities must give non-jurisdictional utilities with reciprocity status the same terms and

* Known formally as FERC's *pro forma* tariff.



conditions for use of their transmission lines that they give one another.

If FERC does not take any action on an investor-owned utility's tariff filing in 60 days, it is automatically approved. But there is no schedule for review of non-jurisdictional utilities' voluntary filings, and response can take a year or more.

How we got here

BPA voluntarily filed its open access tariff with FERC in 1996 and has consistently filed tariff revisions since. BPA's tariff has always varied in places from FERC's standard model, due to BPA's central role in the Northwest's hydroelectric system and terms of the agency's authorizing legislation. BPA strives to achieve as much consistency with FERC's tariff as possible, while adhering to duties Congress assigned specifically to BPA.

Although FERC did not approve every element in BPA's filings, in each case between 1996 and 2007, BPA conformed to FERC's rulings and maintained reciprocity status.

In 2007, FERC issued a revised tariff as part of its Order 890. It directed all jurisdictional utilities to refile their tariffs and invited non-jurisdictional utilities to do so. BPA worked with its customers and FERC to respond, culminating in a BPA tariff filing in 2008. In 2009, FERC denied BPA reciprocity unless BPA made certain changes to its tariff.

As with earlier filings, this new BPA tariff contained differences from the FERC national tariff. Many of the differences responded to BPA customer requests; others reflected BPA needs. While FERC approved changes BPA made to the standard tariff – deviations – it refused BPA's request to omit several provisions of the standard tariff. BPA sought rehearing and said it might ask FERC to conduct a conference. In January 2011, BPA submitted a filing asking FERC to rule on BPA's tariff without a conference.

BPA did not request a conference with FERC because BPA has identified a number of broader

issues. To fully assess the impact of continuing to pursue reciprocity status, BPA conducted a comprehensive analysis of potential differences between FERC's standard tariff and the agency's tariff, practices and potential needs. The results suggest new areas where BPA's tariff may need revision to fully reflect its current practices, follow emerging FERC direction, fulfill BPA's direction from Congress and advance regional priorities. BPA has operated since 2007 without reciprocity status, with no significant consequences.

Differences delineated

BPA has gone through an extensive internal process to identify differences with the FERC tariff. These differences have been placed in three categories:

- 1) Issues that can be remedied within one year.
- 2) Issues for which it will take more than one year to implement fixes.
- 3) Differences in policy where BPA questions whether it is worth the effort and expense to comply with the tariff.

A list of all identified issues is found on page 12. The following sections discuss issues FERC raised on BPA's 2008 tariff filing and some newly emerged concerns.

OUTSTANDING ISSUES

FERC raised several issues in its response to BPA's 2008 Order 890 filing, including requiring several new services. Here are issues FERC has raised:

Financial middleman for transmission resales: Buyers and sellers in the resale market for transmission on BPA's system currently settle financial transactions among themselves, a process that has worked effectively for many years and appears to satisfy their needs. The market for resales on BPA's system is thriving. More than 75 percent of all transmission resales nationwide from April 2007 to December 2009 took place on BPA's system.

Massive transmission resale market

U.S. Transmission Resales Reported to FERC

(April 2007 — December 2009)



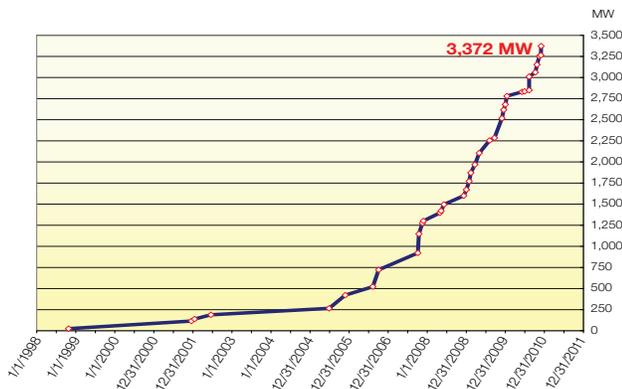
Most transmission resales in the U.S. occur on BPA's system.

FERC's current tariff would require BPA to take on the role of a financial middleman for each resale transaction, receiving funds and making payments on behalf of buyers and sellers. This could encompass 2,000 to 3,500 resale transactions a month, many involving multiple layers of resales among multiple parties. Serving as a middleman in this situation could be a complex and costly new role for BPA, which hosts many more transmission resale transactions than all other utilities combined. In addition, FERC asserted that buyers and sellers cannot be charged a fee for this service. BPA believes that customers who use this service should pay for its costs.

Generation imbalance services: Generation imbalance services maintain system reliability by balancing differences between actual and scheduled generation. These services are especially important for variable energy resources such as wind. BPA has offered generation imbalance services to all generation resources in the BPA balancing authority area since 2002. In Order 890, FERC required transmission providers to offer generation imbalance service to all generators located in their balancing authority areas as part of their tariff services.

Wind power is booming

Wind Generation Capacity in the BPA Balancing Authority Area



BPA innovations* have significantly encouraged wind power development, with astounding success. More than 3,300 megawatts of wind power have connected to BPA's grid, with thousands more queued.

* Such as: exempting wind from certain penalties, Network Open Season, Conditional Firm, Generation Imbalance Services. BPA is also testing the effectiveness of other innovative approaches, including intra-hour scheduling, customer self-supply of certain reserves and dynamic transfers. This graph shows sequential increases in capacity, based on date when actual generation first exceeded 50 percent of nameplate.

BPA's tariff on this subject is under development. It may differ from FERC's version to make BPA's generation imbalance service consistent with any related BPA rate case decisions and to protect BPA ratepayers from becoming responsible for paying stranded costs, for example, costs of resources acquired to balance generators that then choose not to use those services.

BPA believes its rates should assure that the costs of these services are borne by those who use them. BPA also believes that the limits of what we will provide should be set through our rate-making and contracting processes to keep those costs reasonable. We recognize that FERC's view of this issue is evolving as well, and our differences, if any, may turn out to be modest. But for now, our assessment is based on differences that exist in adopted FERC policy.

Designating resources to serve specific loads:

Utilities that take a certain kind of transmission service from BPA called network integration must assign or “designate” the power resources they intend to use to meet their loads. BPA sets aside transmission to carry power from those resources to the utility’s load. If a utility wishes to use a resource for another purpose, such as to make a sale to a third party, it must “undesignate” that resource, freeing up the corresponding transmission capacity to be sold to other users. FERC’s Order 890 requires utilities to change the designation every time use of a designated resource changes, even if only for an hour.

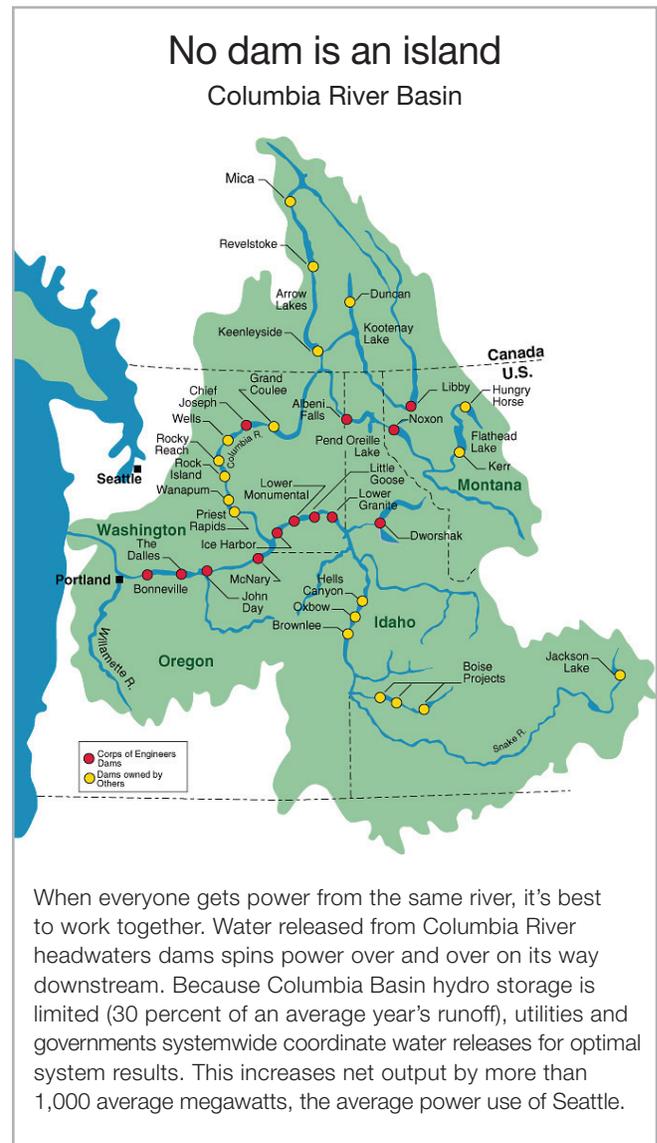
Most of these customers have designated their BPA power sales contract as their designated network resource. The BPA power sales contract is a sale from the federal power system as one interdependent system. Within any day or hour, depending on the weather, streamflows, fish requirements, wind patterns and numerous other factors, some or all of the power from any specific dam or combination of dams may provide power for different kinds of sales, back up fluctuations in wind power, and/or be sold as surplus power. Other utilities’ Columbia River system resources are also affected as all are operated in coordination with federal resources under the 1964 Pacific Northwest Coordination Agreement. Undesignating specific hydroelectric resources for periods of less than a year would be highly impractical for BPA and its customers.

BPA requested a deviation from FERC’s tariff so that BPA and its network integration customers would not have to undesignate resources for periods of less than one year. FERC approved the deviation but requested more information. Therefore, we do not know whether FERC’s approval will stand.

Two types of a new service: Order 890 calls for two types of a new transmission service called conditional firm service, which can make better use of existing transmission. BPA included one type in its tariff and now provides more conditional firm

service than any other transmission provider.* FERC asked BPA to add the second type, called system conditions conditional firm service. BPA customers have expressed very little interest in using this second form of conditional firm service, and BPA would have to incur significant costs to offer it.

Short-term sales windows: Some customers need transmission only for a short period, such as a day, week or month. BPA and some other utilities limit how far in advance customers can reserve this



* See graph on page 10.

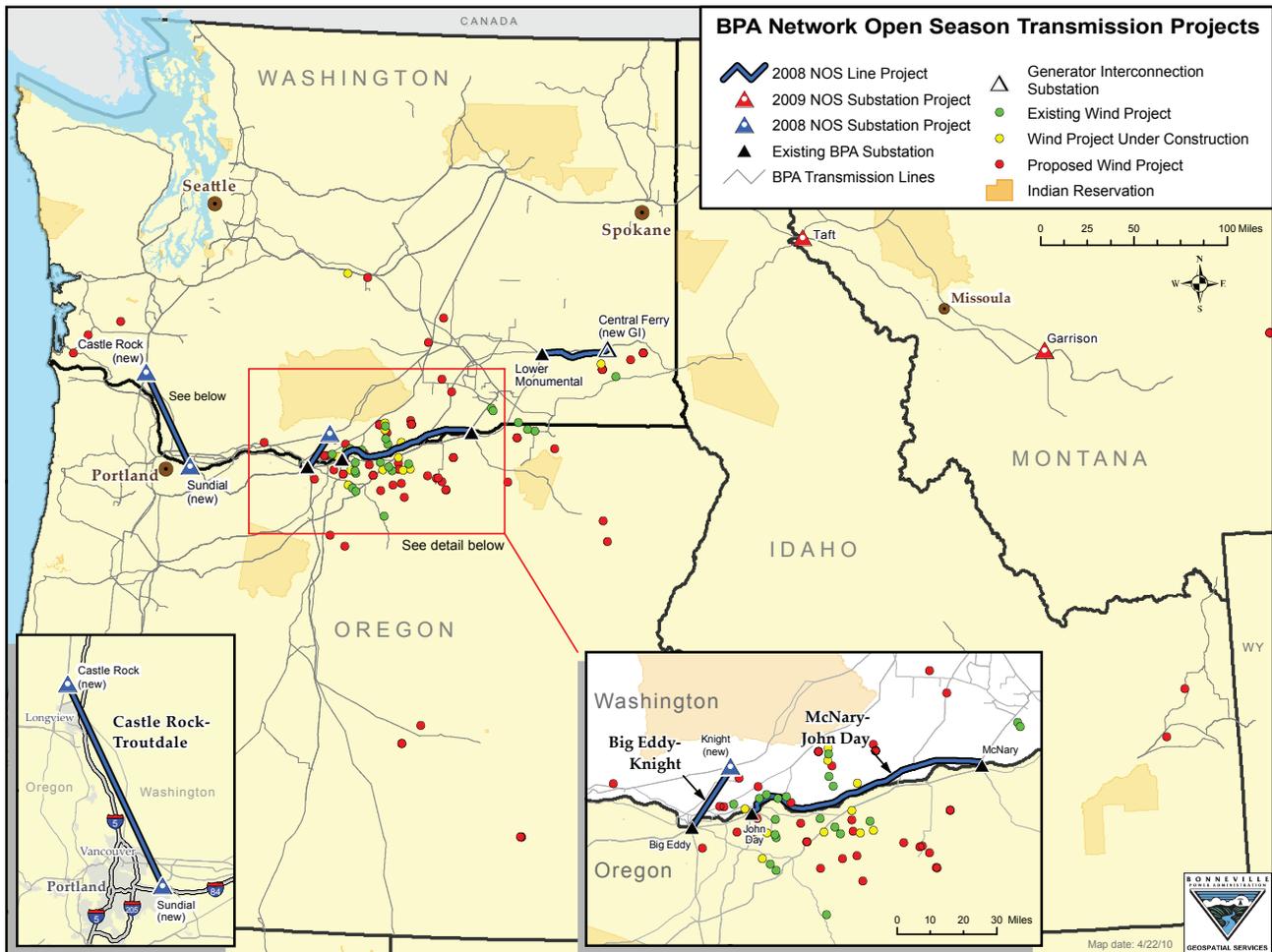
short-term service. In these cases, FERC’s tariff requires a “simultaneous window” approach to awarding service in which all requests that come in during a five-minute or other specified period are given equal priority. This contrasts with FERC’s standard first-come, first-served approach, where those with the fastest computers always go to the head of the line. BPA agrees with the idea of a “simultaneous window.” The question for our customers is, how high a priority is it to implement? It would take about a year and cost about \$250,000 to develop the necessary computer systems. We intend to move forward with implementation, but our timeline is uncertain.

NEW ISSUES

Since FERC denied reciprocity status for BPA’s tariff in 2009, BPA has not made additional filings, pending resolution of BPA’s Order 890 filing. Meanwhile, new concerns have been piling up.

Some of these new issues involve how to reconcile innovative regional practices that benefit customers with the more traditional approaches outlined by FERC. Some involve BPA’s statutory responsibilities. Others would require process changes, automation and/or tariff modification. Here are some of the more significant issues on BPA’s list.

Growing the grid for the economy and green energy



BPA’s Network Open Season approach to transmission line prioritization and financing has enabled BPA to propose new transmission to meet regional needs and integrate thousands more megawatts of wind power.

Study timelines for requests outside Network

Open Season: BPA addresses most transmission requests through its annual Network Open Season. BPA understood that the opportunity for a customer to choose the traditional process under the national tariff was an important assumption behind FERC's approval of Network Open Season, so BPA included an opportunity to "opt out" of Network Open Season in its tariff. Opting out of Network Open Season allows a requestor to follow the traditional FERC process.

But, for a customer who has opted out, BPA does not expect it will be able to fulfill the time requirements for studies of its request specified in FERC's tariff. FERC requires two studies, each of which must be completed in 60 days (120 days, total). Under Network Open Season, BPA considers all requests simultaneously to identify the best solutions for all. Unless an opt-out requestor is at the head of the queue, completing two studies within 60 days each, as required under the FERC procedure, would mean completing studies for all higher-queued requests in that timeframe as well. This is not feasible and would undermine the effectiveness of Network Open Season, because BPA currently dedicates experienced staff to conduct studies using that more efficient and effective approach.

BPA does not now offer an open season on intertie capacity, so FERC standard study timelines apply. BPA is not doing studies on requests for capacity on its California or Montana interties because BPA knows from past efforts that the multiple ownership and scale of intertie lines makes expansion a complex and costly undertaking requiring consensus among parties. An intertie open season is probably needed to examine potential expansion.

Price cap for resales: In its Order 890 tariff, FERC made a change that temporarily allowed transmission service purchasers to resell to other buyers at a negotiated, uncapped price. FERC monitored and

studied the resulting secondary market for capacity reassignments and, based on a little over two years' worth of data, determined it was appropriate to permanently remove the price cap on resales of transmission capacity.

BPA participated in this experiment. In fact, most of the transmission resales nationwide during the time period occurred on BPA's system. BPA supports reasonable price flexibility for transmission resales.

However, based on first-hand experience in the West Coast Energy Crisis of 2000-2001, BPA remains cautious about completely uncapping resale prices. Electricity prices soared from tens of dollars to thousands of dollars per megawatt-hour during that crisis. In some cases, federal power was resold at prices substantially higher than its original cost-based rate. Given the potential for transmission congestion in the West, BPA believes some mechanism or "safety valve" should be in place to prevent the resale of federal transmission in a manner that harms consumers through exorbitant pricing.

BPA believes it should take this position as part of its statutory charge to provide the lowest cost to consumers consistent with sound business principles. Language in BPA's existing tariff may meet this need.

Intra-hour scheduling: BPA supports intra-hour transmission scheduling to make more effective use of resources and to effectively integrate wind power and other variable resources. BPA launched a pilot project for 30-minute transmission scheduling last year and is working with two regional initiatives (ColumbiaGrid and the Joint Initiative) to pursue greater use of intra-hour scheduling.

BPA may need a tariff revision for an upcoming phase of its 30-minute pilot project. However, FERC's view of such a revision is uncertain given its recent Notice of Proposed Rulemaking on Variable Energy Resources, which calls for comprehensive 15-minute scheduling.

Priority access to federal transmission: BPA believes it is required by law to give federal power priority access to contractually uncommitted transmission capacity in certain instances. For example, BPA must give priority to deliveries of federal power to new BPA preference utility customers. This priority does not affect transmission capacity that is under contract to another customer.

FERC standards require that service goes to those customers that are first in line. It does not provide for priority access. BPA believes its transmission tariff should reflect its statutory obligation to use federal transmission as Congress intended.

Compliance with environmental laws and the Northwest Power Act: BPA must comply with federal statutes such as the Endangered Species Act, Clean Water Act and Northwest Power Act, which

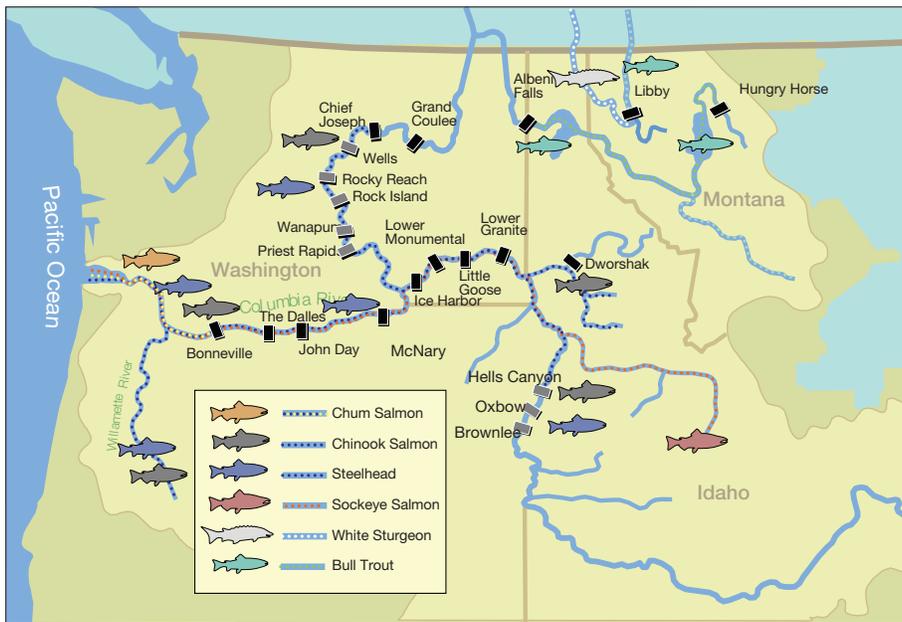
provide for the protection of fish and wildlife. For example, BPA is currently defining additional steps it may have to take to protect fish from high levels of dissolved gas in rivers during high water and wind conditions. BPA expects to issue a draft Record of Decision on the subject soon. For clarity, BPA's tariff should explicitly reflect actions BPA may take to comply with environmental laws that may affect transmission. BPA expects to amend its tariff once the specifics of those requirements have been fully defined.

Requirements for posting available transmission capacity: BPA routinely posts on its website the available transmission capacity for each upcoming hour, day, week and year at 10 critical points on its network transmission system known as flowgates. Customers seeking transmission service can easily tell from the posted information and

accompanying online tools whether sufficient capacity is available to accommodate their requests. This is an efficient means of sharing information, and customers appear satisfied with it.

FERC requires utilities to post the availability of transmission capacity for every transmission path that connects different balancing areas, plus some transmission paths within BPA's network. For BPA's large grid, this could mean posting up to 2 million paths each hour, day, week and year. Systems to collect and post such extensive data would be costly and do not appear to provide any meaningful additional information of use to customers.

More than power is at stake



Unlike thermal power plants, hydroelectric plants are one of many uses of a Northwest dam. Depending on their features, federal and non-federal projects are operated to protect fish, prevent floods, pump and provide irrigation and municipal water, support navigation and foster river recreation. All these uses can have a significant impact on the availability of hydropower and, in turn, Northwest transmission.

Transmission curtailment priorities: When non-firm transmission schedules for the next hour exceed capacity, the national tariff requires curtailment on a pro-rata basis. All affected customers must then adjust accordingly. In the Northwest, the standard regional practice is to curtail these reservations according to a last-in, first-out approach with the most recent non-firm transactions curtailed first. This minimizes the number of schedules affected, providing for efficient and cost-effective market operation. BPA could work with other regional transmission providers to seek a unified tariff deviation to allow the current, efficient business practice to continue. Alternatively, Northwest utilities could change their practices to curtail all such transactions on a pro-rata basis.

Additional technical issues: There are a number of additional technical issues on BPA's list of tariff

terms to discuss with customers. A list of all issues identified to date is found on page 12.

WHERE WE GO FROM HERE

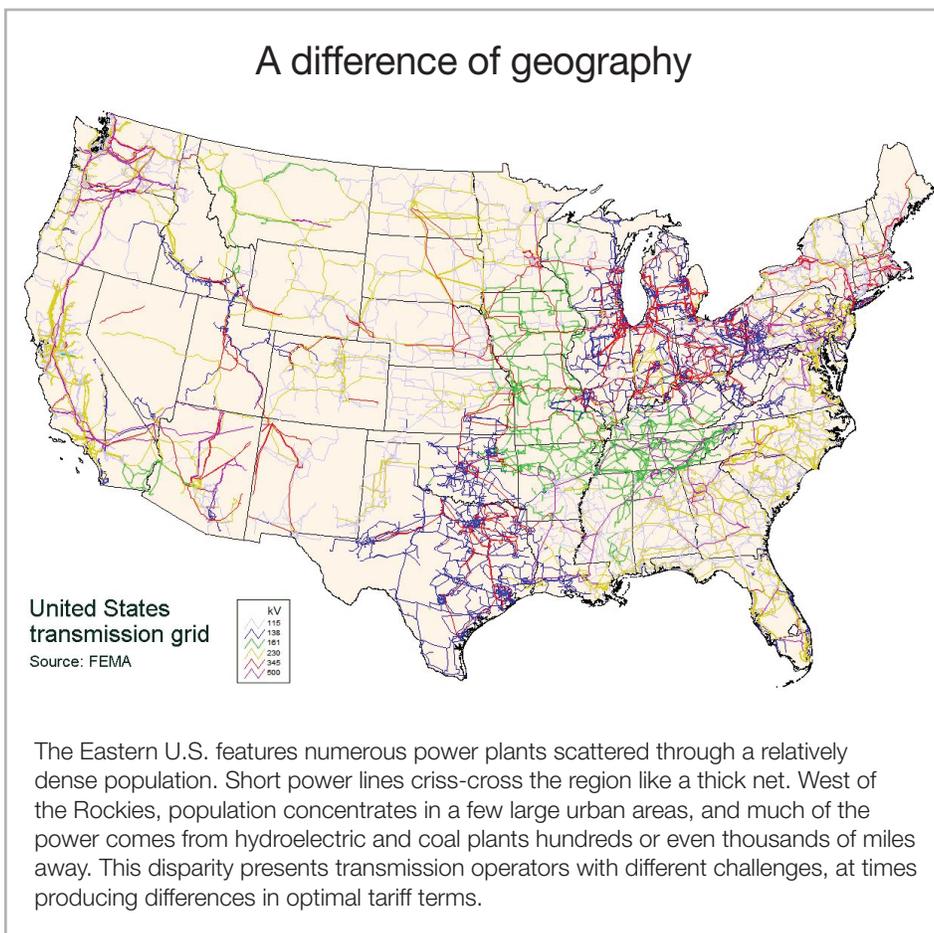
In the next few months, BPA will discuss all the above issues with its customers, as well as other tariff issues that customers bring to the table.

BPA believes that it is important that its tariff accurately reflect its practices. Where necessary, BPA may revise its practices to comply with its tariff or revise its tariff to accurately reflect current practices. We want to say what we do and do what we say. Some of BPA's practices today reflect common, effective regional industry practices that are not spelled out in the tariff. Others are unique practices that were developed as BPA resolved issues with customers. Finally, in some areas, BPA expects to change its practices as its priorities and resources allow.

In some cases, FERC's national directions for investor-owned utilities may not work well for BPA, given the physical constraints of the Northwest's interdependent hydroelectric system and BPA's statutory directives.

Given these issues, BPA and its customers must ask, what is the most productive course to meet regional goals of open access non-discriminatory service and effective use of the transmission system?

Which direction would best keep costs low to consumers and protect the environment?



BPA as a transmission management lab

In many ways, BPA serves today as a laboratory for transmission innovations. Network Open Season has resulted in commitments to provide transmission for more than 7,000 megawatts of power, more than half of it for wind projects.

In some cases, FERC has adopted BPA transmission innovations nationwide.

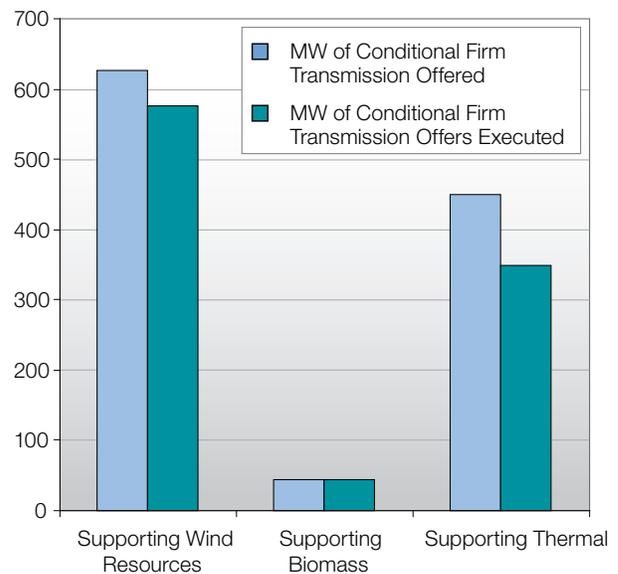
For example, BPA worked with the American Wind Energy Association, FERC and others early in the last decade to develop conditional firm transmission service. This service allows wind generators and other customers to purchase transmission capacity that would otherwise not be available on a long-term basis because it is not available around-the-clock, 365 days a year. In some cases, conditional firm service has made it possible for new wind plants to begin selling their energy while they are waiting for new transmission construction to provide full-time capacity. Since 2009, BPA has identified and offered 1,200 megawatts of conditional firm service.

In Order 890, FERC adopted tiered “energy and generator imbalance provisions similar to those in use by Bonneville.” BPA had exempted wind projects from penalty charges for extreme deviations between their scheduled and actual output, recognizing that those penalties were designed for thermal power plants that have more control over their output.

Beginning in 2009, wind project owners and utilities in BPA’s service territory called on BPA

Stretching use of existing capacity

BPA Conditional Firm Transmission, 2009-2011



BPA has so far offered about 1,200 megawatts of conditional firm transmission service to wind, biomass and thermal generators and has sold about 1,000 megawatts.

to fund a Wind Integration Team to develop new technical solutions to managing large amounts of wind power in BPA’s transmission grid. This team successfully launched six pilot projects in 2009 and 2010. Seven are in progress in 2011. Commenters universally call for more work in this area, faster. BPA also has been working closely with FERC on wind integration tools and techniques.

This fertile innovation and collaboration among BPA, its customers and FERC could be affected if BPA must divert resources to achieve and maintain reciprocity status.

Conferring with the region

BPA is committed to working openly and transparently with the Northwest to provide reliable, cost-effective, open access and non-discriminatory transmission service that best meets the region's needs and fulfills BPA's statutory requirements.

BPA seeks to provide open access, non-discriminatory transmission service in ways that make full use of existing transmission capacity, support needed system expansion and maintain high reliability. BPA manages its investments to assure that these goals are met at the lowest possible cost to consumers consistent with sound business principles.

What are the region's preferences for BPA's direction on the issues described above and others customers may raise? Given the world of expectations and needs facing BPA's transmission system, should BPA continue to seek reciprocity status from FERC? Or should BPA let that effort go for now and work with FERC as a non-jurisdictional utility that actively collaborates with FERC but does not seek or receive reciprocity status?

We invite discussion.

For more information

Reciprocity discussions to date, including comments:

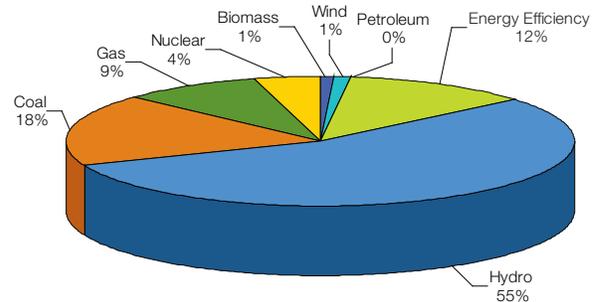
http://transmission.bpa.gov/Business/Rates_and_Tariff/order890.cfm?page=relatedinfo

Tariff reciprocity issues materials dated Feb. 9, 2011:

http://transmission.bpa.gov/Customer_Forums/tx_customer_forum/

What will work best next?

Sources of Electricity Supply in the Pacific NW in 2009



The Northwest Power and Conservation Council has called on the region to meet 85 percent of its additional power needs with energy efficiency over the next 20 years. Much of this will have to come from improved transmission tools through the smart grid and demand response techniques, as well as improved integration of variable wind and solar power. How should Northwest utilities approach BPA's transmission tariff to best support achieving these regional and national goals?

Source: NW Power & Conservation Council

Transmission Issues Chart:

http://transmission.bpa.gov/Customer_Forums/tx_customer_forum/documents/transmission_issues_chart.pdf

Issue Paper:

http://transmission.bpa.gov/Customer_Forums/tx_customer_forum/documents/FinalReciprocityIssuesPaperFinal.pdf

Transmission Issues Chart

BPA Transmission Customer Forum

Feb. 9, 2011

A

New Process Can Be In Place Within One Year		
OATT* Section	Description of Issue	Type of Change
1 2.2 & 17.7	Conduct LT Firm Competitions (Renewal & Deferral)	Process/Automation
2 Section 6	Require Reciprocity Statement from Customers	Process
3 19.9 & 32.5	Begin Posting Study Metrics Percentages	Process
4 Attach. C	Fix Broken Link for ATC Methodology Data	Process
5 Attach. L	Attachment L - Meet LGIP Timelines	Process
6 18 C.F.R. Sec. 37.6 (e)	Post List of DNRs on OASIS	Process
7 18 C.F.R. Sec. 37.6 (h)	Begin Posting Data from SIS & SFS	Process
8 18 C.F.R.	Meet Deadlines for Posting Study Results	Process
9 Order 890 & PF OATT 15.4c.	Provide Systems Conditions for Conditional Firm	Process/Automation

B

New Process Will Take Longer Than One Year (Timeline estimates are subject to resource constraints and reprioritizations)			
OATT Section	Description of Issue	Type of Change	Timeline (Rough Est.)
10 13.2 & 14.2	Create ST Bumping Market	Automation	2012/8mo.
11 14.1, 14.5 & 14.7	Offer NF PTP Products Beyond Hourly	Automation	2013/8mo.
12 33.2	Redispatch All NT Resources	OATT Imp.	2011/ ?
13 13.6, 33.2 & 33.5	Conduct Non Discriminatory Redispatch	Automation	2011/ ?
14 Attach. K	Finalize Business Practices	Process	2011/2-3yrs
15 18 C.F.R.	Post ATC Calculation Data	Process	2012/2-3yrs
16 18 C.F.R. Sec. 37.6 (b)	Post CBM Practices	Process	2011/1-2 yrs
17 S&CPs	Stop Selling Unlimited Hourly Firm & Non-Firm	Process/Automation	2011/21mo.
18 Order 890	Allow Conditional Firm Resales & Redirects	Automation	2013/6mo.
19 Order 890	Implement Simultaneous Windows	Automation	2012/15mo.

C

BPA Believes We Can Resolve Through Working With FERC		
OATT Section	Description of Issue	Type of Change
20 6.1.2 & 16.2	Attachment K - Collect Customer Ten Year Forecasts	OATT Mod.
21 17.2	Collect Customer Generation Location & Capacity Data	OATT Mod.
22 29.2	Collect Customer Redispatch Cost Data	OATT Mod.
23 Attach. J	Require Customers to Pay for Line/Load Studies	OATT Mod.
24 33.1, 33.6, 35.2 & 35.3	NT NOA/NOC - Include Missing Information	OATT Mod.
25 Section 9	File Current Attach. M with FERC	OATT Mod.
26 Attach E & I	Update Customer List	OATT Mod.
27 Attach. O	Sign PTSA Exhibits Consistent with Contract	OATT Mod.

*Open Access Transmission Tariff

D

Likely OATT Modifications			
OATT Section	Description of Issue	Type of Change	Reference
28 17.5	App. Response Timeline	OATT Mod.	See Current Issue# 1
29 17.5	Opt Out Timeline	OATT Mod.	See Current Issue# 2
30 13.5, 15.2, 4(a), 17.5, & 19.4	Intertie Studies	OATT Mod.	See Current Issue# 3
31 13.6 & 14.7	Curtailement by LIFO	OATT Mod.	See Current Issue# 4
32 13.8 & 14.6	Intra-hourly Scheduling	Automation	See Current Issue# 5
33 19.7	R/O of Partial Term Offers	OATT Mod.	See Current Issue# 6
34 18 C.F.R. S&CPs	LT Offer Remainders	OATT Mod.	See Current Issue# 7
35 Order 890 & 18 C.F.R. ATC/AFC Posting		OATT Mod.	See Current Issue# 8
36 22.2 & Order 890	Netting for Redirects	OATT Mod.	See Current Issue# 9
37 23.1 & Order 890	Price Cap Resales	OATT Mod.	See Current Issue# 10
38 23.1 & Order 890	Financial Middleman	Automation	See Current Issue# 11
39 Order 890	Gen. Imb./ Schedule 9	OATT Mod.	See Current Issue# 12
40 TBD	Priority Access to Transmission	OATT Mod.	See Current Issue# 13
41 TBD	ESA	OATT Mod.	See Current Issue# 14

E

Potential OATT Modifications That Require Further Development			
OATT Section	Description of Issue	Type of Change	Reference

BPA is working closely with its transmission customers on how best to respond to FERC tariff issues. This chart, used at a Feb. 9 customer forum, lists:

- A) issues BPA believes it can resolve within one year,
- B) those for which more than a year would be needed to implement changes,
- C) issues BPA believes it can resolve by working with FERC, and
- D) issues that likely would require tariff modification to achieve reciprocity status.

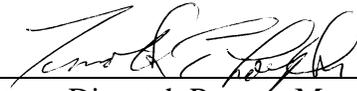
Section E is a placeholder for additional issues customers may raise. BPA will continue to discuss these issues and any others raised by customers in further workshops this spring.

ATTACHMENT D

BONNEVILLE'S DSO 216

BONNEVILLE POWER ADMINISTRATION
SYSTEM DISPATCHERS'
STANDING ORDER NO. 216

LIMITING WIND OUTPUT TO SCHEDULED VALUE

Approved: 
Dittmer Dispatch Process Manager

April 15, 2009
Date

I. PURPOSE

The purpose of this Dispatcher's Standing Order (DSO) is to provide instructions on limiting wind generation to the amount scheduled when there is insufficient regulating capacity available to offset the over generation of wind, or if the over generation of wind is causing a path to reach or exceed its SOL.

II. PROCEDURE

A. There are three methods for determining if over generation of wind is potentially affecting system reliability with regards to regulation capacity described below:

1. The Hydro Duty Power Scheduler's (Scheduler) determination that the system can not regulate down any more due to constraints on the river system.
 - When the Scheduler sees a constraint on the Federal Hydro system that may cause BPA to limit wind within the next two hours, the scheduler will set the wind warning flag. This alerts the wind facility operators that there may be a limitation placed on them in the near future. The wind facility operator is notified via ICCP, GenICCP or by viewing the status of the warning flag on the OPI external website. The Scheduler will call the Generation Dispatcher after arming the warning and explain what is causing the constraint. This flag will reset at the top of the hour so Scheduler will need to reselect if the warning is still in place the following hour.
 - When the Scheduler sees that the Federal hydro system is constrained, the Scheduler will call the Generation Dispatcher to request that the Generation Dispatcher limit wind output to the scheduled value. The Scheduler will explain to the Generation Dispatcher the cause of the limitation.

2. The Generation Dispatcher seeing that the AGC system does not have down regulation available due to the on-control plants getting within 50 MW of their minimum generation capability. If there is availability on other Federal hydro projects, the Scheduler can adjust the set up of the hydro system so the response of the BPA hydro is on plants with room to move. Otherwise, limiting the wind generation is needed.
 - The Generation Dispatcher will see on the Powerhouse Data display that the plants on control have less than 50 MW available between actual output and minimum generation. Until an alarm is created for this condition, it can be seen by an ACE of between +50 and +100 MW for a period of five minutes, at which time the Powerhouse Data display can be viewed and the down regulation calculated by subtracting the minimum generation from the actual generation for all plants on Auto response. Another indication is a large wind Station Control Error and AGC going into Baseload assist mode. If either of these two issues occur, the Generation dispatcher should call the Scheduler and have the Scheduler modify the basepoints of all the powerhouses if possible in order to make more down regulation available. If this is not possible, the wind output must be limited.
3. The RAS dispatcher determines that the over generation of wind is negatively affecting flows on a path to a point where some form of mitigation will be necessary.
 - When the RAS dispatcher determines that the overgeneration is causing a path to reach or exceed its SOL and the Scheduler cannot move the response of the FCRPS to correct the problem.

Example: If the wind is overgenerating by 400MW during a period when there is light load on the system and we are exporting to Canada, the North of Hanford S>N SOL could be exceeded. Since Grand Coulee and Chief Joseph projects typically have up to 70% of the response, 400MW of wind over generation would cause Grand Coulee and Chief Joseph to back off their basepoints by 280MW, thus increasing the North of Hanford S>N flows. If the Scheduler cannot move the response from Grand Coulee and Chief Joseph to the lower Columbia, the wind generation exacerbating the SOL problem can be limited to schedule.

B. In order to limit wind for (1) and (2) above, the following steps are taken:

1. Generation Dispatcher calls up the Misc Wind Generation BPA display (poke point from Miscellaneous Generation BPA display).
2. Generation Dispatcher selects Limit Gen to Sched all Plants. There is no confirmation message on this, once it is selected, the wind facilities are limited. This will set the warning flag to deployed, so the web site is updated. The wind facilities that are on GenICCP or with their operators on ICCP will receive this via the link and will send an acknowledgement that they have received the limitation. More details on how each wind facility is notified are in section D below.

3. For the plants to be notified by phone, in order from largest positive Station Control Error (SCE) to smallest, notify the wind generators to limit their output to their scheduled value using the following verbiage: “This is [state name], BPA Generation Dispatch. BPA is requiring you to lower your generation to your scheduled value of XXX MW, effective immediately. You can increase your generation in subsequent hours if the scheduled amount of generation for your project increases.”
 4. The manual limitation will remain in effect for a minimum of two hours, at which time the wind generators should have their schedules modified to match the actual generation of their project(s). The electronic limitation will reset at the top of the hour as will the warning flag. If the limitation needs to continue through the following hour, the Generation Dispatcher must re-select the Limit Gen to Sched All Plants on the Misc Wind Generation BPA display.
 5. Log the limitation including the wind facilities affected and reason for limiting wind.
- C. In order to limit wind for (3, path flows) above, the following steps are taken:
1. Generation Dispatcher calls up the Misc Wind Generation BPA display (poke point from Miscellaneous Generation BPA display)
 2. For the wind facilities contributing to the path loading, in order from largest positive Station Control Error (SCE) to smallest, notify the wind generators to limit their output to their scheduled value using the following verbiage: “This is [state name], BPA Generation Dispatch. BPA is requiring you to lower your generation to your scheduled value of XXX MW, effective immediately. You can increase your generation in subsequent hours if the scheduled amount of generation for your project increases.”
- D. How different wind facilities are notified:
1. As of April 1, there are only two wind facilities that have been able to set up their systems to automatically receive the limit wind to schedule instructions. These are Hopkins Ridge (Puget Sound energy via ICCP) and Biglow Canyon (Portland General via ICCP). The remainder of the facilities will need to be notified by phone until the automation is complete. All wind facilities have the opportunity to look at the external website to see when we are limiting or have set the flag to warn that limitations may be coming. The website is located at url <http://www.transmission.bpa.gov/Business/Operations/Wind/windlim.aspx>

2. The other wind facilities will be electronically notified as follows:

Iberdrola: Klondike 1, 2, 3 and 3a, Big Horn, Pebble Springs and Hay Canyon. BPA component complete, Iberdrola software to be completed Spring 2009. At that time they will be on GenICCP.

PacifiCorp: Leaning Juniper and Goodnoe Hills: BPA component complete, PacifiCorp needs until April 8 to install the rest of their software. At that time they will be on ICCP.

White Creek Wind: SCADA installation, there is not a time line for installing.
Arlington and Wheatfield: SCADA installation without timeline for installing.
Stateline: SCADA RTU – BPA work to be complete by Spring 2009.
Condon: SCADA RTU – BPA work to be complete by Spring 2009.
Willow Creek: SCADA RTU – BPA work to be complete by Spring 2009.
Tuolumne Wind: SCADA RTU – BPA work to be complete by Spring 2009.

We do not have estimates on when the customer will be taking the RTU output into their operations center.

Nine Canyon: SCADA installation, BPA work to be complete by Spring 2009.
NOTE: Until all the work is completed for Nine Canyon, they are not available for limitation even by phone due to the way they are distributed to four Balancing Authorities.

III. DISCUSSION

During the runoff during spring of 2008 and into the summer, there were multiple times that BPA ran out of down regulation on the Federal System. The primary cause of this was over generation by the wind generators inside the BPA Balancing Authority Area.

Due to the number of wind facilities that have been built in the BPA Balancing Authority Area, an electronic notification system was developed to assist Generation Dispatch in deploying the limit wind to schedule directive. Prior to 2009, there were not enough wind entities in BPA to justify adding this capability, but now that there are 19 wind facilities with 11 different operators, it would be almost impossible for the generation dispatcher to notify all of them within 10 minutes that they need to reduce their output to their scheduled value.

Although we were aiming to have all of the facilities electronically notified by April 1, too many variables jumped up so we were not successful. We did create the web page for the wind operators to see so they will know when the limit wind to schedule is in effect. We are also working on an email notification that will automatically be sent for the warning notification as well as the limitation of wind output.

IV. HISTORY

September 12, 2008: This DSO was created to provide instructions on limiting wind generation to the amount scheduled when there is not regulating capacity available to offset the over generation of wind.

March 13, 2009: Added language for repositioning FCRPS prior to limiting wind, included SOL'S as a reason for limiting wind, and reformatted Section II.

April 3, 2009: Adding electronic notification as the primary method for dispatching wind to schedule.

April 15, 2009: Updated section II.D.2. to change the date from April 15, 2009 to Spring 2009.

Technical Approval: for /s/ Bart McManus
Manager, Technical Operations

April 15, 2009
Date

BMcManus:smr:2912:04/15/09 (W:\DSO\DS0's Offical\200 series\DSO216.doc)

ATTACHMENT E

SAMPLE BONNEVILLE LETTER TO UNILATERALLY REVISE LGIA_s



Department of Energy

Bonneville Power Administration
P.O. Box 61409
Vancouver, WA 98666-1409

TRANSMISSION SERVICES

May 13, 2011

In reply refer to: TSE/TPP-2

Mr. David Glenn, Director, Transmission Origination
Klondike Wind Power III, LLC
c/o Iberdrola Renewables, Inc.
1125 NW Couch, Suite 700
Portland, OR 97209

Dear Mr. Glenn:

During this past spring the Bonneville Power Administration (BPA) has taken a number of significant actions to avoid or minimize the need to make a final decision whether to adopt the proposed Environmental Redispatch Policy. Specifically, BPA has:

- Asked Energy Northwest to shut down its Columbia Generating Station nuclear power plant for refueling on April 1, 2011, instead of April 6, 2011. This action removed over 1,100 MW of generation from the regional power supply.
- Postponed planned, non-essential transmission maintenance during early April 2011. We continue working closely with other utilities, including California intertie owners, to evaluate opportunities to move maintenance operations out of May and June of 2011, maximizing transmission capacity during the spring runoff.
- Signed flexible power sales contracts to increase hydro generation during high streamflow periods. We continue to explore thermal generation displacement agreements with counterparties.

BPA is doing everything it can to position streamflows for the spring to protect young migrating fish. The risks posed by severe over generation events require BPA to be prepared to take further steps. As a result, the Administrator has signed the Final Record of Decision (ROD) adopting Interim Environmental Redispatch and Negative Pricing Policies. As provided in the Final ROD, unilateral amendments to Appendix C of Large Generator Interconnection Agreements (LGIA) will help clarify that generators must reduce generation when ordered to do so during an Environmental Redispatch. The Final ROD is an interim decision, however, and expires on March 30, 2012.

Therefore, pursuant to its authority under Article 9.3 of Klondike Wind Power III, LLC's (Klondike III) LGIA, BPA is unilaterally revising Appendix C of the LGIA, Contract No. 06TX-12406, to clarify that Klondike III's ongoing obligation to comply with Dispatch Orders includes complying with orders to reduce generation in accordance with BPA's Environmental Redispatch Business Practice(s) and Dispatch Standing Order 216. In addition, BPA has also made minor formatting changes to Appendix C. Please refer to the enclosed original of Appendix C, Revision No. 2 which reflects these changes. Due to the interim nature of the Final ROD, however, these revisions to Appendix C will terminate on March 30, 2012. Before March 30, 2012, BPA will issue a revised Appendix C that will take effect on March 31, 2012.

While Appendix C states that BPA and Klondike III must mutually agree to any revisions, this conflicts with BPA's right to unilaterally revise Appendix C under Article 9.3 of the body of the LGIA. Since Article 30.2 of the LGIA states that the terms of the body of the agreement prevail over the terms in the appendices, Article 9.3 controls and, accordingly, BPA is exercising its right to unilaterally revise Appendix C.

If you have any questions regarding this letter, please contact me at (360) 619-6007.

Sincerely,



Angela DeClerck
Senior Transmission Account Executive
Transmission Sales

Enclosure

APPENDIX C, REVISION NO. 2 INTERCONNECTION DETAILS

This Appendix C, Revision No. 2 updates formatting of Section 2 and adds Section 2(b). The revisions in this Revision No. 2 are effective on May 13, 2011 and shall terminate on March 30, 2012.

1. IDENTIFICATION OF THE LARGE GENERATING FACILITY

Interconnection Customer's Large Generating Facility consists of wind turbines totaling up to 198.8 MW net of Generating Facility Capacity, connected together by a mostly underground 34.5 kV radial collector distribution system. Interconnection Customer initially installed wind turbines totaling 122.4 MW of Generating Facility Capacity. Interconnection Customer will install turbines of General Electric 1.5 MW model to make up the remaining 76.5 MW of the total 198.8 MW net Generating Facility Capacity. The Parties may agree (with such agreement not to be unreasonably withheld) to the installation of turbines of a different make and/or generating capacity consistent with the Transmission Provider's technical requirements

2. CONTROL AREA OBLIGATIONS FOR THE INTERCONNECTION CUSTOMER

- (a) As specified in Article 9.4 of the LGIA, the Interconnection Customer is responsible for compliance with Control Area requirements. This includes the WECC Reliability Criteria referenced in Article 4.3.1.1 of the LGIA. The Joint Operating Committee described in Article 29 will address past performance issues and future compliance requirements. Supplemental information to comply with the requirements is detailed in this Appendix C, Revision No. 2 below.
- (b) Transmission Provider's Control Area requirements include compliance with operating instructions issued in accordance with Transmission Provider's dispatch standing orders, including, but not limited to, Dispatch Standing Order 216 and orders to reduce generation in accordance with Transmission Provider's Environmental Redispatch Business Practices, as such dispatch orders may be amended from time to time.

Metering:

- (1) **Generation Metering:** metering provided by Transmission Provider capable of measuring and recording real and reactive power into and separately out of the Large Generating Facility, connecting to the Transmission Provider's 230 kV Schoolhouse to John Day Circuit. There shall be no loss factor adjustments from the point of metering to the Point of Interconnection;

Voltage: 230 kV.

- (2) **Station Service Metering:** the generation OUT metering will provide the station service power to the Large Generating Facility from the Transmission Provider's System. There shall be no loss factor adjustments from the point of metering to the Point of Interconnection. Separate metering provided by others is required to operate the facility when connection to the Transmission Providers System is interrupted. Arrangements for station service power and associated metering are the responsibility of the Interconnection Customer;

Voltage: 230 kV.

3. VOLTAGE SCHEDULES AND REACTIVE POWER

As set forth in Article 9.6.2 of the LGIA, the following provides the Interconnection Customer the information for voltage schedules.

- (a) Each calendar year, Transmission Provider, may review the voltage schedules that shall include a maximum and a minimum voltage setpoint consistent with the design limitations of the Large Generating Facility. Interconnection Customer shall at all times operate the Large Generating Facility and notify Interconnection Customer of any required changes. Interconnection Customer shall at all times operate the Large Generating facility at a voltage level between the maximum and minimum setpoint, consistent with the design limitations of the Large Generating Facility. Transmission Provider shall provide Interconnection Customer, in writing, with a contact for any questions concerning voltage schedules.
- (b) When necessary to maintain the reliability of the FCRTS, Transmission Provider may temporarily suspend the voltage schedule and prepare and send to Interconnection Customer a replacement voltage schedule with different minimum and/or maximum setpoints, consistent with the design limitations of the Large Generating Facility. In such case Interconnection Customer shall operate the Large Generating Facility between the minimum and maximum setpoints of the replacement voltage schedule as long as such replacement voltage schedule is in effect. Transmission Provider will determine in its sole discretion the period during which such replacement voltage schedule shall be in effect.
- (c) Interconnection Customer shall provide Transmission Provider information on the Large Generating Facility's reactive power capability.
- (d) To the extent practicable, the voltage schedules that Transmission Provider prepares pursuant to this Appendix C, Revision No. 2, shall not require voltage support from the Large Generating Facility that is greater than the voltage support that Transmission Provider requires from other generating facilities that provide effective voltage support to the area in which the Large Generating Facility is located and that are of comparable size to the Large Generating Facility.

- (e) The Transmission Provider data gathering equipment located at the Klondike Schoolhouse Substation and John Day 230 kV Substation Large Generating Facility control house will collect analog values for MW, MVAR and kV and other generation equipment status as required.
- (f) The Transmission Provider has determined that low voltage ride through (LVRT) is required for this project. As the generation is connected to the main grid, it is essential that the wind project have the LVRT capability as described in Appendix G of this LGIA.
- (g) The Transmission Provider has determined that dynamic reactive power capability of a power factor of 0.95 leading and lagging capability is required at the Schoolhouse Substation at the 34.5 kV bus, as provided by the dynamic reactive power capability of the GE 1.5 MW machines. Automatic Voltage Control (AVC) requirements is required to provide voltage support of the transmission system. The increment of reactive power required above the dynamic requirement can be supplied by shunt capacitors or other means. Voltage changes due to capacitor switching shall be limited to less than five-tenths (0.5) percent per step at the 230 kV Point of Interconnection with a maximum time delay of thirty (30) seconds.

4. REMEDIAL ACTION SCHEME

- (a) Transmission Provider will install generator-tripping equipment at the Transmission Provider's John Day Substation Large Generating Facility sufficient to allow Transmission Provider to trip all of the generation at the Large Generating Facility in order to maintain compliance with reliability criteria through a remedial action scheme (RAS). Such RAS includes the equipment installed at the Transmission Provider's John Day Substation and certain communications and other equipment owned by Transmission Provider. The Transmission Provider will enable generator tripping as specified in the appropriate Transmission Provider Dispatch Standing Orders (DSO), when line loadings on certain transmission paths exceed certain levels. RAS will automatically trip generation of the Large Generating Facility if a line outage occurs while generator tripping is enabled.
- (b) Transmission Provider will update initial RAS hardware in writing as system conditions warrant. Transmission Provider will provide Interconnection Customer as much notice as reasonably possible of its intent to revise such RAS hardware. As system conditions warrant, Transmission Provider may change the amount of generation that Interconnection Customer must enable for tripping, the line loading levels at which Transmission Provider requests enabling of generator tripping, and the line outages for which the Large Generating Facility will be enabled and tripped.

- (c) Transmission Provider will test and verify RAS signals once each calendar year. Interconnection Customer will provide personnel and assist with testing as determined by Transmission Provider. If, after such testing or at any other time, Transmission Provider determines, in its sole discretion, that the generator tripping equipment is not in operational condition, Interconnection Customer may not operate the Large Generating Facility until, at Interconnection Customer's expense, Interconnection Customer has restored the generator tripping equipment to operational condition, as determined by Transmission Provider in its sole discretion.
- (d) Interconnection Customer will notify Transmission Provider prior to modifying the capacity of the Large Generating Facility or the equipment installed to provide generator-tripping capability. In the event of any such modification, Interconnection Customer will not operate the Large Generating Facility until Transmission Provider has completed the necessary modifications to RAS, as determined by Transmission Provider in its sole discretion. If the Transmission Provider must make modifications to RAS because of modifications by Interconnection Customer, such modifications to RAS will be at Interconnection Customer's expense.
- (e) Information exchange on the RAS design and operation will be performed as part of the duties of the Joint Operating Committee as described in Article 29 of the LGIA.

5. REQUIRED CONTROL AREA SERVICES

	Provided By	Contract No.
Generation Imbalance Service	Transmission Provider	06TX-12406
Operating Reserves – Spinning Reserve	Transmission Provider ¹	06TX-12406
Operating Reserves – Supplemental Reserve	Transmission Provider ¹	06TX-12406

(W:\TMC\CT\Klondike Wind Power III, LLC\Revisions\12406_AppC_R2_Klondike_III_(PhaseII).doc)

¹ Unless otherwise provided for under a Transmission Provider Transmission Service Agreement consistent with Transmission Provider's Open Access Transmission Tariff and associated business practices.

ATTACHMENT F

RESPONSE TO QUESTIONS AT TIPSC

**Response to Questions Raised at
TIPSC Regarding Proposal to Modify
Section 9 of Bonneville's Tariff**

Bonneville's proposed revision to section 9 of the Bonneville Tariff was discussed at the 9 June 2008 Transmission Issues Policy Steering Committee (TIPSC). The current Tariff language requires FERC approval before Bonneville can change its Tariff. Bonneville proposes to revise this language to remove the requirement for FERC approval to instead allow Bonneville to unilaterally change the Tariff after a public process involving Transmission Customers (Customers) and interested parties.

During the TIPSC meeting, participants asked Bonneville for additional information in three areas. First, it was requested that Bonneville provide the exact language of section 9 as currently written and the proposed revised language. Second, they wanted to know why section 9 was put in the Bonneville Tariff in the first place. Third, they wanted to know what rights they are giving up and what recourse will be available to them, should they have a complaint in the future.

Section 9

Current language in the Bonneville Tariff:

9 Regulatory Filings

Nothing contained in the Tariff shall be construed as affecting in any way the right of the Transmission Provider to unilaterally propose a change in rates, terms and conditions, charges or classification of service. The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the rates that apply to transmission service under such Service Agreement pursuant to applicable law. The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the terms and conditions of this Tariff upon, and only upon, a determination by the Commission that (i) such change is just and reasonable and not unduly discriminatory or preferential, or (ii) such change meets the non-public utility reciprocity requirements pursuant to a request for declaratory order under 18 CFR § 35.28(e).

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

Proposed revision, with deletions indicated and new language underlined:

9 Regulatory Filings

~~The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the rates that apply to transmission service under such Service Agreement pursuant to applicable law. The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the terms and conditions of this Tariff~~ after conducting a public process in which

Deleted: Nothing contained in the Tariff shall be construed as affecting in any way the right of the Transmission Provider to unilaterally propose a change in rates, terms and conditions, charges or classification of service.

Transmission Customers and other interested parties have an opportunity to review and comment on all proposed changes. Such public process shall include the following: (i) at least one public meeting, with additional public meetings to be held as necessary and appropriate; (ii) a period of not less than 30 days after the conclusion of the public meeting process during which all Transmission Customers and other interested parties may file written comments with the Transmission Provider regarding the proposed changes; and (iii) written responses by the Transmission Provider to all written comments received, posted on the Transmission Provider's web site.

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

Deleted: upon, and only upon, a determination by the Commission that (i) such change is just and reasonable and not unduly discriminatory or preferential, or (ii) such change meets the non-public utility reciprocity requirements pursuant to a request for declaratory order under 18 CFR § 35.28(e).

History of Section 9

In 1996, FERC issued the *pro forma* Tariff and required all public utilities to adopt it as the terms and conditions for transmission service for all Customers. Under section 9 of the Tariff, public utilities may unilaterally apply to FERC for a change in the Tariff. If approved, the change applies to all Customers.

Historically, Bonneville entered into bilateral contracts with Customers where each contract contained the terms and conditions of transmission service. Bonneville could amend a contract only with the consent of the other party. However, Bonneville also adopted the *pro forma* Tariff, with some deviations, in order to obtain reciprocity. Recognizing that the Tariff must be free to grow and change over time, Bonneville also wanted the right to change the Tariff. The Customers, however, were concerned about giving Bonneville, which was not subject to FERC's authority, the right to unilaterally change the Tariff. As part of the 1996 Final Transmission Terms and Conditions Proposal, Bonneville reached a compromise with its Customers under which Bonneville adopted its own version of section 9.¹ Bonneville included a section 14 in its initial Tariff that provided:

BPA may impose subsequent Tariff changes upon Customers who have executed Service Agreements only upon a determination by the Commission that the changes are just and reasonable, not unduly discriminatory or preferential, unless otherwise agreed in writing. Though not required to do so under law, BPA agreed to this as part of the Transmission Settlement.²

Included in the Standard Form of Service Agreements was the following provision:

Unless otherwise mutually agreed in writing by the parties, Bonneville may change the terms and conditions of the Tariff upon, and only upon, a determination by the Commission that such change is just and reasonable and not unduly discriminatory or preferential.³

¹ Bonneville Power Administration, FERC Docket No. NJ97-3-000, Petition for Declaratory Order Regarding Transmission Terms, Conditions and Rates for Open Access Transmission Service (Dec. 16, 1996).

² Id. at 27-28 (internal citation omitted).

³ Id. at Attachment 2, Bonneville Power Administration Point-to-Point Transmission Service Tariff, TC-96-FS-BPA-02 at 64; Id. at Attachment 2, Bonneville Power Administration Network Integration Service Tariff, TC-96-FS-BPA-01 at 44.

In 2001 Bonneville held a second terms and conditions proceeding, in which it amended a number of Tariff provisions. As part of that process Bonneville removed the above language from the service agreement and incorporated similar language in section 9 of the Tariff (this is the current section 9). Thus, currently, even if the parties agree to a change to the existing Tariff, if FERC does not approve the change it will not take effect. With the revised language, a public process involving the parties would replace FERC approval.

Customer Recourse under the Revised Section 9

There is one significant difference if Bonneville adopts the proposed revision of section 9 (or some variation thereof): Bonneville would have the right to amend the Tariff even if FERC did not approve the amendment. However, Bonneville would be sacrificing reciprocity status by doing so, and therefore would not make such a change lightly.

It is also important to note what would not change. The following paragraphs summarize the status of Bonneville's Tariff if it revises section 9:

1. Bonneville would continue to file its Tariff with FERC. (Although it should be noted that if FERC ever disapproves an amendment, and Bonneville adopts the amendment anyway, Bonneville will sacrifice reciprocity and therefore will have little reason to file Tariff amendments with FERC thereafter.) In order to obtain safe-harbor status, the non-jurisdictional Transmission Provider must file all amendments to its Tariff with FERC for approval. Safe-harbor status means that, because FERC has approved your Tariff, public utilities know at the time you request service that you meet FERC's test for reciprocity. Therefore, they must grant you open access transmission. If you have not filed your Tariff with FERC, you are still entitled to reciprocity, that is, to open access service from public utilities, if your Tariff satisfies FERC's standards. However, because FERC has not approved your Tariff, public utilities have an opening to argue that your Tariff does not satisfy FERC's standards.

Removal or amendment of section 9 would not change this process; note that of the 20 non-jurisdictional utilities that filed reciprocity Tariffs with FERC after the issuance of Order 888, only two retained a requirement for FERC approval of Tariff amendments. Therefore, it is important to separate the requirement of FERC approval from the FERC filing process itself. FERC did not expect non-jurisdictionals to include in their Tariffs a requirement of Commission approval of amendments. If Bonneville amends section 9 it can make a change before obtaining FERC approval if it wishes (or without FERC approval). But if Bonneville wants to retain safe-harbor status, it will still have to file its Tariff with FERC and obtain the Commission's approval.

2. The process for protesting a proposed amendment to Bonneville's Tariff will be unchanged (as long as Bonneville retains reciprocity). If Bonneville continues to file proposed Tariff changes with FERC, any party can file a protest arguing that Bonneville's proposed change does not meet the Commission's reciprocity standards. The Commission would then make its decision just as it does today. The difference is that even if FERC disapproved the amendment Bonneville could still adopt it. However, Bonneville would have to be prepared to sacrifice safe-harbor status.
3. The complaint process would also be unchanged (again, at least as long as Bonneville maintained reciprocity status). Any Customer that believed Bonneville was not following

its Tariff could file a complaint at FERC. If FERC agreed with the complaint, it could issue an order requiring Bonneville to follow the Tariff if it wanted to maintain reciprocity status. That is the same order that FERC would issue today. Today, all FERC can do in response to a complaint against Bonneville is threaten to pull reciprocity unless Bonneville adheres to its order. FERC cannot order Bonneville to follow the Tariff. Therefore, the removal or amendment of section 9 would not affect the remedies available to Customers.

4. Amendment of section 9 also would not affect Bonneville's current policy of following new FERC initiatives, such as Order 890. Note that section 9 *prohibits* Bonneville from making changes without FERC approval. It does not *require* Bonneville to amend its Tariff when FERC amends the *pro forma* Tariff, or even include any implication that we will do so. It is irrelevant to that issue. Therefore, the course Bonneville has followed regarding Order 890, in which Bonneville is adopting the 890 Tariff provisions to the greatest extent possible, would have been no different if section 9 were not in the Tariff. Likewise, Bonneville's incorporation of various NAESB business practices in the Tariff has nothing to do with section 9.

Customer Benefit Under the Revised Section 9

Finally, Customers can benefit from the proposed amendment to section 9. Today, if Customers support an amendment but FERC does not, Bonneville cannot change the Tariff. For example, Order 890 prohibited NT Customers from designating system sales as Network Resources. Bonneville planned to request a deviation, which became unnecessary when FERC changed its position in Order 890A. Had FERC not done so, it could have denied Bonneville's request for a deviation, causing major problems for Bonneville's NT Customers. However, if Bonneville had already amended section 9, it could have allowed system sales to qualify as Network Resources even if FERC did not agree.

ATTACHMENT G

NOTICE OF COMPLAINT

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Iberdrola Renewables, Inc.;)	
)	
PacifiCorp;)	
)	
NextEra Energy Resources, LLC;)	
)	
Invenergy Wind North America LLC;)	
and)	
)	
Horizon Wind Energy LLC)	
)	Docket No. EL11-___-000
Complainants,)	
)	
v.)	
)	
Bonneville Power Administration)	
)	
Respondent.)	

NOTICE OF COMPLAINT

June 13, 2011

Take notice that on June 13, 2011, Iberdrola Renewables, Inc., PacifiCorp, NextEra Energy Resources, LLC; Invenergy Wind North America LLC; and Horizon Wind Energy LLC (collectively, "Complainants") filed a formal complaint against Bonneville Power Administration ("Bonneville") pursuant to Sections 210, 211A, 212, 307, 308, and 309 of the Federal Power Act ("FPA"), and 18 C.F.R. § 386.206 (2010), requesting that the Federal Energy Regulatory Commission ("Commission") use its authority under FPA Sections 210, 211A and 212 to order Bonneville to provide transmission services on terms and conditions that are comparable to those under which Bonneville provides transmission services to itself and that are not unduly discriminatory or preferential.

Complainants certify that copies of the complaint were served on the contacts for Bonneville as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person

wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20436.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose,
Secretary

CERTIFICATE OF SERVICE

I hereby certify that on June 13th, 2011, I served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Daniel P. Archuleta
Daniel P. Archuleta

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Iberdrola Renewables, Inc., et al.)	
)	
Complainants,)	
)	
)	Docket No. EL11-___-000
)	
Bonneville Power Administration)	
)	
Respondent.)	
)	
)	

**MOTION TO INTERVENE AND COMMENTS OF
THE AMERICAN WIND ENERGY ASSOCIATION**

Pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission (“Commission” or “FERC”) Rules of Practice and Procedure,¹ the American Wind Energy Association (“AWEA”) hereby moves to intervene and file comments in the above-captioned proceeding. AWEA files these comments in support of the complaint filed by Iberdrola Renewables, Inc., PacifiCorp Energy, NextEra Energy Resources, Horizon Wind Energy, and Invenergy LLC (collectively, “Complainants” or “Complaint”) against the Bonneville Power Administration (“BPA”).²

It would be hard to think of a clearer violation of the preferential treatment and undue discrimination standards than the facts of this case present: BPA’s use of its transmission system to break existing transmission contracts when such action benefits its own generation over competing generators and to control the price of energy for its customers. We see no reason

¹ 18 C.F.R. §§ 385.211, 214.

² 16 U.S.C. §§ 824e, 824v, 825e and 825h.

why the Commission should not require BPA, as with any other transmission provider, to honor its transmission contracts whenever it desires to “protect” certain interests from prices for power that it feels it should not have to pay. In order to send a message that all transmission providers must provide transmission on a comparable basis and must adhere to their contracts, we request that the Commission grant the relief requested by the Complainants and declare that BPA’s curtailment practices are unduly discriminatory and require it to revise its curtailment practices consistent with the requirements of the Federal Power Act (“FPA”).

I. INTRODUCTION

AWEA believes that the facts of this case are clear: BPA has chosen to use its position as the controller of the region’s transmission system to promote the economic interests of its primary power customers over the interests of its transmission customers. In doing so, BPA has broken contracts with wind generators and seized their transmission rights, not to address reliability or environmental concerns, but out of apparently pure economic concerns—ensuring that its preference customers do not have to pay higher power prices.³ Fortunately, as discussed below, there are multiple means by which BPA could have satisfied its contractual, reliability, and environmental obligations without unduly discriminating against competing generators.

During times of high hydropower generation, lower electric demand, and high wind generation, BPA’s Environmental Redispatch and Negative Pricing Policies (“Redispatch Protocol”) allows wind generation contracts to be curtailed by BPA without any compensation to wind project owners.⁴ In other words, this policy allows BPA to unilaterally breach wind

³ BPA argues that “paying negative prices to displace renewable generation to ensure BPA’s environmental responsibilities are met is neither *socially optimal* nor consistent with traditional principles of cost causation.” Redispatch Protocol at 12 (emphasis added).

⁴ BPA suggests that its Redispatch Protocol is not discriminatory because it also applies to thermal generation. Redispatch Protocol at p. 15. However, under the Redispatch Protocol, wind generators would be the only generation type that BPA would likely have to affirmatively pay in order to induce them to back down and, therefore, the protocol has a disparate impact on wind generation (a disproportionate adverse impact).

energy contracts. This creates a dangerous precedent with regard to the Commission's long-held support for the notion of the sanctity of contracts.⁵ BPA, like all providers, does not have the right to unilaterally change its delivery contracts with its customers and abrogate their transmission agreements. To allow such a policy to stand could have a chilling effect on the sanctity of transmission contracts in the Pacific Northwest, as well as the nation as a whole, as it would create uncertainty for existing and prospective customers regarding their ability to deliver their energy.

BPA's actions have already cost wind companies millions of dollars and will likely serve to stifle new investment in renewable energy in the Pacific Northwest.⁶ This directly undermines the Obama Administration's policy of promoting a robust renewable energy plan for the nation. Representative Earl Blumenauer recently stated: "The actions that the Bonneville Power Administration has undertaken are in direct conflict with the stated renewable goals of the Department of Energy, the Obama Administration, many key energy policy leaders nationally and regionally, and at variance with what we've attempted to do in the Pacific Northwest to grow this industry."⁷ In addition, expressing similar concerns, Representative Ed Markey sent a letter to Energy Secretary Steven Chu earlier, stating: "[T]his action, if implemented, would economically impact current facilities and could lead to the cancellation of future wind projects in the region . . . [and] create enormous uncertainty at a time when the Obama administration is

⁵ See, e.g., *PacifiCorp v. Reliant Energy Services, Inc.*, 99 FERC ¶ 61381 at P 25 (2002) ("The Commission's long-standing policy, consistent with a substantial body of Supreme Court and other judicial precedent, has been to recognize the sanctity of contracts. Rarely has the Commission deviated from that policy, and then only in extreme circumstances.").

⁶ We note that BPA has a statutory duty under the Northwest Power Act to facilitate the development of renewable resources within the Pacific Northwest. See Pacific Northwest Electric Power Planning and Conservation Act 16 U.S.C. § 839 (1980) ("Northwest Power Act").⁶

⁷ Earl Blumenauer, Address at WINDPOWER 2011 Conference (May 23, 2011) (on file with AWEA).

promoting increased investments in renewable energy technologies."⁸ We also think it is important to keep in mind that BPA's actions harm adjoining regions, such as California. In particular, BPA's substitution of renewable resources with its own hydro generation restricts those regions' ability to meet their renewable portfolio standards.

The Commission is not powerless to remedy this issue just because BPA is a federal agency. Indeed, in the Energy Policy Act of 2005 ("EPAct 2005"),⁹ Congress made sure that entities, such as BPA, are not sheltered from the Commission's jurisdiction to eliminate undue discrimination and protect competitive markets.¹⁰ Specifically, in section 211A of the FPA, Congress provided the Commission with the jurisdiction to eliminate undue discrimination by any entity, including federal power marketing agencies. In short, section 211A applies an analog of the undue discrimination standard that is applicable to public utilities in section 205 of the FPA for non-jurisdictional entities and, as such, requires transmission service offered by non-jurisdictional entities to be on terms and conditions that are comparable to those under which they provide transmission service to themselves and that are unduly discriminatory and preferential. BPA's actions clearly violate these fundamental principles of comparable and non-discriminatory transmission service.

The Commission has also long held that transmission providers may only curtail their customers on a non-discriminatory basis to avoid reliability violations, but they cannot curtail

⁸ Letter from Rep. Edward J. Markey, to Hon. Steven Chu, Secretary, U.S. Dep't of Energy (May 3, 2011), *available at* http://markey.house.gov/docs/chu_letter_05.03.11.pdf.

⁹ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

¹⁰ Indeed, if the Commission were to find that a public power entity, such as BPA, engaged in undue discrimination in providing transmission and interconnection service, based on section 211A, the Commission would have the statutory obligation to remedy the situation. This is consistent with the interpretation of the provision by the Commission's then-General Counsel Cynthia A. Marlette in her March 2005 written responses to questions posed by the House Subcommittee on Energy and Air Quality: "The provisions in section 1231 of the Discussion Draft would provide helpful authority to *ensure* that non-public utilities provide non-discriminatory access to their transmission systems similar to the requirements currently imposed on public utilities." H.R. Ser. No. 109-1, at 226 (2005) (Statement of Cynthia A. Marlette, General Counsel, Federal Energy Regulatory commission) (emphasis added).

customers simply because they don't like the prevailing market price of power. Accordingly, BPA's curtailment practices also violate the terms and conditions of its Open Access Transmission Tariff ("OATT") and its interconnection agreements with wind generators because they were not done for reliability concerns.

AWEA respectfully requests that the Commission declare that BPA is violating its OATT and LGIA and that its actions are unduly discriminatory, contrary to the requirements of section 211A of the FPA, and order BPA to revise its curtailment practices to comport with the requirements of the FPA and FERC's policies.

II. COMMUNICATIONS

The following persons (as indicated by a "*") should be included on the official service list in these proceedings and should be served with all communications concerning this motion:

Tom Vinson Michael Goggin *Gene Grace AWEA Suite 1000 1501 M St NW Washington DC 20005 (202) 383-2521 ggrace@awea.org

III. DESCRIPTION OF INTERVENOR

AWEA is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind energy resources in the United States. AWEA members include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, renewable energy supporters, utilities, marketers, customers and their advocates.

IV. MOTION TO INTERVENE

AWEA requests that its Motion for Leave to Intervene be granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. AWEA and its members have a vital interest in ensuring that the Commission's policies properly promote wind generation development in the Pacific Northwest. AWEA, thus, has a direct and substantial interest in the outcome of this proceeding that cannot be adequately represented by any other party.

V. COMMENTS

On May 13, 2011, BPA issued the Redispatch Protocol,¹¹ which authorizes it to unilaterally curtail wind generation below scheduled levels and substitute its own hydropower in BPA's Balancing Authority Area ("BAA"), in order to avoid paying "negative prices" when the Redispatch Protocol is in effect. In other words, under the Redispatch Protocol, BPA is free to order wind generation to shut down during certain high water events, allowing its own hydropower resources to be transmitted across a wind generators' firm transmission paths and delivered to the wind generators' loads. Since May 18, 2011, BPA, pursuant to its Redispatch Protocol, has curtailed thousands of megawatt-hours of wind generation and taken transmission capacity to deliver hydropower to customers that have contracted to obtain wind power, costing wind generators millions. BPA also has not changed the original e-Tag, depriving the receiving party of the renewable attributes it has purchased from the wind generator.¹²

As the Complainants demonstrate, BPA has committed multiple violations of the FPA, its OATT, and its LGIA that all stem from its undue discrimination of curtailing wind generation in favor of its own generation. Specifically, as discussed below, BPA's discriminatory actions contravene three distinct but related legal requirements: (1) sections 210, 211A and 212 of the

¹¹ *Administrator's Final Record of Decision on Redispatch and Negative Pricing Policy* (May 13, 2011), available at http://www.bpa.gov/corporate/pubs/RODS/2011/ERandNegativePricing_FinalROD_web.pdf.

¹² Redispatch Protocol at 71.

FPA; (2) the provisions of its OATT; and (3) the terms and conditions of its LGIA. Accordingly, the Commission should order BPA to cease its unduly discriminatory actions and provide transmission service that meets the Commission's statutory and regulatory standards.¹³

A. BPA's Actions are Unduly Discriminatory and Preferential under FPA Section 211A

BPA maintains in its Redispatch Protocol that it does not affect transmission rights and is only limiting the ability of a generator interconnected to its transmission system to generate.¹⁴ BPA also argues in the Redispatch Protocol that transmission customers' rights are unaffected because the quantity of energy the transmission customer schedules is delivered using the customer's transmission rights.¹⁵

The reality is that BPA is taking a generator's transmission rights and violating its firm commitments in violation of the FPA and the Commission's policies. BPA is simply taking firm transmission service purchased by wind generators and using it to serve those generators' customers with BPA's hydropower instead. BPA does not point to anything (nor could it) that suggests that it has the unilateral right to seize a transmission customer's firm transmission rights and use them to deliver its own energy to a wind energy customer's load when it does not like the prevailing market price.¹⁶ That is due to the fact that BPA's actions clearly violate the Commission's most fundamental principles of comparable and non-discriminatory transmission service. Indeed, its actions patently discriminate against wind generation and are unjust,

¹³ The Commission has long held that the central purpose of the FPA, OATT and LGIA is to eradicate undue discrimination. *See, e.g., Preventing Undue Discrimination and Preference in Transmission Services*, 112 FERC ¶ 61,299 at 1 (2005) (stating "the Commission issued Order No. 888 to remedy undue discrimination or preference in access to the monopoly owned transmission wires that control whether and to whom electricity can be transported in interstate commerce) (footnotes omitted); *Cal. Indep. Sys.*, 112 FERC ¶ 61,009 at 181 (2005) ("The Commission's authority to require the addition of the pro forma LGIP and LGIA to the OATT derives from our findings of undue discrimination in the interstate electric transmission market that formed the basis for Order No. 888").

¹⁴ Redispatch Protocol at 43.

¹⁵ *Id.* at p. 25.

¹⁶ *Id.* at 35.

unreasonable, unduly discriminatory and preferential.

FPA Section 211A¹⁷ was intended to ensure that the Commission would require non-jurisdictional entities, such as BPA, to provide non-discriminatory, open access on their transmission systems if they fail to do so.¹⁸ Specifically, section 211A's comparability standard requires transmission providers to provide transmission and interconnection service to others on terms and conditions that are comparable to the service it provides itself.¹⁹ The Commission has acknowledged that it has the clear authority under section 211A of the FPA "to order [a] non-public utility to provide 'open access' transmission service, *i.e.*, service to all eligible customers."²⁰

Since BPA does not subject its own generation or its own transmission to similar treatment as it does wind generation and its transmission rights (curtailing wind generation while explicitly protecting its own generation) under the Redispatch Protocol, it does not satisfy the comparability standard. In light of the Commission's authority under section 211A, it should require BPA to provide transmission service, including interconnection service, on terms and conditions that are comparable to those it provides itself and that are not unduly discriminatory or preferential.

¹⁷ In particular, FPA Section 211A(b) states: "[T]he Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services (1) at rates that are comparable to those that the unregulated transmission utility charges itself; and (2) on terms and conditions (not relating to rates) that are comparable to those under which the unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential." 16 U.S.C. § 824j-1(b).

¹⁸ In enacting Section 211A, Congress' stated intent was to allow the Commission "to require unregulated transmitting utilities to provide open access to their transmission systems." S. Rep. No. 109-78, at 49 (June 9, 2005).

¹⁹ In the event the Commission declines to interpret FPA Section 211A to include interconnection service, we request that the Commission direct BPA to provide interconnection service pursuant to sections 210 and 212(i) of the FPA.

²⁰ Order No. 890 at P 164.

B. BPA's Actions are Inconsistent with the Requirements of its OATT

We acknowledge that the OATT does permit BPA to “redispatch” a non-network customer’s generation resources regardless of the context. But, while the OATT permits the redispatch of a network customer’s generation, it only allows the redispatch of a transmission provider’s generation resources to maintain the schedules and reservations of transmission customers and does not allow that action to be taken for the curtailment of a customer’s generation.²¹ Moreover, even in the case of a network customer’s generation, any such redispatch must be for reliability reasons and must be done on a non-discriminatory basis. Nonetheless, BPA does not even suggest that its Redispatch Protocol is being implemented for reliability reasons. Accordingly, BPA’s actions provide for curtailment in a manner that violates the requirements of its reciprocity OATT.

C. BPA's Actions Are Inconsistent with its Interconnection Agreements

Contrary to its statements in the Redispatch Protocol, BPA does not have the contractual right to implement its Redispatch Protocol under the Large Generator Interconnection Agreement (“LGIA”). Specifically, BPA does not have the right to unilaterally amend the LGIA to grant itself the authority to implement the Redispatch Protocol. Since that agreement does not permit curtailment in accord with BPA’s actions, BPA is clearly violating the terms and conditions of its LGIA.²²

²¹ See Section 33.2 of the OATT (addressing “reliability redispatch”).

D. BPA Could Have Chosen Non-Discriminatory Alternatives to Achieve its Goals

BPA's curtailments have occurred without them exhausting other viable alternatives. The only explanation for that behavior appears to be that doing so conflicted with BPA's arbitrary "negative pricing" policy contained in the Redispatch Protocol—it did not want to pay those associated prices.²³ Indeed, there are a number of alternative actions BPA could have taken (and still could) to alleviate the over-generation issue.²⁴ For instance, BPA could have: (1) entered into arrangements with entities in British Columbia to take BPA's excess generation; (2) entered into agreements with neighboring utilities to take BPA's excess generation to displace their own thermal generation; (3) paid negative prices to induce wind and other generators to back down generation; and/or (4) BPA could have fairly compensated generators within its BAA for temporarily shutting down. BPA has apparently not seriously considered these alternatives due to the costs it perceives associated with taking these steps. In short, it appears BPA has taken the path of least resistance—curtailing wind generators at no cost to itself.

VI. CONCLUSION

WHEREFORE, for the foregoing reasons, AWEA respectfully requests that the Commission grant its motions to intervene, accept these comments into the record in this proceeding, and grant the relief requested herein.

Respectfully submitted,

²³ We note that to extent there are costs associated with paying negative prices, BPA would be acting consistent with the Northwest Power Act if it allocated those costs to its preference customers.

²⁴ While we recognize that BPA has certain restrictions regarding spill and water quality, it could have met those requirements without implementing the Redispatch Protocol. Moreover, to the extent environmental restrictions are relevant, they do not automatically provide BPA with an excuse to engage in anticompetitive behavior.

By: _____/s/ _Gene Grace_

Dated: June 13, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service lists compiled by the Secretary in these proceedings.

Dated at Washington, D.C. this June of 13, 2011