

Customer Comments on BPA's Proposed Draft Tariff Language

**Received February 3, 2012 from Puget
Sound Energy, Inc.**

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Bonneville Power Administration
Transmission Services
Via e-mail to Rich Gillman and Kristi Wallis

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Re: Comments of Puget Sound Energy, Inc. on BPA's Draft Common Services Provisions, New Section 1A, posted January 17, 2012

Puget Sound Energy, Inc. ("PSE") thanks Bonneville Power Administration ("BPA") for the opportunity to comment and to work cooperatively with BPA on the document entitled "New Section 1A – Draft Common Services Provisions ("Standard of Development, Interpretation, and Change"), posted January 17, 2012 (New Section 1a").

In the context of BPA's process of developing an Open Access Transmission Tariff ("OATT") for filing with the Federal Energy Regulatory Commission ("FERC"), PSE believes that it is unnecessary and inappropriate for BPA to advance, as proposed OATT language, its selective reading of certain of its organic statutes with respect to transmission access to third parties. Inclusion of a view of certain of BPA's organic statutes is unnecessary for purposes of developing BPA's OATT. In particular, inclusion of such language will lead to unnecessary controversy within the region and unnecessarily impede efforts to arrive at a broad consensus regarding BPA OATT language.

Further, the proposed New Section 1a represents a one-sided legal analysis of BPA's purported authority under its organic statutes, which legal analysis has already been the subject of controversy and disagreement among stakeholders.¹ PSE respectfully submits that including such controversial legal analysis in BPA's OATT is not in the region's best interests and will only lead to unnecessary controversy and delay.

In this regard, BPA's construction and interpretation of its organic statutes in relation to BPA's obligations to provide transmission service to third parties as reflected in the proposed New Section 1a is erroneous and incomplete. BPA's proposed New Section 1a states, for example, that under BPA's organic statutes, BPA "shall make transmission available to third parties on a fair and nondiscriminatory basis" only if BPA's transmission service--

- "'is not in conflict with the Administrator's other marketing obligations and the policies of [the Northwest Power Act] and other applicable laws,' 16 U.S.C. § 839f(i)(1),'

and can be provided

- 'without substantial interference with [the Administrator's] power marketing program, applicable operating limitations or existing contractual obligations,' 16 U.S.C. § 839f(i)(3)."

¹ See, e.g., Customer comments regarding BPA's "2011 NT MOA" and associated document entitled, "BPA Principles Relating to Planning, Operations and Commercial Practices Affecting the Federal Columbia River Power and Transmission Systems [Final 4/27/11]."

First, this statutory language should only be construed as limiting the transmission services BPA must make available for transmission of non-Federal power to any capacity in the Federal transmission system in excess of the capacity required to transmit electric power generated or acquired by the United States. A broader construction of this statutory language to make the provision of BPA transmission for non-Federal power conditioned on the absence of any adverse effect on BPA's power marketing program would produce an illogical result. For example, one could argue that BPA's transmission of any non-federal power may decrease the revenues available to BPA from sale of its surplus power. Therefore, BPA would arguably be precluded from transmitting any non-federal power. Obviously, such a construction would be contrary to the clear intent of the BPA organic statutes that require BPA to provide transmission for non-Federal power.

Second, BPA fails to recognize that Section 9(i)(1)²—in which the quoted “is not in conflict with the Administrator’s other marketing obligations” appears—expressly refers to a subset of BPA services, with respect to BPA’s disposal of or assisting in the disposal of electric power that a customer or customers proposes to sell. As such, Section 9(i)(1) does not extend to or address all transmission services provided by BPA, and the statutory fragment quoted—"is not in conflict with the Administrator’s other marketing obligations"—does not qualify or limit BPA’s obligation to provide transmission under statutory provisions other than Section 9(i)(1).

More fundamentally, BPA’s proposed New Section 1a ignores the directive to BPA in Section 9(d) of the Northwest Power Act to provide transmission to utilities for non-Federal power:

In addition to the directives contained in subsections (i)(1)(B) and (i)(3) of this section and subject to:

- (1) *any contractual obligations of the Administrator,*
- (2) *any other obligations under existing law, and*
- (3) *the availability of capacity in the Federal transmission system,*

the Administrator shall provide transmission access, load factoring, storage and other services normally attendant thereto to such utilities and shall not discriminate against any utility or group thereof on the basis of independent development of such resource in providing such services.

16 U.S.C. § 839f(d) (emphasis added). The directive in Section 9(d) to BPA is to provide transmission and other services to utilities *in addition to* the directives to provide transmission in Section 9(i) and is not qualified by any limitations in Section 9(i).³ BPA’s obligation to provide transmission to utilities under Section 9(d) is qualified only by BPA’s contractual obligations,

² 16 U.S.C. § 839f(i)(1).

³ 16 U.S.C. § 839f(i)

BPA's obligations under existing law (as of the adoption of the Northwest Power Act) and the availability of capacity on the federal transmission system.

Section 6 of the Transmission System Act provides as follows:

The Administrator shall make available to all utilities on a fair and nondiscriminatory basis, any capacity in the Federal transmission system which he determines to be in excess of the capacity required to transmit electric power generated or acquired by the United States.

16 U.S.C. § 838d. Each of Section 6 of the Transmission System Act and Section 9(d) of the Northwest Power Act requires BPA to provide transmission for non-Federal power without reference to "the Administrator's other marketing obligations" or "substantial interference with [the Administrator's] power marketing program."

Third, the proposed New Section 1a fails to acknowledge, for example with respect to the availability of capacity in the Federal transmission system, BPA's authority, undertakings and statutory obligations to construct facilities for the transmission of Federal and non-Federal power. *See, e.g.*, Section 4 of the Transmission System Act, 16 U.S.C. § 838b. In light of such authority, undertakings and statutory obligations, there should be little if any basis to deny requests for transmission of non-Federal power on the basis that the capacity is required to transmit electric power generated or acquired by the United States.

Finally, BPA has recognized in the proposed New Section 1a that FERC may require BPA to provide transmission service pursuant to Section 211A of the Federal Power Act. BPA has also indicated that "there is no irreconcilable conflict between section 211A, section 212(i), and Bonneville's statutes."⁴ It should not be necessary either to specify in BPA's OATT any reading of BPA's organic statutes nor should it be necessary in BPA's OATT to attempt to resolve any disputes regarding the interaction between BPA's organic statutes and Federal Power Act Section 211A. It should not be necessary, for example, to address in BPA's OATT any issues as to whether the fact that Section 212(i) of the Federal Power Act provides that "otherwise applicable Federal laws shall continue in full force and effect" in the application of certain other provisions of the Federal Power Act means that a similar provision should somehow be "read into" Section 211A. In short, it should not be necessary to address in BPA's OATT whether there is an irreconcilable conflict between BPA's organic statutes.

PSE appreciates BPA's review of these comments and consideration of the recommendations contained herein. By return e-mail, please confirm BPA's receipt of these comments.

⁴ Bonneville Power Administration's Request for Leave to Answer and Answer, Docket No. EL11-44-000, at 85 (Jan. 27, 2012) (FERC Accession No. 20120127-5265).