

123 FERC ¶ 61,264  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Suedeem G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinohoff.

Bonneville Power Administration

Docket No. NJ08-7-000

DECLARATORY ORDER

(Issued June 13, 2008)

1. On March 31, 2008, as supplemented on May 9 and May 30, 2008, Bonneville Power Administration (Bonneville) filed a petition for declaratory order requesting the Commission to accept revisions to its reciprocity tariff involving a Network Open Season (Open Season) process, cluster studies for processing transmission service requests, and the Precedent Transmission Service Agreement (Precedent Agreement) that will be used in the Open Season process. In addition, Bonneville requested a one-time waiver of certain existing tariff provisions in order to implement the Open Season process. In this order, we grant, in part, Bonneville's petition for a declaratory order, and will allow a one-time departure from certain existing provisions of its Order No. 888 reciprocity tariff.

**I. Background**

2. In Order No. 888, the Commission established a safe harbor procedure for the filing of reciprocity tariffs by non-public utilities.<sup>1</sup> Under this procedure, non-public utilities may voluntarily submit to the Commission an open access

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<sup>1</sup> *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. ¶ 31,036, at 31,760 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,281-87, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

transmission tariff (OATT) and petition for declaratory order requesting a finding that the tariff meets the Commission's comparability (non-discrimination) standards. If the Commission finds that the terms and conditions of such a tariff substantially conform or are superior to those in the *pro forma* OATT, the Commission will deem it to be an acceptable reciprocity tariff and will require public utilities to provide open access transmission service upon request to that particular non-public utility.<sup>2</sup>

3. In Order No. 890,<sup>3</sup> the Commission reformed the *pro forma* OATT to better ensure that transmission service is provided on a non-discriminatory basis. Order No. 890 requires that a non-public utility that already has an Order No. 888 reciprocity tariff must amend its tariff so that its provisions substantially conform or are superior to the new *pro forma* OATT in Order No. 890 if it wishes to continue to qualify for safe harbor treatment.<sup>4</sup>

4. Bonneville is not a public utility, but rather is a federal power marketing administration within the United States Department of Energy; it is not a public utility subject to sections 205 and 206 of the Federal Power Act (FPA).<sup>5</sup> After the issuance of Order No. 888, Bonneville sought and obtained a determination by the Commission that it had an acceptable reciprocity tariff.<sup>6</sup> Subsequently, Bonneville submitted additional filings to ensure that its tariff would continue to qualify for

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<sup>2</sup> In Order No. 888-A, the Commission clarified that, for reciprocity, a non-public utility must also comply with the Open Access Same-Time Information System (OASIS) standards of conduct requirements, or obtain a departure from them. *See* Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,286.

<sup>3</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

<sup>4</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 191.

<sup>5</sup> 16 U.S.C. §§ 824d, e (2000 & Supp. V 2005).

<sup>6</sup> *See United States Department of Energy – Bonneville Power Administration*, 80 FERC ¶ 61,119 (1997) (finding reciprocity tariff to be acceptable and requiring modifications); *United States Department of Energy – Bonneville Power Administration*, 84 FERC ¶ 61,068 (1998) (finding reciprocity tariff to be acceptable and requiring further modifications); *United States Department of Energy – Bonneville Power Administration*, 86 FERC ¶ 61,278 (1999) (finding reciprocity tariff to be acceptable).

safe harbor status. However, Bonneville has not yet filed a complete revised reciprocity tariff to comply with Order No. 890.

## II. Bonneville's Filing

5. Bonneville states that its current transmission service request queue contains approximately 9,262 megawatts (MW) of requests for transmission service on its network, exclusive of requests for transmission service on the Southern and Montana Interties. Bonneville declares that, given the size of its transmission queue, it is not efficient for Bonneville and its customers to plan upgrades for individual requests for transmission service. Bonneville also explains that it plans its transmission system to serve load growth of its regional customers, to integrate generation, including generation to meet state renewable portfolio standards, and to provide interconnections with other systems. Bonneville declares that, under current tariff mechanisms for processing transmission requests, its transmission planners cannot predict which requested transmission paths will actually be used, or when any new generation using the paths will be operated. According to Bonneville, this uncertainty makes planning for queued transmission requests impractical. Bonneville, therefore, initiated a stakeholder process with its customers and other interested parties to address these issues.

6. At the conclusion of that stakeholder process, on March 31, 2008, Bonneville submitted the revisions to its tariff at issue here, implementing an Open Season process for processing transmission service requests, providing a cluster study process for transmission service requests, and establishing a Precedent Agreement<sup>7</sup> that will be used in the cluster study process.<sup>8</sup>

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<sup>7</sup> According to Bonneville, the Precedent Agreement is similar to precedent agreements used in the natural gas industry, under which pipeline developers subscribe sufficient demand so that the Commission may issue a certificate of public convenience and necessity that allows construction. *See Texas Eastern Transmission Corporation*, 82 FERC ¶ 61,236, at 61,915-16 (1998). Under the Open Season, subscriptions to transmission capacity through Precedent Agreements let Bonneville determine whether there is sufficient demand to go forward with a decision to construct.

<sup>8</sup> Bonneville filed an errata to its filing to correct several editorial and typographical errors in the Precedent Agreement. Bonneville explains that these revisions do not change the Precedent Agreement in any substantive way. Bonneville notes that the revised Precedent Agreement in its May 9, 2008 filing is the Agreement that it has been offering to customers who participated in the initial Open Season process.

7. Bonneville requests a March 31, 2008 effective date for the revised sections in its reciprocity tariff in order to allow it to implement the provisions for its first Open Season process which began on April 15, 2008 and ended on May 15, 2008.

**A. Proposed Open Season Process and Precedent Agreement**

8. Bonneville proposes an Open Season process that will eliminate the need for multiple studies while realizing the benefits of the cluster study approach. Bonneville proposes to conduct an Open Season process annually for all long-term, point-to-point transmission service requests and network integration transmission service requests in the transmission queue at the time of each Open Season process. Bonneville proposes that, for transmission service requests to remain in the transmission service queue, it will require customers to sign a Precedent Agreement for each eligible transmission service request.

9. Bonneville states that the Precedent Agreement will obligate customers to take service if Bonneville satisfies the following conditions: (1) it determines that it can provide service for transmission service requests in the cluster at embedded cost, point-to-point and network integration transmission service rates, and (2) it decides to build the facilities needed to provide that transmission service, after completion of a Bonneville-funded National Environmental Policy Act (NEPA) study of the environmental impacts of the proposed facilities.

10. Bonneville points out that there are two principal features to its Open Season process. According to Bonneville, one feature is periodic (at least annual) cluster studies to analyze system impacts and new facility requests on an aggregate basis for long-term, point-to-point transmission service requests and requests for network integration service for network resources either that are already in the transmission service queue at the start of an application window or that apply for service during that application window.<sup>9</sup> Bonneville explains that, in order to be included in the cluster study, customers with eligible transmission service requests must sign a Precedent Agreement for each eligible transmission service request within a specified period following the close of the application window or prior to the transmission service request expiration date, whichever is earlier, and provide security. Bonneville states that, if customers do not sign and return the Precedent Agreement by the Open Season process deadline or prior to the transmission service request expiration date, those customers will be removed from the transmission queue.

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<sup>9</sup> Bonneville states that the application window for the first Open Season process was the 31-day period of April 15, 2008 through May 15, 2008.

11. Bonneville identifies the following additional details of its Open Season process: (1) it will provide notice to customers that will describe the Open Season process, including the timeline, for any upcoming Open Season process; (2) it will process certain transmission service requests with no or *de minimus* available transfer capability (ATC) impact for which such capacity is available as individual requests; (3) it will process applications for transmission service submitted after the application window closes as individual requests; (4) Exhibit A to the Precedent Agreement conforms with Exhibit A to the current *pro forma* point-to-point or network transmission service agreements and includes the service specifications for the transmission service request; (5) customers with eligible transmission service requests who sign Precedent Agreements will be obligated to provide security in an amount equal to the charge for 12 months of transmission service using the rate for long-term, point-to-point or network transmission service, as applicable, in effect at the time of the Open Season deadline; (6) it will re-stack the transmission service request queue as soon as practicable after the Open Season deadline, in a first-come, first-served order, with the eligible transmission service requests for which Precedent Agreements were signed and security received; (7) it will use due diligence to complete the Open Season [see transmittal at P. 3 paragraph (g)] cluster studies within 120 days after the Open Season deadline, or it will provide the customers notification of any delay and the reason for that delay; (8) based on the transmission service requests in the Open Season cluster study, it will analyze whether it can satisfy the conditions for each Precedent Agreement in the cluster study; (9) once it determines what facilities will be needed to provide transmission service to customers that participate in the Open Season cluster study, and estimates the costs for those facilities, it will determine the benefits that will accrue to the integrated network from the facilities, and allocate that portion of costs to the network with the remaining costs recovered from subscriptions by the Precedent Agreement customers; (10) it must satisfy the conditions precedent for each Precedent Agreement within specified deadlines, or the customer may terminate the Precedent Agreement, in which case the transmission service request will be processed under the tariff as an individual request; and (11) if it determines that it can reasonably provide service at embedded cost rates to customers participating in a cluster study, and determines, after a NEPA process, to build the facilities, it will sign Exhibit A to the Precedent Agreement.

12. Bonneville proposes, for customers who commit to take transmission service at embedded cost rates, to assume the costs of cluster studies and NEPA studies upfront until the costs can be rolled in to Bonneville's rates. Bonneville expects the rate impacts of the cost of the studies will be negligible. Bonneville points out that, if the studies were funded by customers, either individually or as a cluster, the cost of the studies could be so significant to the customers that it would preclude customer funding of such studies.

13. As discussed below, Bonneville proposes additional clustering provisions that are beyond the clustering provisions related to its Open Season proposal.

14. In its filing, Bonneville requests the Commission to act on its filing no later than June 16, 2008. Bonneville explains that the June 16, 2008 date is the date by which customers that elect to participate in the initial Open Season process must sign their Precedent Agreements. Bonneville states that, if the Commission does not act by June 16, 2008, it may delay the elimination of eligible transmission service requests for which Precedent Agreements were not signed from the transmission service request queue, and the re-stacking of the transmission service request queue.

**B. Proposed Cluster Study Tariff Provisions**

15. In its filing, Bonneville also requests approval of proposed cluster study provisions unrelated to its Open Season proposal. Bonneville states that, if customers request a cluster study, it will determine whether it can accommodate the request. Bonneville notes that it identified the factors it may apply to determine whether cluster service requests are appropriate. But, Bonneville notes, it does not require any additional process for a request to conduct a cluster study.

**C. Requested Waiver of Existing Tariff Provisions**

16. In its filing, Bonneville also requests a one-time waiver of certain sections in its current tariff in order to implement the new Open Season process and the associated cluster studies: (1) sections 17.6.2, 19.1, 19.2, 19.3, 19.4, 19.5, 29.6, 32.1, 32.2, 32.3, and 32.4 relating to system impact study agreements or facilities study agreements; (2) sections 19.4 and 32.4 relating to customer acceptance of service after completion of the facilities studies; (3) sections 17.6.2 and 29.6 that require Bonneville to tender a service agreement after completion of any necessary environmental review; (4) section 19.7 relating to partial interim service; (5) section 2.2(a) relating to reservation priority for existing customers; (6) section 17.2(vii) providing for submittal of the term of the requested transmission service in the original application; and (7) sections 19.4 and 32.4 relating to the security that customers must provide to retain their position in the transmission service request queue.

17. Bonneville explains that these waivers are required because it will apply the first Open Season process to eligible transmission service requests that were in the transmission queue beginning April 15, 2008, and to eligible transmission service requests that entered the transmission queue before the end of the application window on May 15, 2008.

**D. Waiver of Filing Fees**

18. Bonneville requests a waiver of the filing fee for petitions for declaratory orders.<sup>10</sup> Bonneville explains that it is a federal power marketing administration, and, thus, is exempt from such fees.

**III. Notice of Filing and Interventions**

19. Notice of Bonneville's filing was published in the *Federal Register*, 73 Fed. Reg. 19,830 (2008), with interventions and protests due on or before April 30, 2008. The following entities filed timely motions to intervene: PacifiCorp; Coral Power, LLC; Portland General Electric Company; and Puget Sound Energy, Inc. The following entities filed timely motions to intervene and comments: Iberdrola Renewables, Inc. (Iberdrola); Public Utility District No. 1 of Snohomish County, Washington (PUD); Public Generating Pool (PGP); City of Seattle, Washington (Seattle); Caithness Shepherds Flat, LLC (Caithness); Powerex Corporation (Powerex); and Renewable Northwest Project (RNP) and American Wind Energy Association (AWEA)(filing jointly).

20. RNP and AWEA, Seattle, Iberdrola, and Powerex generally support Bonneville's proposed Open Season process. They note Bonneville's use of its stakeholder process to ensure that customers' input was included in the proposed Open Season process. They declare that Bonneville's proposal to cluster transmission service requests for study is efficient, and will capture load and resource diversity inherent in power system operation. Powerex states that Bonneville's proposed Open Season process will ensure that customers in the queue who are not ready to take service do not encumber existing ATC for customers who are ready to take transmission service, and can currently use that service. Powerex states that the proposed Open Season process will consolidate and commit customers to specific transmission infrastructure. Powerex also states that a consistent revolving Open Season process will provide customers with needed certainty about when to submit transmission service requests in order to meet their business schedule needs.

21. While intervenors generally support Bonneville's filing, RNP and AWEA, Iberdrola, and Powerex express concerns relating to perceived shortcomings in Bonneville's proposed Open Season and cluster study processes. They offer some suggestions and comments relating to these processes.

22. The intervenors nevertheless conclude, however, that Bonneville's proposed Open Season process will efficiently determine which transmission

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<sup>10</sup> See 18 C.F.R. § 381.108 (2007).

service requests are ready to move forward by requiring customers to make upfront financial and transmission service commitments before any ATC is reserved for their requests. Therefore, these entities request the Commission to grant Bonneville's petition for a declaratory order, and allow it to proceed with the Open Season and cluster study processes proposed in its filing.

23. On May 30, 2008, Bonneville filed an informational filing providing a status report of the initial open season process initiated April 15, 2008.

#### **IV. Discussion**

##### **A. Procedural Matters**

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

##### **B. Substantive Matters**

25. We find that Bonneville's Open Season process, along with the associated Open Season cluster study process and Precedent Agreement, satisfy the Commission's standards for reciprocity, as discussed further below.

26. Bonneville has requested a March 31, 2008 effective date. Bonneville, as noted above, is not a public utility whose rates, terms and conditions of service are subject to the requirements of FPA sections 205 and 206. As a consequence, the Commission does not "accept" such rates, terms and conditions under FPA sections 205 and 206. As a further consequence, the Commission does not determine an effective date for such rates, terms and conditions under FPA sections 205 or 206.

27. We note, however, that the Commission's policy is not to rule on safe harbor status until a non-public utility incorporates into its tariff the reforms adopted in Order No. 890.<sup>11</sup> We note, further, that Bonneville's filing does not purport to be a filing in compliance with Order No. 890. As we noted in the

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<sup>11</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 191; see also *Southwest Transmission Cooperative, Inc.*, 118 FERC ¶ 61,121 (2007); *Southwest Transmission Cooperative, Inc.*, 122 FERC ¶ 61,001 (2008); *Southwestern Power Administration*, 123 FERC ¶ 61,079 (2008).

*SWTC Declaratory Order*,<sup>12</sup> and as Bonneville recognizes,<sup>13</sup> Bonneville must amend its tariff so that its provisions substantially conform to or are superior to the new *pro forma* OATT in Order No. 890 if it wishes to qualify for safe harbor treatment. Until it has amended its tariff in such a manner, we find, it does not qualify for such safe harbor treatment.

### **1. Open Season Process and Precedent Agreement**

28. Bonneville proposes to implement an annual Open Season process for all long-term, point-to-point transmission service requests and network integration transmission service requests in its transmission service queue at the time of each Open Season process. Bonneville's Open Season process combines a single cluster study with a Precedent Agreement. Bonneville states that the Open Season process will enable it to develop plans and commence construction, if appropriate after consideration of environmental impacts, as soon as reasonably possible, for those customers who are ready to proceed. Bonneville notes that customers who are not yet ready to proceed can participate in a subsequent Open Season process.

29. Bonneville asserts that the Open Season process is superior to the Order No. 888 *pro forma* OATT because the resulting elimination of speculative transmission service requests will enable use of freed-up ATC. Bonneville points out that there were 9,262 MW of requests for transmission on Bonneville's network as of March 19, 2008. Bonneville points out, further, that during the March 29, 2007 through March 1, 2008 time period, 31,434 MW of transmission service requests entered its transmission service queue for network service, while 10,992 MW withdrew from the queue. Bonneville asserts that the Open Season process would result in elimination of transmission service requests that are not prepared to commit to taking service at Bonneville's embedded cost rates.

### **Intervenors' Comments**

30. While intervenors generally support Bonneville's Open Season process, they express concerns with certain aspects of the process. Iberdrola and RNP and AWEA point out that Bonneville has not committed to when its conditional firm transmission product, referenced in its Precedent Agreement, will be available. They argue that the inclusion of a conditional firm bridge product in the Open Season process would be valuable to customers because the product mitigates the risk and uncertainty customers bear as they wait for Bonneville to conduct NEPA

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<sup>12</sup> See *Southwest Transmission Cooperative, Inc.*, 118 FERC ¶ 61,121, at P 12, n.10 (2007) (*SWTC Declaratory Order*).

<sup>13</sup> Bonneville's Transmittal Letter at 1.

work and construct facilities. Intervenors argue that, without a conditional firm product, customers must sign long-term contracts without knowing when they will be able to take service. Intervenors recognize that Bonneville is making an effort to bring this product to market, and that the product likely will be available for some participants in the initial Open Season process prior to the time that upgrades are completed. Intervenors request the Commission to condition approval of the Open Season process upon Bonneville's commitment to file, by a date certain, an Order No. 890 compliant tariff that includes a definition of the conditional firm product.

31. RNP and AWEA also are concerned that Bonneville's Open Season process is unlikely to facilitate access to location-constrained, renewable resources. They assert that the Open Season process will lessen the amount of location diversity of the renewable energy generation that is developed. They also point out that Bonneville's Open Season process does not apply to its interties, and, therefore, does not provide the ability to increase transmission flows between regions even if customer demand and financial and service commitments are sufficient to justify the construction of new intertie transmission capacity. They request the Commission to encourage Bonneville to work with the Commission, the co-owners of the interties and stakeholders to develop a process to consolidate and analyze the financial commitment to expand Bonneville's intertie capacity.

32. Iberdrola and RNP and AWEA assert that the success of Bonneville's Open Season process in facilitating access to new renewable resource zones will depend on the details and assumptions in its Commercial Infrastructure Analysis. They describe the Commercial Infrastructure Analysis as determining what percentage of a proposed transmission line needs to be pre-subscribed by new long-term service commitments and what portion of the line costs may be allocated to the general customer base for their future use and increased reliability. Therefore, they encourage Bonneville to ensure that the Commercial Infrastructure Analysis gives appropriate weight to the benefits of accessing transmission-constrained renewable resources, including meeting state renewable portfolio standards, increasing the diversity of the region's non-dispatchable energy production, and decreasing the region's reliance on fossil fuels.

33. RNP and AWEA state that Bonneville's Open Season process will enable the States of Oregon, Washington and Montana to meet their renewable energy mandates, by removing the transmission service queue backlog, and, if successful, financing the construction of new transmission capacity to serve new renewable resources. However, they are concerned that Bonneville's Open Season process may disadvantage transmission projects that do not have large reliability benefits, and that it may be difficult for Bonneville's portion of the renewable portfolio standard requirements "to be facilitated with transmission upgrades down existing

paths.”<sup>14</sup> They encourage Bonneville to work with the Commission and stakeholders to tailor future Open Season proposals or alternative policies to examine and address this issue.

34. Iberdrola and RNP and AWEA challenge Bonneville’s explanation that because the total number of MW of transmission service requests exceeds its estimates of regional load growth and intertie capacity, the remaining requests must be speculative. They state that Bonneville should not assume, as it does, that demand forecasts are the only indication of the amount of new transmission needed. Iberdrola asserts that the Open Season process makes this issue moot if Bonneville performs an annual Open Season process as indicated in its filing. They also assert that Bonneville’s current process for acquiring transmission service has a degree of uncertainty and inefficiency that makes it difficult for customers to plan business decisions. As a result, they assert that customers must get into the transmission service queue well ahead of their readiness to take service because the current process for getting service is lengthy. They state that, if successful, Bonneville’s Open Season process will more efficiently determine which transmission service requests are ready to move forward by requiring customers to make upfront financial and service commitments before any ATC is reserved for their requests.

35. Powerex is concerned that Bonneville may be contemplating declining transmission service requests in the queue, and performing the queue re-stack prior to Commission approval of its Open Season process and the Precedent Agreement if the Commission does not approve its filing before June 16, 2008. According to Powerex, Commission approval must be a prerequisite before Bonneville modifies its queue. Powerex points out that, subsequent to Bonneville’s filing in this proceeding, Bonneville revised the Precedent Agreement included as an attachment in the Bonneville filing. Powerex argues that Bonneville should file an errata to reflect the revised Precedent Agreement so that the Commission can act on the current version of the Precedent Agreement.<sup>15</sup> Powerex also expresses concerns about comparable treatment among customers in linked generation interconnection requests. Finally, Powerex expresses concerns about an alleged lack of clarity in the Precedent Agreement. Powerex argues that the Precedent Agreement should be clear that a customer should not be required to review the Open Season bulletin or Business Practices to understand the provisions of the Precedent Agreement. Powerex requests the Commission to require Bonneville to make it clear when transmission service will commence and terminate.

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<sup>14</sup> RNP and AWEA protest at 10.

<sup>15</sup> We note that Bonneville has since done that.

36. Caithness notes that it has a pending transmission request in Bonneville's queue, for which it received a letter from Bonneville on April 22, 2008 informing Caithness that its request will be subject to the Open Season process as proposed in the instant filing. Caithness explains that the letter also stated that if it did not sign the Precedent Agreement by June 16, 2008, and did not provide the additional security by June 27, 2008, its request would be considered declined, and removed from the queue. Subsequently, Caithness states, it received an e-mail from Bonneville's Account Representative stating that Caithness did not have to execute the Precedent Agreement by June 16th. Thus, Caithness states that there is a degree of uncertainty as to the timing of the implementation of the new procedures in the instant filing.

### **Commission Decision**

37. We find that Bonneville's Open Season process and Precedent Agreement substantially conform to or are superior to *pro forma* OATT provisions because the process will: (1) ensure that customers in the queue who are not ready to accept transmission service offers will not encumber existing ATC for customers who are ready to take service and can currently use it; (2) ensure that Bonneville's existing transmission system will be used more efficiently; (3) consolidate and commit customers to specific transmission upgrades, and enable the timely study, review and construction of new transmission infrastructure; and (4) provide customers with certainty about when to submit transmission service requests in order to meet their business schedule needs.

38. We note that, as intervenors recognize, Bonneville's Open Season process will require further adjustments and revisions as it initiates subsequent Open Season processes in the future. We encourage Bonneville to continue to work with the Commission and stakeholders to tailor future Open Season processes, including, but not limited to, including a process to consolidate and analyze the financial commitment to expand Bonneville's intertie capacity; ensuring that the Commercial Infrastructure Analysis gives appropriate weight to the benefits of accessing transmission-constrained renewable resources, including meeting state renewable portfolio standards, increasing the diversity of the region's non-dispatchable energy production, and decreasing the region's reliance on fossil fuels; ensuring that transmission projects that do not have large reliability benefits are not disadvantaged, and that Bonneville's portion of the renewable portfolio standards requirements can be facilitated with transmission facilities upgrades down existing paths.

39. While the proposed Precedent Agreement provides that during its term, Bonneville may offer conditional firm service, and the customer may choose to take such offered service, Bonneville notes that it has not yet implemented

conditional firm service pursuant to Order No. 890. Intervenors request the Commission condition approval of Bonneville's proposal upon a commitment to file, by a date certain, an Order No. 890 compliant tariff that includes a definition of the conditional firm product. Bonneville explained in its filing that due to its significant regional public outreach process regarding implementation of the Order No. 890 *pro forma* OATT, it will be unable to file the remainder of its Order No. 890 tariff revisions, including conditional firm service related provisions, until later this spring. We find Bonneville's submittal of the instant filing containing the Open Season process in advance of other provisions required in Order No. 890, such as conditional firm service, acceptable under the circumstances explained by Bonneville of not wanting to lose a construction season. While we decline to conditionally approve Bonneville's instant filing, as noted in our discussion above, we anticipate that Bonneville will address the requirement to offer conditional firm service in its upcoming filing addressing the requirements of Order No. 890. Until it has amended its tariff in such a manner, we find, it does not qualify for safe harbor treatment.

40. We find that Powerex's concern that Bonneville may begin to decline transmission service requests in the queue and to re-stack the queue prior to Commission approval of the Open Season process and the Precedent Agreement is moot in light of the fact that we are acting on Bonneville's filing by the June 16, 2008 action date requested by Bonneville. We also will decline Powerex's request that we direct Bonneville to revise the Precedent Agreement regarding the timing of commencement and termination of transmission service. The Precedent Agreement identifies when transmission service will commence in certain specific circumstances during the Open Season process. For example, when ATC is freed up due to the transmission queue re-stack, service begins the later of: (1) the first day of the month occurring at least 15 days from the date of receipt by the customer of the executed service agreement; or (2) the start date as originally requested by the customer. When new facilities are constructed, transmission service begins the later of: (1) the first day of the month occurring at least 15 days from the date on which the Expansion Facilities are available to provide transmission service to the customer; or (2) the start date as originally requested by the customer. We find that the Precedent Agreement recognizes that transmission service will commence at different times for different customers depending on the transmission service product a particular customer requests, the availability of ATC due to a re-stack of the transmission service queue at the end of the Open Season process, and when Bonneville commits to building new facilities. Bonneville's Open Season process is designed to be flexible in responding to its customers' different transmission service requests. A requirement to add more specificity could limit Bonneville's ability to respond to its customers' different transmission service needs. However, we encourage Bonneville to review the commencement and termination provisions as it

undertakes the Open Season process in the future, and to work with the Commission and its stakeholders to review and revise these provisions as it implements the Open Season process, as necessary.

41. With regard to Caithness' uncertainty about the implementation date of the Open Season process, we note that Bonneville's Open Season as found acceptable above establishes June 16, 2008 as the date by which customers that received Precedent Agreements must sign and return those agreements to Bonneville in order to remain in the queue.

## 2. Cluster Study Tariff Provisions

42. Bonneville requests Commission approval of cluster study tariff provisions unrelated to its Open Season proposal. Although Bonneville's proposed OATT revisions regarding cluster studies apply in part to the Open Season process, such provisions also include use of Cluster Studies outside an Open Season process,<sup>16</sup> which are addressed in this section of the order. Bonneville points out that Order No. 890 does not require transmission providers to conduct cluster studies. Bonneville notes, however, that Order No. 890 does identify certain issues to address in the tariff, including: (1) how the transmission provider will process a request to perform a cluster study; (2) how the transmission provider will structure customers' obligations when they have joined a cluster study; and (3) customers' rights to opt out of a cluster study, and request an individual study.<sup>17</sup>

43. Bonneville asserts that its cluster study procedures address these issues in a manner consistent with Commission direction and policy. Bonneville states that its procedures provide that it may conduct cluster studies on its own initiative, or in response to a written request by customers. Bonneville explains that, if customers request a cluster study, it will determine whether it can reasonably accommodate the request. Bonneville states that it will require customers with transmission service requests in a cluster study to execute either Cluster Study agreements or Precedent Agreements. Bonneville explains that Cluster Study agreements, other than Precedent Agreements, will require customers in the cluster to bear the study costs, with each customer bearing a share of the costs based in proportion to its share of the total capacity requested in all clustered requests. Bonneville points out that customers with service requests that are subject to a Cluster Study agreement may opt out of the cluster study, but the customer will remain liable for its share of the cluster study costs. Bonneville states, however,

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<sup>16</sup> Bonneville's Transmittal Letter at 13.

<sup>17</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1371.

that customers with requests subject to Precedent Agreements will be unable to withdraw from the cluster study and request an individual study.

### **Intervenors' Comments**

44. RNP and AWEA assert that Bonneville's current practice of assigning network upgrade costs to individual generators is one of the main causes of Bonneville's current transmission service queue backlog. They assert that Bonneville's instant proposal to cover the upfront costs of cluster studies and NEPA studies, and to finance the construction of any new facilities, with Bonneville recovering the costs through a pre-determined rate, reduces the uncertainty and upfront costs facing customers, and balances the burden between the transmission provider and customer.

45. Seattle also asserts that Bonneville's proposal to cluster transmission service requests for study will be more efficient and will capture the load and resource diversity inherent in power system operation. Seattle states that, for individual customers, the study costs associated with transmission service requests, in the absence of a process for clustering studies, has resulted in substantial risk with a low probability of a favorable outcome. According to Seattle, if Bonneville clusters transmission service requests and performs a single study that captures the system benefits of diverse transactions, it is more likely to produce results that will lead to firm transmission service offerings. Seattle states that Bonneville's proposal to bear the costs of cluster studies, and recover those costs in rates, is acceptable because of the system benefits that are likely to accrue to all customers, including those who do not participate in the Open Season process.

46. Powerex raises concerns about certain Cluster Study tariff provisions. Specifically, Powerex points out that section 19.10, particularly section 19.10(i) discusses the criteria that Bonneville will utilize to determine when to perform cluster studies. According to Powerex, one criterion states that Bonneville will conduct a cluster study with "all requests that the [t]ransmission [p]rovider determines are suitable for aggregation based on other appropriate criteria, including a combination of criteria," are met. Powerex argues that the Commission should require Bonneville to define what it would consider to be "appropriate criteria," and provide examples of those criteria. Powerex also states that section 19.10(ii) provides that a transmission provider "may" require eligible customers to sign Cluster Study agreements. Powerex notes, however, that, if Bonneville instead chooses to offer the customer a Precedent Agreement, it will not require that customer to sign a Cluster Study agreement. Powerex states that it cannot determine whether there are other circumstances in which Bonneville would not require the customer to sign a Cluster Study agreement. Powerex argues that Bonneville should explain the circumstances under which it would

require such an agreement to be signed and those in which it would not. Finally, Powerex notes that section 19.10(iii) provides that the Precedent Agreement “will obligate the Eligible Customers to take transmission at the rate for Long-Term Firm [point-to-point] transmission service in the Transmission Provider’s Point-to-Point rate if the Transmission Provider satisfies conditions in the agreement....” According to Powerex, it appears that the word “schedule” should be inserted after the second reference to rate in the quoted language.

### **Commission Decision**

47. We find that Bonneville’s proposed cluster study tariff provisions, unrelated to its Open Season proposal, including sections 19.10(i) and 19.10(ii), neither substantially conform to nor are superior to the *pro forma* OATT because they do not include sufficient detail to allow customers to understand when Bonneville will process requests to cluster transmission service request studies. For example, the Commission agrees with Powerex that Bonneville’s proposed section 19.10(ii), providing that Bonneville “may” require eligible customers to sign Cluster Study agreements, is unclear and requires additional detail. The Commission also agrees with Powerex that it appears that a word should be inserted in section 19.10(iii). We disagree with Powerex, however, that Bonneville should define what it would consider to be “appropriate criteria” in determining suitability for aggregation or provide examples of those criteria. We find the aggregation criteria provided by Bonneville<sup>18</sup> to be reasonable and sufficiently detailed. We note that the Commission in Order No. 890 gave each transmission provider the discretion to develop the clustering procedures it will use because the transmission provider is in the best position to determine the clustering procedures it can accommodate.<sup>19</sup>

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<sup>18</sup> Bonneville’s proposed section 19.10(i) states “For purposes of a Cluster Study, the Transmission Provider may aggregate: (1) all Applications that are submitted within a set time period, including, without limitation, Applications that were submitted before notification by the Transmission Provider of a Cluster Study, that may be in study status, and that remain in the queue at the start of the Cluster Study, (2) all requests for service over a particular transmission path, (3) all requests for service of at least a certain amount of capacity, or (4) all requests that the Transmission Provider determines are suitable for aggregation based on other appropriate criteria, including a combination of criteria.

<sup>19</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-71.

48. We will defer further action on the clustering provisions that proposed unrelated to its Open Season proposal until such time as Bonneville submits further amendments to its tariff to address the remaining requirements of Order No. 890.

### **3. Requested Waiver of Existing Tariff Provisions**

49. Bonneville explains that it proposes to apply the initial Open Season process to eligible transmission service requests that are in the transmission service queue on April 15, 2008, and to eligible transmission service requests that enter the queue before the end of the application window on May 15, 2008. Bonneville states that it will need a waiver of certain tariff provisions. Bonneville states that this one-time waiver request is limited to those provisions that conflict with the Open Season process. Bonneville asserts that there will be no undesirable consequences. Bonneville also asserts that the Open Season process will benefit all customers because it will increase the likelihood of new infrastructure that will benefit the integrated network, and facilitate the acquisition of new generation to meet load growth.

### **Intervenors' Comments**

50. RNP and AWEA support Bonneville's request for a one-time waiver to the extent that they are necessary to implement the initial Open Season process. RNP and AWEA, however, reserve the right to challenge a request by Bonneville to waive these same provisions in the future.

### **Commission Decision**

51. We will allow the requested departure from its reciprocity tariff. We find that doing so in this case is appropriate because: (1) all customers requesting long-term transmission service on Bonneville's network will receive transmission service offers consistent with their transmission service requests; (2) the waiver request is limited to those tariff provisions that conflict with the proposed Open Season process; (3) there is no evidence of undesirable consequences; and (4) the Open Season process will benefit all customers because it will increase the likelihood of new infrastructure that will benefit the integrated network and facilitate the acquisition of new generation to meet load growth.

### **C. Filing Fee Waiver**

52. Bonneville petitions for an exemption from the filing fee based on its non-jurisdictional status. As we stated in Order No. 888-A, "[the Commission's] regulations specifically exempt states, municipalities, and anyone who is engaged

in the official business of the Federal Government from filing fees.”<sup>20</sup> Because Bonneville is an agency of the United States Department of Energy engaged in the official business of the Federal government, we will grant Bonneville’s request for waiver of the filing fee.

The Commission orders:

(A) Bonneville’s petition for declaratory order is hereby granted, in part, as discussed in the body of this order.

(B) Bonneville is hereby allowed to depart from certain provisions in its reciprocity tariff, as discussed in the body of this order.

(C) Bonneville’s request for exemption from the filing fee is hereby granted.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>20</sup> Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,288-89 (citing *South Carolina Public Service Authority*, 75 FERC ¶ 61,209 at 61,694-95 (1996) (citation omitted)).