

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

United States Department of Energy  
Bonneville Power Administration

Docket No. NJ05-2-001

ORDER GRANTING REQUEST FOR REHEARING AND/OR CLARIFICATION

(Issued October 3, 2005)

1. On September 6, 2005, Bonneville Power Administration (BPA) filed a motion for rehearing and/or clarification of the Commission's August 17, 2005 Order<sup>1</sup> granting BPA's petition for declaratory order, subject to the filing of tariff modifications. In this order, the Commission grants BPA's motion for rehearing and/or clarification.

**Background**

2. On February 4, 2005, BPA filed a petition for declaratory order requesting that the Commission approve its proposed Large Generation Interconnection Procedures (LGIP) and Large Generation Interconnection Agreement (LGIA) which BPA intended to add to its Open Access Transmission Tariff (OATT) as Attachment L. The Commission granted BPA's petition finding that, subject to modifications, BPA's proposed filing substantially conforms or is superior to the Order No. 2003, 2003-A, and 2003-B *pro forma* LGIP and LGIA.<sup>2</sup>

3. BPA proposed to delete LGIA article 18.1 which requires each Party to indemnify the other Party for damages resulting from actions the other Party takes in furtherance of its obligations under the LGIA. BPA stated that it is a party to a comprehensive

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<sup>1</sup> *Bonneville Power Administration*, 112 FERC ¶ 61,195 (2005) (Declaratory Order).

<sup>2</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005); *see also* Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

agreement under the Western Interconnection Electric Systems (WIES), which establishes parties' liability in the event of damage to any member's electric system. BPA asserted, among other things, that article 18.1 would disrupt the WIES system by establishing a separate and contradictory liability regime and by re-introducing fault, which the WIES system was designed to avoid.

4. The Declaratory Order directed BPA to modify its proposal to state that Interconnection Customers who are signatories to the WIES Agreement will be subject to the indemnification provisions included in the WIES Agreement and those Interconnection Customers who are not WIES members will be subject to the Order No. 2003 liability provisions.

5. BPA filed a motion for rehearing and/or clarification of the Declaratory Order. BPA states that it intends to add the indemnity provisions of article 18.1 to the interconnection agreements it executes with generators that are not signatories to the WIES Agreement. However, BPA requests to omit the article 18.1 provisions under which the indemnifying party assumes the defense of the other party against a claim for damages. BPA asserts that, as a federal agency, it is represented in litigation by the United States Department of Justice (Department of Justice) and, therefore, cannot accept representation by the other party to an interconnection agreement. Further, the Department of Justice will not represent a non-federal party, nor can BPA's attorneys do so. BPA proposes to omit article 18.1.1 and the second and third paragraphs of article 18.1.3, all of which concern the assumption by one party of the defense of the other. BPA states that it did not raise this issue earlier because it proposed to entirely delete article 18.1.

### **Discussion**

6. BPA's request for rehearing and/or clarification is based upon the fact that its status as a federal entity makes it unable to fulfill the commitment found in LGIA article 18.1 regarding the assumption by one party of the defense of the other. In Order No. 2003, the Commission explained that it would consider the legal obligations of federal entities when evaluating their reciprocity filings.<sup>3</sup> Therefore, the Commission will grant BPA's request for rehearing and/or clarification and allow BPA to omit article 18.1.1 and the second and third paragraphs of article 18.1.3.

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<sup>3</sup> Order No. 2003 at P 616, 844.

The Commission orders:

The Commission grants BPA's request for rehearing and/or clarification as described in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.