

138 FERC ¶ 61,009
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 6, 2012

In Reply Refer to:
Portland General Electric Company
Docket No. ER11-4374-002

Denise Saunders
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Dear Ms. Saunders:

1. On August 25, 2011, as amended on October 20, 2011 and November 8, 2011, Portland General Electric Company (PGE), filed a revised transmission reassignment tariff intended to facilitate transactions on non-jurisdictional transmission systems that have not adopted section 23 of the Commission's *pro forma* open access transmission tariff (OATT).¹ According to PGE, pursuant to Order No. 739-A,² the proposed revisions seek to remove language from its rate schedule, so as to eliminate the price cap on the reassignment of transmission service capacity as of October 1, 2010, and replace it with language that allows PGE to reassign its transmission rights, without limitation, at negotiated rates on non-jurisdictional transmission systems, such as Bonneville's

¹ On October 20, 2011, the Commission issued a deficiency letter requesting a copy of the transmission service agreement between Bonneville Power Administration (Bonneville) and PGE to be included as part of the record. On October 28, 2011, as amended on November 8, 2011, PGE submitted its three point-to-point transmission service agreements with Bonneville.

² *Promoting a Competitive Market for Capacity Reassignment*, Order No. 739, 132 FERC ¶ 61,238 (2010), *reh'g denied*, Order No. 739-A, 135 FERC ¶ 61,137, at 15-16 (2011).

system.³ PGE states that the revisions to section 2.5 of its rate schedule⁴ are virtually identical to the language that the Commission approved for Powerex Corporation and Macquarie Energy LLC in similar filings.⁵ PGE requests an effective date of October 24, 2011.

2. Notice of PGE's August 25, 2011 filing was published in the *Federal Register*, 76 Fed. Reg. 55,372 (2011), with protests and interventions due on or before September 15, 2011. Notice of PGE's October 28, 2011 filing was published in the *Federal Register*, 76 Fed. Reg. 69,258 (2011), with protests and interventions due on or before November 18, 2011. Notice of PGE's November 8, 2011 filing was published in the *Federal Register*, 76 Fed. Reg. 72,193 (2011), with protests and interventions due on or before November 29, 2011. Bonneville filed an untimely motion to intervene and protest. PGE filed an answer to Bonneville's protest. Bonneville filed an answer to PGE's answer.

3. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant Bonneville's late-filed motion to intervene, given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to an answer or a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by PGE and Bonneville because they have provided information that assisted us in our decision-making process.

³ PGE notes that the "revisions generally make the rate schedule applicable to all non-jurisdictional transmission systems, not just [Bonneville's]." PGE August 25, 2011 Filing at 2.

⁴ PGE's Amended Electric Tariff First Revised Volume No. 12, Rate Schedule for the Sale, Assignment, or Transfer of Transmission Rights. *Portland General Elec. Co.*, Docket No. ER09-93-000 (December 12, 2008) (delegated letter order).

⁵ *Powerex Corp.*, Docket No. ER10-3060-000 (Nov.18, 2010) (delegated letter order); *Macquarie Energy LLC*, Docket No. ER10-3089-000 (Nov. 19, 2010) (delegated letter order).

4. Bonneville argues that PGE's proposal is inconsistent with its tariff, which contains a price cap⁶ on the resale or assignment of transmission service.⁷ Bonneville adds that this price cap is expressly incorporated into its transmission service agreement with PGE.⁸ Thus, Bonneville asks the Commission to acknowledge that acceptance of PGE's transmission reassignment tariff does not supersede the terms and conditions of PGE's transmission service agreement with Bonneville or Bonneville's tariff.

5. Bonneville argues that, in a recent Commission proceeding, a similarly-situated customer of Bonneville, PPL Energy, LLC (PPL), filed to resell transmission capacity on Bonneville's system at market-based rates.⁹ Bonneville states that the Commission required PPL to make a compliance filing committing not to resell capacity above the price cap set forth in Bonneville's OATT.¹⁰ Bonneville requests that the Commission require PGE to commit to making a similar compliance filing here.

6. PGE asks the Commission to reject Bonneville's request that the Commission require PGE to make a compliance filing that would expressly incorporate PGE's commitment not to resell capacity above the price cap set forth in Bonneville's tariff.¹¹ PGE argues that the reassignment of capacity is a jurisdictional transaction under a Commission-approved rate schedule rather than a transaction under Bonneville's OATT; it argues, therefore, that Bonneville cannot apply a price cap to such an arrangement.¹² PGE contends that the Commission affirmed in Order No. 739-A that stand-alone rate schedules governing reassignments of transmission capacity on non-jurisdictional systems allow assignments over the cap of the non-jurisdictional system.¹³

⁶ Part II, Section 23.1 of Bonneville's tariff caps the compensation to the reseller of reassigned transmission capacity to the higher of: (1) the original rate paid by the reseller; (2) the Transmission Provider's maximum rate on file at the time of the reassignment; or (3) the reseller's opportunity cost capped at the Transmission Provider's cost of expansion.

⁷ Bonneville Protest at 2.

⁸ *Id.* at 4.

⁹ *PPL Energy Plus, LLC*, 136 FERC ¶ 61,166, at P 7 (2011) (*PPL Energy*).

¹⁰ Bonneville Protest at 4.

¹¹ PGE September 28, 2011 Answer at 6

¹² *Id.* at 5.

¹³ *Id.* at 4.

7. PGE states that, while entities such as PPL may voluntarily agree to add language to their rate schedules, any requirement that would mandate such language would be inconsistent with the Commission's determination in Order No. 739-A.¹⁴ PGE argues that the Commission has approved rate schedules similar to that proposed by PGE without a commitment not to resell capacity above the price cap set forth in Bonneville's tariff.¹⁵

8. Bonneville argues that any resale of PGE's transmission rights on Bonneville's system is also a transaction under Bonneville's tariff. According to Bonneville, the Commission's approval of PGE's rate schedule ensures that any resale of capacity does not violate the Federal Power Act.¹⁶ Bonneville claims that such approval is irrelevant to whether the resale is valid under Bonneville's tariff and will not justify PGE's failure to abide by Bonneville's tariff.

9. We find that PGE's proposed rate schedule is consistent with Order Nos. 739 and 739-A, which revised the *pro forma* OATT to lift the price cap for all transmission customers reassigning electric transmission capacity.¹⁷ The Commission took such action to facilitate the development of a market for electric transmission capacity reassignments as a competitive alternative to primary transmission capacity. Specifically, the Commission stated that lifting the price cap "would allow transmission capacity to be allocated to those entities that value it most, thereby sending more accurate price signals to identify the appropriate location for construction of new transmission facilities to reduce congestion."¹⁸ The Commission also suggested that entities could file, in separate proceedings, revised stand-alone rate schedules allowing them to resell transmission capacity above a price cap, if such a price cap were imposed by a non-jurisdictional

¹⁴ *Id.* at 6.

¹⁵ Citing *Powerex Corp.*, Docket No. ER10-3060-000 (Nov. 18, 2010) (delegated letter order); *Macquarie Energy LLC*, Docket No. ER10-3089-000 (Nov. 19, 2010) (delegated letter order); *Morgan Stanley Capital Group*, Docket No. ER11-68-000 (Nov. 23, 2010) (delegated letter order).

¹⁶ Bonneville Protest at 4.

¹⁷ Order No. 739, 132 FERC ¶ 61,238 at 12 (citing to FERC Staff, *Staff Findings on Capacity Reassignment* (2010), available at <http://www.ferc.gov> (FERC Staff Report recommending removal of the price cap)).

¹⁸ Order No. 739-A, 135 FERC ¶ 61,137 at P 2.

entity.¹⁹ Accordingly, we will accept PGE's proposed reassignment tariff, effective October 24, 2011, as requested.

10. We will not require PGE to agree not to resell reassignment of transmission service capacity above the price cap, as in *PPL Energy*. Contrary to Bonneville's argument, PPL voluntarily agreed to abide by its existing transmission service agreement with Bonneville and not makes sales pursuant to its transmission reassignment tariff at prices higher than those permitted by the Bonneville OATT. In the instant filing, however, PGE declines to make such a commitment on a voluntary basis. Thus, it is not appropriate to require a compliance filing here.

11. We caution, however, that our approval, which allows PGE to resell its transmission rights on a non-jurisdictional entity's transmission system, does not settle any dispute it may have with Bonneville regarding whether reassignments of capacity at negotiated rates are allowable under its transmission service agreements with Bonneville. We note that Order No. 739 did not intend to abrogate pre-existing transmission service arrangements over a non-jurisdictional entity's transmission system. Accordingly, our approval of PGE's proposed rate schedule does not affect any obligations that PGE may have to comply with its non-jurisdictional transmission service agreements with Bonneville.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹⁹ Order No. 739, 132 FERC ¶ 61,238 at P 38, *reh'g denied*, Order No. 739-A, 135 FERC ¶ 61,137 at P 6, 15-16.