

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Bonneville Power Administration

Docket Nos. NJ04-5-000  
NJ04-5-001

ORDER GRANTING CLARIFICATION  
AND DENYING REHEARING

(Issued February 8, 2005)

1. In this order, the Commission denies Westward Energy, LLC's (Westward) request for rehearing and grants Bonneville Power Administration's (Bonneville) motion for clarification. This order benefits customers by ensuring that the terms and conditions of a reciprocity open access transmission tariff (OATT) are followed.

**Background**

2. On August 27, 2004, Bonneville filed a petition for declaratory order requesting that the Commission find the terms of an unexecuted long-term firm service agreement (Service Agreement) for firm point-to-point transmission service with Westward to be just and reasonable and consistent with or superior to the requirements of Order No. 888.<sup>1</sup> The Service Agreement proposed to commence transmission service on September 1, 2004 for 520 MW, for Westward's new 520 MW generator (Summit Project). Bonneville stated that the start date should be September 1, 2004 even though the Summit Project was not yet in operation, because Westward had maintained its senior position in Bonneville's queue based on its original in-service date of November 1, 2003. The Service Agreement contained a provision, which stated that

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<sup>1</sup>*Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Service by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. and Regs., Regulations Preambles July 1996-December 2000 ¶ 31,048 (1997), *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), *d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

after energization of the Summit Project, Westward would be curtailed on a non-pro rata basis until necessary upgrades on PacifiCorp's system and a remedial action scheme with Portland General Electric Company (Portland General), as identified in the System Facilities Study (SFS), were completed. Bonneville claimed that Westward must either begin paying for the reservation of the service it requested or release the available transmission capacity (ATC) to those below it in the queue.

3. Westward protested Bonneville's petition for declaratory order and requested that the Commission: (1) deny Bonneville's request for a declaratory order; (2) remand the Service Agreement to Bonneville with instructions to resolve with PacifiCorp, Portland General, and Westward the level of mitigation required, the facilities required, the remedial action schemes required, and Westward's pro rata share of the costs of facilities and terms of the remedial action scheme concerning the affected systems before Bonneville may offer Westward firm transmission; (3) declare that with respect to any mitigation obligations that Westward must be treated in the same manner as similarly situated transmission customers and that any curtailment of transmission must be imposed pro rata with other similarly situated transmission customers; and (4) clarify that Bonneville may not terminate Westward's queue rights during the pendency of this dispute before the Commission.

4. In an order issued January 4, 2005<sup>2</sup> (January 4 Order), the Commission found that Bonneville's offer of a curtailable firm transmission service under its proposed Service Agreement is contrary to the provisions of its reciprocity OATT and is unduly discriminatory. The Commission explained that Bonneville should have followed the terms and conditions of its OATT in responding to Westward's request for transmission service. Because Bonneville could not provide the full 520 MW of transmission service for the term of service requested by Westward, the Commission found that section 19.7 (Partial Interim Service) of its OATT was applicable and Bonneville was obligated to follow it.

5. As the Commission explained in the January 4 Order, under section 19.7 of Bonneville's OATT, if there is insufficient ATC to grant a request for firm point-to-point transmission service, the transmission provider must offer the portion of the requested firm point-to-point transmission service that can be accommodated without addition of any facilities and through redispatch.<sup>3</sup> The Commission further explained that section 19.7 provides that the transmission provider is not obligated to provide the incremental amount of the requested transmission service that requires the addition of facilities or upgrades to the transmission system until such facilities or upgrades have been placed in service. The Commission explained that this same logic applies to facilities or upgrades on third-party systems. Thus, the Commission found

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<sup>2</sup> *Bonneville Power Administration*, 110 FERC ¶ 61,001 (2005).

<sup>3</sup> *See, e.g., Morgan Stanley Capital Group v. Illinois Power Co.*, 83 FERC ¶ 61,204 at 61,912, *modified*, 83 FERC ¶ 61,299 (1998), *reh'g granted*, 93 FERC ¶ 61,081 (2000).

that Bonneville properly offered to provide Westward 520 MW of transmission service for the period from September 1, 2004 to the date the Summit Project was energized.<sup>4</sup> However, the Commission further found that Bonneville should have offered to provide Westward with whatever portion of the 520 MW it could provide on a firm basis after the Summit Project was energized without upgrades to PacifiCorp's system or the need for Westward to coordinate with Portland General regarding a remedial action scheme.

6. The Commission concluded that at such time as the necessary PacifiCorp upgrades are completed and a Portland General remedial action scheme is implemented, Bonneville should offer Westward an amendment to the service agreement to provide Westward the full 520 MW of transmission service through November 1, 2033. The Commission also found that until such time as Bonneville offers a service agreement to Westward that is consistent with the OATT, Westward must maintain its current position in Bonneville's transmission queue.

#### **Bonneville's Filing**

7. On January 13, 2005, Bonneville filed a motion requesting that the Commission expeditiously clarify the procedure that will apply when Bonneville applies the provisions of its OATT to Westward's request for transmission service in the manner clarified by the Commission in the January 4 Order. Bonneville states that it concurrently proffered to Westward a transmission service agreement, complying in full with the procedures outlined by the Commission in the January 4 Order, with an effective date of February 1, 2005 (Revised Service Agreement) and attached the Revised Service Agreement to its motion. Bonneville requests that the Commission clarify that Westward, in order to retain its present position in Bonneville's transmission queue, must execute the Revised Service Agreement within 15 days of the date the agreement was offered to Westward.

8. Bonneville states that it has set aside 520 MW of transmission capacity for Westward's use beginning September 1, 2004. Since then, Bonneville states, Westward has maintained its position in the transmission queue and tied up valuable capacity on Bonneville's system without making any payment to Bonneville. Bonneville argues that now that service complying with the Commission's January 4 Order has been offered,

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<sup>4</sup> The Commission explained that Westward would have the option of requesting extensions for commencement of service pursuant to section 17.7 (Extensions for Commencement of Service) of Bonneville's OATT. Under this section, Westward could obtain up to five one-year extensions, however, it would have to pay a non-refundable annual reservation fee equal to one-month's charge for firm transmission service and if another eligible customer submits a completed application for firm transmission service and such request can be satisfied only by releasing all or part of Westward's reserved capacity, that capacity would be released unless Westward agreed to pay the firm point-to-point transmission rate for its reserved capacity concurrent with the new service commencement date.

the Commission should clarify that Bonneville can remove Westward from the queue if it does not execute the Revised Service Agreement and make the appropriate transmission service payment within 15 days of the date the new agreement was offered to Westward. Bonneville states that it is concerned that Westward not be permitted to request another filing of the Revised Service Agreement on an unexecuted basis and thereby delay again its obligation either to pay for its requested service or lose its position in the transmission queue.

9. Bonneville states that consistent with the Commission's January 4 Order, the Revised Service Agreement provides for Bonneville to provide Westward with the full 520 MW of firm transmission service until the energization of the Summit Project (Period A). Further, once the Summit Project is energized (Period B), consistent with section 19.7 of Bonneville's OATT and the clarification in the January 4 Order, Bonneville states that it will not be able to provide Westward with any firm transmission service, as it will not have any reserved capacity it can provide on a firm basis without upgrades to PacifiCorp's system and coordination between Westward and Portland General regarding a remediation scheme. Once the upgrade to PacifiCorp is completed and a Portland General remedial action scheme is implemented, however, Bonneville states that it will offer Westward an amendment to the Revised Service Agreement to provide Westward the full 520 MW through November 1, 2033. Bonneville states that in offering this service to Westward effective February 1, 2005, it has complied in full with the requirements of its OATT as interpreted by the Commission in the January 4 Order.

10. Bonneville further asserts that under the present circumstances there are no grounds for permitting Westward to further delay resolution of its transmission request by seeking to have Bonneville file another unexecuted service agreement and commence another contested proceeding at the Commission. Bonneville argues that the Commission has already been informed regarding the details of Westward's transmission request and the third-party system impacts thereof. Further, Bonneville argues that Westward fully raised its concerns in this proceeding regarding the Service Agreement filed in August. Bonneville notes that the Commission did not require it to further negotiate the issues relating to third-party system impacts before supplying the requested transmission service to Westward. Instead, Bonneville states, the Commission identified a defect in Bonneville's application of its OATT and specified how Bonneville could correct that defect. Bonneville claims that it has now acted exactly as the Commission instructed, thus there is no basis for requiring Bonneville to return to the Commission with these issues and the Commission should so clarify that this is the intended result of the January 4 Order.

11. Bonneville also argues that Westward may have an inherent economic motivation to prolong the instant dispute to avoid having to make a cash outlay for transmission service prior to the Summit Project's commercial operation. Bonneville argues that this is inconsistent with the OATT and unfairly permits Westward to retain transmission rights that otherwise should go to others in the absence of an appropriate payment by Westward. Accordingly, Bonneville requests that the Commission clarify that

Westward must either accept the terms of the Revised Service Agreement, defer the commencement of that agreement pursuant to section 17.7 of the OATT, or refuse the offered transmission service and relinquish its position in Bonneville's transmission queue.

### **Westward's Answer**

12. On January 21, 2005, Westward filed an answer to Bonneville's January 13 Motion for clarification. Westward urges the Commission to clarify that a Revised Service Agreement is unduly discriminatory and not in compliance with Bonneville's OATT and Order No. 888 if it provides lower quality firm point-to-point transmission service than that provided to other firm point-to-point transmission customers. Westward states that the Revised Service Agreement does not meet the Commission standard because unlike any other firm point-to-point transmission customer, Bonneville has concluded that it has no ATC to provide to Westward, and therefore is incapable of providing the firm transmission service that Westward requested. Westward states that Bonneville's invention of Period B service is, in effect, a curtailment of all service pending the satisfaction of the same discriminatory condition that was rejected by the Commission in the January 4 Order. Westward also states that Bonneville lacks sufficient ATC to provide firm point-to-point transmission service to any customer in the long-term transmission queue without first resolving impacts on third-party systems, and that there is thus no urgency to the Commission's resolving the instant dispute. Lastly, Westward argues that since the service Bonneville is offering is not firm service, Bonneville should not be permitted to demand payment until the service is actually available, and Westward should not be removed from the queue until Bonneville offers the service that Westward requests.

### **Westward's Request For Rehearing**

13. On January 19, 2005, Westward filed a motion for clarification or, in the alternative, rehearing of the January 4 Order. Westward argues that the Revised Service Agreement is flawed, and seeks clarification that by requiring transmission providers to offer partial service, the Commission did not intend to require transmission customers to accept transmission service that does not conform to their transmission request or lose their place in the queue.

14. Westward argues that whether it is called curtailment or zero capacity in Period B the result is the same. Westward argues that Bonneville's offer is premised upon a de facto right to curtail Westward at whatever point Westward is in a position to actually take transmission service; therefore, Westward's firm transmission rights are less than those of other firm point-to-point transmission customers. Westward states that the Revised Service Agreement still contains a provision not found in other transmission service agreements. The provision provides that: "additions or modifications are required on the systems of PacifiCorp and Portland General as specified below."<sup>5</sup>

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<sup>5</sup> Exhibit A, Table 1, pages 3 and 4 of Bonneville's filing.

15. Westward claims that the discriminatory nature of this can be seen by considering what would happen if Westward exercised, during Period A, its rights to nondiscriminatory reassignment of its transmission rights to a third party.<sup>6</sup> Westward claims that, based on Bonneville's Revised Service Agreement cover letter, Bonneville does not have the ATC to honor a reassignment, and therefore, this lack of capacity would necessitate that Westward or its assignee be curtailed in ways not applicable to other point-to-point transmission customers. Otherwise, Westward states, existing firm transmission customers would be subject to pro rata curtailment even though Bonneville had sufficient ATC when it executed the earlier third-party contracts. Westward claims this curtailment would be precisely the type of curtailment the Commission found to be discriminatory, and thus inconsistent with Bonneville's OATT and Order No. 888 when the Commission issued the January 4 Order.

16. Westward argues that if its assignee could schedule point-to-point transmission service over the points provided in the Revised Service Agreement without being subject to special curtailment rights, then Bonneville would clearly be discriminating against Westward. This is because, Westward claims, Bonneville would deprive Westward of Period B transmission altogether even though the same operating circumstances would prevail as during Period A when Bonneville would provide transmission to Westward's assignee over the same path.

17. Westward argues that if Bonneville allows Westward or its assignee to schedule 520 MW of transmission over the contractual path during Period A, but also during a period during which Bonneville acknowledges, as it does, that it lacks any ATC, then Bonneville would subject existing transmission customers to increased risk of pro-rata curtailment. Westward contends that this would discriminate against existing customers along the affected path who would newly be subject to increased risks of pro rata curtailment unassociated with a system-wide disturbance.

18. Westward further argues that Bonneville has erroneously interpreted the January 4 Order as not only sanctioning Bonneville's non-conforming offer of less than the amount of transmission that Westward requested, but also sanctioning Bonneville's position that if Westward rejects the non-conforming offer, it will be out of the queue. Westward points out how this could provide a ruse whereby the transmission provider could clear its entire queue. Westward claims that Bonneville is turning the holding in *Morgan Stanley Capital Group v. Illinois Power Co.*,<sup>7</sup> which the Commission cited in its January 4 Order, on its head. Westward argues that Bonneville seeks to imply that *Morgan Stanley* imposes upon the transmission customer the obligation to accept the proffered partial transmission or lose its place in the queue. Westward argues, however,

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<sup>6</sup> Bonneville's OATT section 23.1.

<sup>7</sup> 83 FERC ¶ 61,204 at 61,912 (last 2 paragraphs under 2. Redispatch) (1998), *modified*, 83 FERC ¶ 61,299 (1998), *reh'g granted*, 93 FERC ¶ 61,081 (2000).

that what *Morgan Stanley* really requires is that the transmission provider must offer partial service, not that the transmission customer must accept this partial service. Westward argues that sanctioning Bonneville's interpretation would actually tacitly be adopting a policy of encouraging utilities (who can sign long term agreements to hold increments of capacity) over non-utility generators who can finance their projects only through matching megawatt for megawatt the project output with fixed transmission capacity.

### **Bonneville's Answer**

19. On February 1, 2005, Bonneville filed an answer to Westward's motion for clarification.<sup>8</sup> Bonneville contends that the Revised Service Agreement conforms to the Commission's instructions in the January 4 Order, despite Westward's claims that the Revised Service Agreement is discriminatory.

20. Bonneville argues that it is losing approximately \$600,000 per month of transmission revenues while this dispute with Westward is ongoing. Bonneville states that it has customers below Westward in the queue that are awaiting long-term firm transmission service, one of whom has requested 450 MW of transmission service that can be provided from available capacity only if Westward's request is terminated.

21. Bonneville states that it has available capacity to meet Westward's requested transmission absent energization of the Summit Project. In answer to Westward's claim that Bonneville makes no demonstration that anything on its system will change between February 1, 2005 and the date that the Summit Project is energized, Bonneville states that the energization of the Summit Project creates subgrid constraints in the local area and changes power flow characteristics to create a third-party system impact on the transmission systems of PacifiCorp and Portland General. Bonneville reiterates that it has studied the reliability and ATC impacts of the Summit Project's energization, as shown in the July 2004 Summit SFS Report, which identified the need for upgrades to PacifiCorp's system and the development of a remedial action scheme for certain line outages for facilities on Portland General's system once the Summit Project commences operations to maintain the transfer capacity across South of Allston path. Bonneville argues that the identified third-party system impacts must be remedied if Bonneville is to provide reliable and firm point-to-point transmission service; thus, until the required mitigation measures are completed, Bonneville has 0 MW of ATC after the Summit Project is energized.

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<sup>8</sup> On February 2, 2005, Bonneville filed an errata making two changes to its Answer. First, it corrected the reference to its May 2004 Summit SFS Report in the first full paragraph on page 7 to its July 2004 Summit SFS Report. Second, in the last sentence of the first full paragraph on page 7, Bonneville changed the reference to read "to maintain the transfer capacity across South of Allston path" in place of "to maintain the applicable WECC line ratings in the local area."

22. Bonneville states that Westward is confused about how an interconnected transmission system operates. Bonneville states that, though all transmission requests on an interconnected electrical system have some impact on neighboring systems, the extent and magnitude of that impact is directly related to the magnitude of the power flows, the location of the point of receipt, the voltage at which the power is injected into the system, and the location of the point of delivery.

23. Bonneville emphasizes that Westward's ability to obtain the full amount of transmission service requested is not compromised and Westward is not being charged for service Bonneville cannot provide. Bonneville states that because it can provide 520 MW during Period A, Westward must pay for that amount of service, but during Period B, Bonneville can provide no firm service reliably if the affected system issues are not resolved, and thus Westward will not be charged. Bonneville contends that until resolution of the affected systems, Westward will retain superior rights to the requested transmission should it become available and will lose no rights. Further, Bonneville states that Bonneville's system requires no system upgrades and resolution of Westward's request requires Westward to reach an accommodation with third-party systems. Bonneville argues that OATT section 13.5 (Transmission Customer Obligations for Facility Additions or Redispatch Costs) does not require it to construct facilities when the limiting elements are on third-party systems.

24. Bonneville states that Westward's arguments regarding the legitimacy of offers of partial service are illogical and contrary to the OATT. Bonneville states that section 19.7 of the OATT does not allow transmission providers to decide how much service to offer, but instead it requires a transmission provider to provide a transmission service agreement for all the service it can provide and the transmission customer must then execute that agreement, require its filing on an unexecuted basis, or lose its spot in the queue. Bonneville argues that the fact that Westward may prefer not to begin making payments now or may prefer to prolong the process and delay taking service by requiring Bonneville to install facilities on its system rather than perform mitigation needed on the affected systems is not a legitimate reason for permitting Westward to remain in Bonneville's transmission queue without taking the affirmative action to execute an agreement for the service Bonneville can provide.

25. Bonneville contends that if Westward's position is adopted by the Commission, the policy ramifications would be extreme. Bonneville states that independent generators could reserve transmission service for years at a time without payment and without losing their position in the transmission queue simply by choosing to leave third-party affected system issues unresolved. Further, Bonneville argues, the transmission provider would be required to withhold otherwise available ATC from other parties. Bonneville asserts that there is no rational justification for such a policy.

26. Bonneville states that the Revised Service Agreement does not unduly discriminate against Westward. Bonneville states that all of the curtailment scenarios that Westward constructs in its January 19 Motion seem to depend on Westward's

mistaken view that Bonneville does not have ATC to provide service in Period A. Bonneville affirms that Westward can schedule transmission between the requested points without a third-party impact during Period A, as can any assignee of Westward. Bonneville reiterates that it is only upon energization of the Summit Project that operating conditions change and the effect on third-party systems begins to operate as a limit on the amount that can be scheduled. Again, Bonneville states that the difference in ATC between Period A and Period B is due to the energization of the Summit Project; thus, neither Westward nor its assignee can schedule transmission on a firm basis between the requested points of receipt and delivery once the Summit Project is energized. Therefore, Bonneville states, there is no discrimination.

27. Further, Bonneville states that there is no discriminatory curtailment in the Revised Service Agreement. Bonneville states that in the January 4 Order the Commission found that the OATT did not provide for a firm service that would curtail certain customers on a non-pro-rata basis. To remedy this defect, Bonneville states, the Commission required Bonneville to offer only that transmission service Bonneville was able to provide without causing the identified third-party system impacts. Bonneville contends that by reducing the service provided to only the amount that could be provided without triggering the reliability problems on affected systems, the possibility of a discriminatory curtailment would be eliminated.

28. Bonneville again argues that there is no need to delay resolution of the issues by requiring a separate filing of the Revised Service Agreement on an unexecuted basis as requested by Westward on January 21, 2005 in a letter to Bonneville.

29. Bonneville requests that the Commission reject Westward's motion for clarification or, in the alternative, request for rehearing, and reject Westward's arguments in the Westward answer. Instead, Bonneville states, the Commission should grant Bonneville's motion and compel Westward either to commit to the service that Bonneville is able to provide by executing the Revised Service Agreement as required by the OATT by a date certain or terminate the status of its request in Bonneville's transmission queue. Bonneville further requests that the Commission act by no later than February 8, 2005 so that Bonneville does not lose the opportunity to obtain another month's transmission revenues.

### **Discussion**

30. The Commission will deny Westward's request for rehearing and grant Bonneville's motion. Westward argues that a transmission customer is not obligated to accept an offer that does not conform to its transmission request and requests that the Commission clarify that if a transmission customer rejects an offer of partial service, it does not lose its place in the queue. We agree with Westward that a transmission customer is not obligated to accept an offer that does not conform to its transmission request. Indeed, Westward, or any transmission customer, is not obligated to accept any offer by a transmission provider, whether it conforms or does not to the transmission

customer's request. However, if a transmission provider indicates that it cannot provide the full request of a transmission customer because of a lack of ATC, it is obligated under section 19.7 of the OATT to offer partial interim transmission service for the portion of the transmission service request that can be accommodated without the addition of facilities. Once an offer of partial interim transmission service is made, consistent with the OATT, the transmission customer must either accept the offer or reject it.<sup>9</sup> If it chooses to reject the offer, the transmission customer will lose its place in the queue. Otherwise, the transmission customer could prevent the firm use of ATC for an indefinite period of time while it proceeds with its project on its own timetable. This is an inefficient and unacceptable result that would deprive the transmission provider of revenues and other transmission customers' access to ATC.

31. With its motion, Bonneville submitted a Revised Service Agreement for Westward that is consistent with the Commission's January 4 Order. This Service Agreement offers Westward the full 520 MW requested for the period starting February 1, 2005 and ending on the date of energization of Westward's Summit Project (Period A). Once the Summit Project is energized (Period B), the Revised Service Agreement reduces the amount of firm transmission service to 0 MW, the amount of transmission Bonneville can provide on a firm basis if the identified upgrades and remedial action schemes on the third-party systems are not implemented. Moreover, consistent with the January 4 Order, Bonneville indicates that it will amend the Revised Service Agreement to provide for the full 520 MW of transmission service requested once the required upgrades and remedial action schemes are implemented on the third-party systems. Bonneville's Revised Service Agreement is consistent with its OATT and with the Commission's January 4 Order.

32. Westward argues that Bonneville not only cannot provide any transmission service to Westward but also has no firm transmission to offer any party. It maintains that "BPA makes no demonstration that anything on its system will change between February 1, 2005 and the date that the Summit Westward project is energized."<sup>10</sup> We disagree with Westward. As Bonneville explains, "[t]here is no logical incongruity between Bonneville having 520 MW of firm ATC between the requested points of receipt and delivery prior to the project's energization and Bonneville having no firm available transmission capacity after that energization."<sup>11</sup> Bonneville currently is able to

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<sup>9</sup> We note that Bonneville performed a system impact study with respect to Westward's request and concluded that no additional facilities would be necessary on Bonneville's system to provide the requested service. The study did identify issues on third-party systems, however, that would have to be resolved before transmission service could be provided after the energization of the Summit Project.

<sup>10</sup> Westward Answer at 5.

<sup>11</sup> Bonneville Answer at 6-7.

provide 520 MW of transmission service without the need for facilities additions on Bonneville's system.<sup>12</sup> It is only when the Summit Project is energized that matters change. Bonneville performed a study of the impact of the Summit Project and in a July 2004 Summit SFS Report indicated the need for upgrades to PacifiCorp's system and a need for the development of a remedial action scheme for certain line outages for facilities on Portland General's system once the Summit Project is energized. Thus, absent the energization of the Summit Project, Bonneville has transmission capacity to offer Westward or other customers in Bonneville's queue. Westward has not shown that Bonneville's July 2004 Summit SFS Report is in error or that Bonneville is unable to provide transmission service prior to the energization of the Summit Project. Moreover, it is indisputable that all transmission requests will have an impact on the integrated transmission grid, but those impacts are unique to the specific transmission requests. The fact that Bonneville may not be able to provide transmission service after the energization of the Summit Project does not mean that it will not have transmission capacity available for other transmission customers in the absence of the energization of the Summit Project.

33. Westward also argues that Bonneville's new offer "provides no service in exchange for the required payment of [Bonneville's] full firm point-to-point transmission charge."<sup>13</sup> We again disagree with Westward. As provided in Bonneville's OATT and the Commission's January 4 Order, Bonneville may charge Westward only for transmission service that it is capable of providing. As discussed above, Bonneville has ATC to provide 520 MW between the requested points during Period A, and because Westward has requested transmission service for this period, it must pay for this amount of service. It is irrelevant that Westward does not need the transmission service during Period A. It cannot enjoy the benefits of its queue position without paying for the transmission service that it has requested, and which associated transmission capacity is thus unavailable to any other customer on a firm basis.<sup>14</sup> Further, during Period B, Bonneville has shown that it cannot provide firm service if the

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<sup>12</sup> Bonneville's studies indicate that Bonneville can provide 520 MW of transmission service during Period A and that it can provide 520 MW of transmission service during Period B subject to the resolution of issues on third-party systems. Bonneville is under no obligation to construct facilities when it has identified the limiting factors as issues on third-party systems. Bonneville's only obligation under its OATT is to assist the transmission customer in making arrangements on the third-party systems.

<sup>13</sup> Westward's Answer at 2.

<sup>14</sup> As the Commission explained in the January 4 Order, Westward has the option of requesting extensions for commencement of service pursuant to section 17.7 of Bonneville's OATT. We also note that pursuant to Bonneville's OATT Westward may reassign any transmission capacity that it chooses not to use.

issues on the third-party systems are not resolved. However, consistent with its OATT and the January 4 Order, Bonneville indicates that Westward will not be charged until the issues on the third-party systems are resolved. At that time, Bonneville indicates that it will implement a new amendment to the Revised Service Agreement to offer the full 520 MW of service requested, and during the pendency of that resolution, Westward will retain superior rights to that transmission should it become available and will lose no rights. Thus, at no time will Westward have to pay for firm transmission service that is not available for its use.

34. Westward argues that Bonneville's Revised Service Agreement is inherently discriminatory. It maintains that "[i]f [Bonneville] is permitted to offer Westward a TSA that requires Westward to begin paying for 520 MW of capacity *before Westward's project is energized*, and also before [Bonneville] is actually in a position to provide **any** firm transmission service, [Bonneville's] actions will be equally discriminatory."<sup>15</sup> It claims that Westward's firm transmission rights are thus less than those of other firm point-to-point transmission customers. Westward's claim is unavailing. As we discussed above, it is only upon the energization of the Summit Project and the resulting effect on third-party systems that a limit arises on the amount of transmission capacity that can be scheduled. Until that occurs, Westward can use 520 MW of capacity or, if it chooses, assign its transmission rights to that capacity to a third party. Whether before or after the energization of the Summit Project, Westward and possible assignees are treated the same and, contrary to Westward's assertions, there is no undue discrimination. Moreover, any transmission customer seeking transmission service that requires additions or modifications on third-party systems would have the same limiting language included in their service agreements as Bonneville included in the Revised Service Agreement. Contrary to Westward's assertions, it is not being treated in an unduly discriminatory manner by Bonneville. We also disagree with Westward's assertion that Period B constitutes "in effect, a curtailment of all service pending the satisfaction of the same discriminatory condition that was rejected by the Commission in [Bonneville's] first offer."<sup>16</sup> In the January 4 Order, the Commission found that Bonneville's offer of a curtailable firm transmission service was inconsistent with its OATT and subjected only that customer to possible curtailment. The Commission concluded that this was unduly discriminatory and required Bonneville to offer transmission service consistent with its OATT. Bonneville's Revised Service Agreement does not result in unduly discriminatory behavior. Bonneville is treating Westward in the same manner as it would treat any other transmission customer seeking transmission service consistent with the terms and conditions of Bonneville's OATT.

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<sup>15</sup> Westward Motion at 6 (emphasis in original).

<sup>16</sup> Westward Answer at 2.

35. Lastly, we agree that there is no usefulness to Bonneville filing with the Commission its Revised Service Agreement on an unexecuted basis. The Commission is able to make a determination at this time based on the pleadings filed by the parties that the Revised Service Agreement is consistent with the Commission's January 4 Order and any further delay in resolving this matter would be unfair to the parties involved in this case as well as other potential transmission customers on Bonneville's system. Accordingly, in order to retain its position in Bonneville's queue, Westward must accept Bonneville's offer of the Revised Service Agreement pursuant to the terms and conditions of Bonneville's OATT.

The Commission orders:

(A) Bonneville's request for clarification is hereby granted, as discussed in the body of this order.

(B) Westward's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.