

143 FERC ¶ 61,274
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Iberdrola Renewables, Inc.
PacifiCorp
NextEra Energy Resources, LLC
Invenergy Wind North America LLC
Horizon Wind Energy LLC

Docket Nos. EL11-44-004
EL11-44-005

v.

Bonneville Power Administration

ORDER DENYING REHEARING

(Issued June 26, 2013)

1. On December 20, 2012, the Commission issued an order conditionally accepting Bonneville Power Administration's (Bonneville) Oversupply Management Protocol (OMP) for filing, conditioned upon Bonneville submitting a further compliance filing under section 211A of the Federal Power Act (FPA).¹ The Commission directed Bonneville to submit a compliance filing that proposed a cost allocation methodology under the OMP to allocate displacement costs in a manner that, in conjunction with the non-rate terms and conditions of the OMP, ensures comparable transmission service. On that same date, the Commission issued an order denying rehearing of the Commission's December 7, 2011 order in this same docket.² In this order, the Commission denies rehearing of both the Compliance Order and the Rehearing Order, as set forth below.

I. Background

2. On June 13, 2011, Iberdrola Renewables, Inc., Pacificorp, NextEra Energy Resources, LLC, Invenergy Wind North America, LLC, and Horizon Wind Energy LLC (collectively, Petitioners) filed a petition alleging that Bonneville, under its Interim

¹ *Iberdrola Renewables, Inc. v. Bonneville Power Administration*, 141 FERC ¶ 61,234 (2012) (Compliance Order).

² *Iberdrola Renewables, Inc. v. Bonneville Power Administration*, 141 FERC ¶ 61,233 (2012) (Rehearing Order).

Environmental Redispatch and Negative Pricing Policies (Environmental Redispatch Policy), had acted in an unduly discriminatory manner by directing the curtailment of wind generators and then using the wind generators' firm transmission rights to deliver federal hydropower to the wind generators' customers. Petitioners requested that the Commission invoke its authority under section 211A to direct Bonneville to change its curtailment practices and to file a revised open access transmission tariff (OATT) with the Commission. Petitioners also requested that the Commission order Bonneville to act in accordance with the terms of its interconnection agreements with Petitioners by ceasing its curtailment practices immediately.³

3. On December 7, 2011, the Commission issued an order finding that Bonneville's Environmental Redispatch Policy resulted in the noncomparable treatment of non-federal generating resources interconnected to Bonneville's transmission system. Pursuant to section 211A, the Commission directed Bonneville to provide comparable transmission service to such resources prospectively by submitting tariff revisions that provide for transmission service under terms and conditions that are comparable to those under which Bonneville provides transmission to itself, and that are not unduly discriminatory or preferential.⁴

4. On March 6, 2012, Bonneville submitted its compliance filing to address the concerns raised in the December 2011 Order. Bonneville's compliance filing proposed to amend its OATT to include the OMP, which sets forth the terms and conditions for displacing generation during periods of oversupply. Under the OMP, Bonneville proposed to retain the practice of displacing certain generation resources unilaterally.⁵ Bonneville proposed to displace generating units using a least cost displacement curve, which would be implemented by an independent evaluator, and to compensate such generation for displacement costs, including: (1) compensation for production tax credits (PTC) that the generator would have received but for the displacement; (2) compensation for lost renewable energy credits (REC) unbundled from the sale of power; and (3) certain contract costs related to the bundled sale and purchase of RECs, and costs and penalties related to the failure to deliver renewable power.⁶

³ See *Iberdrola Renewables, Inc. v. Bonneville Power Administration*, 137 FERC ¶ 61,185 (2011) (December 2011 Order).

⁴ *Id.*

⁵ Bonneville will continue to issue dispatch orders that direct generators to reduce output (some will be required to reduce output to zero) and instead will deliver federal hydroelectric energy to replace the displaced generation in order to meet generators' schedules.

⁶ Bonneville March 6, 2012 Compliance Filing at 14-15 (Compliance Filing).

5. With regard to compensation for the latter, i.e., lost contract revenues, Bonneville proposed to differentiate between generators that had entered into contracts prior to March 6, 2012, which would receive compensation for these losses, and those that entered into contracts after March 6, 2012 (the date of the compliance filing), which would not. Bonneville argued that this differentiation was not unduly discriminatory or preferential because prospective contracts could be appropriately structured and priced to avoid these costs. Further, Bonneville pointed out that OMP does not unduly discriminate between new and existing generation because compensation for existing generators entering into new contracts after March 6, 2012 would not include compensation for lost contract revenues. Nevertheless, Bonneville asserted that the Commission has established precedent for allowable distinctions between new and existing customers. Bonneville stated that, in *PJM Interconnection, L.L.C.*,⁷ the Commission found that generators are bound by the rules in place at the time they enter the transmission provider's interconnection queue, because the generator is on notice of the costs it will incur under those tariff rules, even if the tariff rules are subsequently changed. Bonneville argued that its OMP compensation rule is similar, because generators will be on notice of the rules that will apply after March 6, 2012 (the date of the compliance filing) and can structure their economic models and contracts accordingly.⁸

6. Bonneville explained that it will fund the compensation to displaced generators through transmission reserves, and will seek to recover those funds once a cost allocation methodology is established in a formal rate case conducted pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act).⁹ Bonneville stated that it intended to propose a methodology that allocates 50 percent of the costs of displacement under the OMP to generators who submit displacement costs, and 50 percent of the costs for displacement under the OMP would be allocated to purchasers of power from the Federal Base System. Bonneville asserted that this allocation approach was reasonable and fair, and it appropriately aligned costs and benefits, as both federal hydroelectric resources and wind resources contribute to the oversupply situation.¹⁰ Bonneville noted, however, that it is legally barred from establishing rates outside of a formal rate case under section 7(i) of the Northwest Power

⁷ 136 FERC ¶ 61,195, at P 35 (2011), *order on reh'g*, 139 FERC ¶ 61,184 (2012); *appeal docketed sub nom. West Deptford Energy, LLC v. FERC*, No. 12-1340 (9th Cir. 2013) (*PJM*).

⁸ Compliance Filing at 27-28.

⁹ 16 U.S.C. §§ 839, *et seq.* (2006).

¹⁰ Compliance Filing at 21-23.

Act. Bonneville stated that it intended to convene the rate case in the spring of 2012 and would submit proposed rates to the Commission at the conclusion of the rate case.¹¹

7. To implement the OMP, Bonneville proposed to amend Appendix C of existing large generator interconnection agreements (LGIA) to clarify that the terms and conditions of the OMP apply to all generators located in Bonneville's balancing authority area through existing interconnection agreements.¹²

8. On December 20, 2012, the Commission conditionally accepted the OMP as a balanced interim measure that addressed Bonneville's oversupply problems, subject to Bonneville submitting a further compliance filing. The Commission explained that Bonneville's proposed OMP involved both rates for, and non-rate terms and conditions of, transmission service. For this reason, the Commission stated that it would consider both the rate and non-rate aspects of the compliance proposal to determine whether the OMP, as a whole, complies with the directive in the December 2011 Order.¹³

9. The Commission found that the proposed rates and non-rate terms and conditions of the OMP, when viewed as a whole, did not result in comparable transmission service for displaced generators that was not unduly discriminatory or preferential. Specifically, the Commission determined that Bonneville had not demonstrated that its 50/50 cost sharing arrangement would place an appropriate and equitable cost burden upon all firm transmission customers. In particular, the Commission noted that wind generators' use of firm transmission service on Bonneville's system during oversupply periods represents a fraction of the total firm transmission usage during those periods, yet such entities would be allocated half of the displacement costs under Bonneville's intended methodology.¹⁴

10. The Commission directed Bonneville to submit a compliance filing under section 211A within 90 days of the issuance of the Compliance Order setting forth a cost allocation methodology that equitably allocates displacement costs to all firm transmission customers. The Commission suggested a methodology based on generators' respective transmission usage during oversupply situations but did not require any specific methodology, noting that Bonneville could establish any methodology that ensures

¹¹ *Id.* at 22-25. Bonneville formally initiated its rate case on OMP cost recovery on November 8, 2012. Bonneville January 22, 2012 Rehearing Request at 7 (Bonneville Rehearing Request). The Commission has directed Bonneville to submit its compliance filing within thirty days after the date it submits to the Commission its final OMP rate decision. *Iberdrola Renewables, Inc. v. Bonneville Power Administration*, 142 FERC ¶ 61,116, at PP 1, 5-6 (2013) (February 2013 Order)).

¹² Compliance Filing at 19-21.

¹³ Compliance Order, 141 FERC ¶ 61,234 at P 43.

¹⁴ *Id.* PP 44-46.

comparability in the provision of transmission service by Bonneville. The Commission stated that it would evaluate whether any such methodology, coupled with the non-rate terms and conditions under the OMP, ensures comparable transmission service for all resources.¹⁵

11. In addition to the Commission's primary determination described above, the Commission made a number of additional determinations regarding certain technical aspects of the OMP. In particular, the Commission directed Bonneville to consider changes to protocols proposed to address future oversupply situations to address, among other things, the compensation of displaced thermal resources,¹⁶ and to identify the types of actions Bonneville will take prior to curtailing wind generation.¹⁷ Finally, the Commission approved Bonneville's proposal to revise Appendix C of Bonneville's existing LGIAs in order to implement the OMP, pursuant to the Commission's authority under FPA section 211A, noting that Bonneville's authority to amend the LGIAs unilaterally under Article 9.3 of the LGIA was not relevant to the proceeding and was not being addressed in the order.¹⁸

12. Also on December 20, 2012, the Commission issued the Rehearing Order. In the Rehearing Order, the Commission found, in relevant part, no basis for parties' claims that, by directing Bonneville to provide comparable transmission service under section 211A, the Commission had ignored Bonneville's other statutory obligations and had directed Bonneville to act in a manner inconsistent with those statutes.¹⁹ The Commission also noted that Bonneville had stated in its March 2012 compliance filing that it could provide transmission service in accordance with section 211A while also satisfying its other statutory obligations, and that this undercut Bonneville's claims that the Commission had ignored Bonneville's other statutory responsibilities.²⁰

13. On January 22, 2013, the following parties sought clarification and/or rehearing of the Compliance Order: (1) Bonneville; (2) Petitioners, jointly with Northwest and Intermountain Power Producers Coalition and TransAlta Energy Marketing (collectively, Movants); (3) E.ON Climate & Renewables North America, LLC (EON); (4) Public Power Council, Pacific Northwest Generating Cooperative, Northwest Requirements Utilities, and the Western Public Agencies Group (collectively, Joint Intervenors); (5) the

¹⁵ *Id.* P 46.

¹⁶ *Id.* P 53.

¹⁷ *Id.* P 56.

¹⁸ *Id.* P 77.

¹⁹ Rehearing Order, 141 FERC ¶ 61,233 at P 32.

²⁰ *Id.* P 33.

American Wind Energy Association (AWEA) and Renewable Northwest Project (RNP);²¹ and (6) Powerex Corp. (Powerex). Bonneville filed an answer.

14. Bonneville and Joint Intervenors included in their respective requests for rehearing of the Compliance Order motions requesting a stay of the requirement to file an alternative cost allocation methodology within 90 days of the date of the Compliance Order. In support of their requests, Bonneville and Joint Intervenors stated that the to-be-proposed cost allocation methodology under the OMP must be developed through a rate process under section 7(i) of the Northwest Power Act (Northwest Power Act rate case). Thus, the parties requested that the Commission defer Bonneville's compliance obligations until such time as the Commission rules favorably on their rehearing requests, or Bonneville has completed the Northwest Power Act rate case.²² On February 5, Charles Pace filed an answer in opposition to the motions. On February 6, 2013, Movants filed an answer generally stating that they did not oppose the parties' motions for stay.²³ On February 19, 2013, the Commission issued an order granting an extension of time, until 30 days after the date Bonneville files the Northwest Power Act rate case decision with the Commission, for Bonneville to submit its cost allocation methodology.²⁴

15. Also on January 22, 2013, Joint Intervenors filed a request for rehearing of the Rehearing Order. Joint Intervenors filed an erratum on January 23, 2013 to correct an omission in the identification of joining parties in the January 22, 2013 filing.

II. Discussion

A. Procedural Matters

16. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2012), prohibits answers to a request for rehearing. Therefore, we will reject Bonneville's answer.

²¹ AWEA and RNP jointly support EON's request for rehearing.

²² Bonneville Rehearing Request at 12-13; Joint Intervenors Request for Rehearing of Compliance Order at 24-25 (Joint Intervenors Compliance Order Rehearing Request).

²³ Movants instead requested that the Commission establish a new compliance filing date of July 22, 2013 for Bonneville's submission.

²⁴ February 2013 Order, 142 FERC ¶ 61,116 at P 6.

B. Requests for Rehearing and/or Clarification of Compliance Order**1. OMP Compensation for Contract Costs**

17. EON requests clarification that the Compliance Order did not accept Bonneville's proposal under the OMP to compensate displaced generators with contracts executed after March 6, 2012 in a manner different from those displaced generators with contracts executed prior to March 6, 2012, nor did the Commission authorize treatment of displaced generators in this manner in any future compliance filing. According to EON, the OMP would compensate displaced generation for: (1) lost PTCs; (2) lost RECs; and (3) certain contract costs. However, EON explains, under the OMP, displaced generators with contracts executed after March 6, 2012 would not be compensated for contract costs. EON states that, while the Compliance Order described Bonneville's proposal to disallow recovery of contract costs for post-March 6, 2012 displaced generation, the Commission failed to address this aspect of the OMP specifically in the Compliance Order.²⁵

18. In the alternative, EON argues that the Commission erred by accepting this aspect of the OMP, because the exclusion of contract costs for such generators is unduly discriminatory and preferential, and is also inconsistent with the comparability directive set forth in the December 2011 Order. Specifically, EON argues that providing less compensation to similarly situated generators with contracts executed after March 6, 2012 would be unduly discriminatory. Further, EON argues that, because the OMP expires on March 30, 2013, it would not be lawful to subject contracts executed after that date to the exclusion of contract costs.²⁶

19. Both EON and Movants argue that the distinction between pre- and post-March 6, 2012 contracts results in undue discrimination against new entrants; EON and Movants generally argue that, by providing this compensation to generators with contracts entered into before March 6, 2012, while failing to compensate generators under new contracts for these same costs, the OMP creates an undue preference for existing generation.²⁷ EON and Movants contend that this aspect of the OMP creates an unlevel playing field for new non-federal renewable generation, and thus may discourage potential new entrants in the electricity market.²⁸

²⁵ EON January 22, 2013 Rehearing Request at 5-6 (EON Rehearing Request).

²⁶ *Id.* at 7-9.

²⁷ *Id.* at 9; Movants January 22, 2013 Rehearing Request at 19 (Movants Rehearing Request).

²⁸ EON Rehearing Request at 11-12; Movants Rehearing Request at 19-23.

20. Movants reject Bonneville's proffered justifications for excluding contract costs in the compensation for displaced generators with post-March 6, 2012 contracts. Movants argue that notice of Bonneville's protocol for prospective contracts is not an acceptable distinction, and they maintain that notice of an unduly discriminatory practice does not constitute comparable or non-discriminatory transmission service. Movants also argue that Bonneville's reliance on *PJM* to justify its proposed different treatment of new and existing generators is misplaced. Movants assert that *PJM* applies only narrowly to situations in which a transmission provider revises its tariff after a generator enters that transmission provider's interconnection queue. Movants insist that *PJM* does not speak to the broader question of whether and under what circumstances it may be acceptable to treat existing and new customers differently. Moreover, Movants argue that the instant situation is distinguishable from the one presented in *PJM*, because the rule in *PJM* promotes regulatory certainty, whereas the OMP offers no certainty upon which new generators can make informed business decisions.²⁹

21. EON also argues that Bonneville's proposal to exclude contract costs for generators with contracts executed after March 6, 2012 is inconsistent with other determinations in the Compliance Order that require comparable treatment. EON states that the Compliance Order directed Bonneville to establish a cost allocation methodology that "equitably allocates . . . costs to all firm transmission customers" and "ensures comparability." EON claims that compensating curtailed generators differently based on whether they entered into contracts that pre-date or post-date March 6, 2012 does not constitute equitable or comparable treatment of all firm transmission customers.³⁰

22. EON further argues that the OMP unduly discriminates between new non-federal thermal generation, which would receive compensation for contract costs, and new non-federal renewable generation, which would not receive compensation for such costs.³¹ Similarly, EON contends that the exclusion of contract costs for any displaced generators is contrary to the Commission's comparability directive in the December 2011 Order because the federal generation on Bonneville's system does not appear to be subject to the same exclusion. Thus, EON asserts that the OMP compensation not only fails to achieve the Commission's comparability directive, but also provides an undue preference for federal generation over non-federal generation.³²

²⁹ Movants Rehearing Request at 19-22.

³⁰ EON Rehearing Request at 9-12 (citing December 2011 Order, 137 FERC ¶ 61,185 at P 46).

³¹ *Id.* at 11.

³² EON Rehearing Request at 8.

23. EON notes that Joint Intervenors had argued that displaced generators with contracts executed after March 6, 2012 should also not be compensated for PTCs and RECs, but that the Compliance Order did not address this alternative proposal. EON states that, if the intent of the Compliance Order was to do anything other than reject the Joint Intervenors' proposal, EON seeks rehearing on this issue.³³

Commission Determination

24. The Commission will deny rehearing. Although not expressly addressed in the Compliance Order, the Commission accepted, as part of the overall OMP proposal, Bonneville's proposal to exclude compensation for contract costs for generators with post-March 6, 2012 contracts. We find appropriate Bonneville's proposal to compensate those generators with executed contracts that pre-date the filing of the OMP for contract costs resulting from displacement during oversupply events, while excluding compensation for lost contract revenues for generators that execute contracts after the OMP was filed (i.e., March 6, 2012). Generators that had already entered into contracts prior to March 6, 2012 had no opportunity to address and mitigate any possible losses associated with potential displacement during oversupply events. However, we find that, with notice of the proposed OMP compensation rules, generators entering into new contracts have the opportunity to structure their transactions in accordance with the applicable OMP compensation provisions. Although the specific facts differ from this case, *PJM* is relevant with regard to the issue of notice. Thus, because Bonneville's filing of the OMP provided notice of the compensation rules that would apply prospectively, after March 6, 2012, we find that the Commission's approval of this element of the OMP is consistent with Commission precedent on this issue, including *PJM*.

25. Further, as Bonneville explained in its compliance filing, the proposed compensation under the OMP applies to all renewable generators - both new and existing renewable generators - executing contracts after March 6, 2012. Thus, we find no undue discrimination or preferential treatment with respect to compensation for contract costs. For the same reasons, we find no inconsistencies between the Commission's prior comparability directives, either in the December 2011 Order or in the Compliance Order and the Commission's acceptance of the OMP compensation provisions.

26. We also reject claims of undue discrimination as between non-federal thermal and non-federal renewable generation. As the Commission explained in the Compliance Order, thermal generators are not eligible to receive reimbursement for any displacement costs under the OMP. Thus, we disagree with EON's claim that non-federal thermal generators will be reimbursed for their contract costs. Similarly, we find no merit in EON's claim that the OMP creates an undue preference for federal generation due to the

³³ *Id.* at 12-13. The Commission did not accept the Joint Intervenors' alternative proposal in the Compliance Order. Thus, we will not further address EON's arguments on this issue.

exclusion of contract costs for certain displaced non-federal generators. Based on Bonneville's representations in its compliance filing, Bonneville does not receive PTCs or have RECs, and it will not submit costs of displacement for its generation.³⁴ Thus, we find that federal generators will not be eligible for contract cost reimbursement, nor are they treated preferentially as compared to non-federal generators with regard to compensation for displacement costs.

27. The Commission will consider the proposed compensation rules for the post-March 30, 2013 period in a separate proceeding that addresses Bonneville's March 2013 compliance filing. Thus, we find that EON's concerns about the compensation rules after the expiration of the OMP are beyond the scope of this proceeding.

2. Cost Allocation Issues

28. Joint Intervenors challenge the Commission's determination that the rate and non-rate aspects of the OMP are intrinsically linked and must be evaluated together to determine if Bonneville has complied with the Commission's directive to provide comparable and not unduly discriminatory transmission service. Joint Intervenors assert that the Commission offered no support for these findings. Joint Intervenors argue that the OMP non-rate terms and conditions are distinct from the cost allocation and rate issues. Moreover, Joint Intervenors state that the Commission has previously approved certain Bonneville non-rate provisions for a service without having reviewed the actual rates for that same service. In particular, Joint Intervenors cite the Commission's approval of Bonneville's Tiered Rates Methodology (TRM) filing, despite the fact that the TRM did not establish specific rates.³⁵ Thus, Joint Intervenors contend it would be consistent with Commission precedent to approve the non-rate OMP provisions without addressing OMP rates until such rates are established through its formal rate proceeding.³⁶

29. Joint Intervenors and Bonneville argue that the Commission offered no support for its finding that a 50/50 cost allocation methodology would not result in comparable transmission service, or its suggestion that a cost allocation based on transmission usage during oversupply situations would be acceptable to the Commission.³⁷

³⁴ Compliance Filing at 28.

³⁵ Joint Intervenors Compliance Order Rehearing Request at 20-22 (citing *U.S. Department of Energy – Bonneville Power Administration*, 131 FERC ¶ 61,244 (2010) (TRM Order)).

³⁶ *Id.*

³⁷ *Id.* at 22-23; Bonneville Rehearing Request at 11-12.

30. Joint Intervenors and Bonneville also argue that, by directing Bonneville to file a cost allocation proposal within ninety days of the issuance of the Compliance Order, the Commission has improperly interfered with Bonneville's rate process under the Northwest Power Act. The two parties argue that the cost allocation methodology referenced in the March 6, 2012 compliance filing was only a "starting point" of the rate case. Bonneville contends that it only provided the methodology to give the Commission a fuller picture of Bonneville's approach to the oversupply situation. Both parties generally argue that forcing Bonneville to comply with the Commission's directive prior to Bonneville's completion of the rate process would have harmful consequences. For example, they argue that this compliance obligation impinges upon the due process rights of Bonneville and other interested parties intending to litigate the merits of the cost allocation methodology in the Northwest Power Act rate case. Thus, both parties argue that Bonneville should be allowed to complete the Northwest Power Act rate case, and then submit to the Commission the OMP, including the cost allocation methodology established through that process.³⁸

31. Movants and Powerex question the Commission's statement in the Compliance Order that Bonneville should allocate costs under the OMP to all firm transmission customers. Movants seek clarification that the Compliance Order does not address the lawfulness under Bonneville's other statutes of Bonneville's allocating power costs, including the costs associated with fish and wildlife measures and the inability to sell excess power, to transmission rates. In the alternative, Movants seek rehearing if the Commission instead concluded in Compliance Order that allocation of power costs to transmission rates is indeed lawful under any statute, including section 211A. Movants argue that the Northwest Power Act requires that the costs for all fish and wildlife protection and mitigation measures must be allocated to power rates. According to Movants, the costs for environmental redispatch, characterized by Bonneville as fish and wildlife costs, must be allocated to power rates. Similarly, Movants contend that the Northwest Power Act requires that costs associated with the inability to sell excess power must be allocated to power rates, and not transmission rates. Thus, Movants argue that it would be unduly discriminatory and inconsistent with the Northwest Power Act to allocate to transmission rates the costs associated with fish and wildlife protection and mitigation measures and the inability to sell excess electric power.³⁹

³⁸ Joint Intervenors Compliance Order Rehearing Request at 10-18; Bonneville Rehearing Request at 4-11.

³⁹ Movants Rehearing Request at 6-12.

32. Movants also assert that Bonneville's controlling statutes, including the Northwest Power Act and the Federal Columbia River Transmission System Act of 1974,⁴⁰ set forth the difference between power rates and transmission rates for cost allocation purposes, and these statutes have been interpreted to prohibit the use of transmission rates to collect revenues to cover power costs.⁴¹

33. Powerex seeks clarification or, in the alternative, rehearing that OMP displacement costs should be allocated only to Bonneville and not to all firm transmission customers. Powerex contends that such clarification is necessary in light of the Commission's emphasis in the Compliance Order on the need for comparable transmission service under the OMP. Powerex also contends that allocating costs under the OMP to all firm transmission customers would violate cost causation principles.⁴²

34. Powerex claims that OMP costs result from the decision of Bonneville's merchant function, BPA Power Services, to set a threshold price below which it is unwilling to sell its power. Powerex asserts that, in order to get rid of its excess generation, Bonneville makes the economic choice to address oversupply by essentially commandeering the wind generators' sales and associated transmission service by using its re-dispatch authority to substitute its merchant's surplus power for the generators' schedules and associated contracts. Thus, Powerex argues that the costs Bonneville incurs under the OMP are entirely power-related and that the chief beneficiary of the OMP is BPA Power Services, by being provided a way to dispose of its excess generation. Powerex contends that, because transmission customers neither caused nor contributed to the need for displacing wind generators, and did not benefit from displacements, there is no basis for transmission customers to bear these costs.⁴³

35. Powerex also argues that Bonneville's confiscation of third-party transmission rights, associated with the delivery of BPA Power Services' surplus power to the wind generators' customers, violates the transmission comparability standard. Unless 100 percent of the OMP costs are allocated to BPA Power Services, Powerex contends that the OMP curtailment procedures effectively provide transmission service to Bonneville's

⁴⁰ 16 U.S.C. §§ 838, *et seq.* (2006).

⁴¹ Movants Rehearing Request at 12-14 (citing *U.S. Dep't of Energy, Bonneville Power Admin.*, 25 FERC ¶ 61,140, at 61,375 (1983) (finding that the Commission could not determine whether Bonneville's transmission rates satisfied the requirements of the Northwest Power Act without some type of tracking system to ensure that "costs assigned to transmission are only transmission related costs ...").

⁴² Powerex January 22, 2013 Rehearing Request at 3-4.

⁴³ *Id.* at 5-9.

merchant function under terms and conditions that are not available to other Bonneville transmission customers with excess power.⁴⁴

36. Finally, Powerex contends that, if the Commission rules that Bonneville should allocate displacement costs to all firm transmission customers, the Commission should clarify that: (1) Bonneville Power Services should be included as a firm transmission customer; and (2) wheel-through transmission is not subject to the OMP, nor is it required to pay displacement costs.⁴⁵

Commission Determination

37. The Commission denies rehearing on all arguments related to the OMP cost allocation methodology. As a threshold matter, we reaffirm the Commission's prior determination that the rates and non-rate terms and conditions of the OMP are intrinsically linked. Bonneville's proposal to address oversupply situations includes a mix of non-rate terms and conditions for displacing non-federal resources on a unilateral basis, compensation for displaced resources, and a methodology for allocating displacement costs across Bonneville's transmission system. The Commission cannot evaluate whether the OMP as a whole results in comparable transmission service for all resources connected to Bonneville's transmission system without looking at the interrelationship of all three aspects of the proposal. Bonneville, itself, confirmed in its compliance filing that "[d]uring 2012, Bonneville will use transmission reserves to fund the compensation to displaced generators. Once the cost allocation methodology is established and approved, it will determine customers' responsibility for replenishing reserves."⁴⁶ Therefore, despite the fact that Bonneville has already implemented certain aspects of the OMP, we continue to find that the proposed cost allocation methodology, the compensation, and the non-rate terms and conditions of the OMP are linked, and must be evaluated together to determine whether the OMP ensures comparable transmission service for all resources.

38. We find that this situation is distinguishable from the issue addressed in the TRM Order, where the question before the Commission was simply whether the TRM would prevent Bonneville from recovering certain costs. In granting the petition, the Commission found that the TRM was "only a change in Bonneville's rate design methodology," and noted that "Bonneville has a statutory obligation to set rates to recover its costs."⁴⁷ The Commission did not need to, and so it did not, consider the interrelationship between a specific rate and other non-rate terms and conditions in order to address the question presented. As discussed above, the instant case is different in that

⁴⁴ *Id.* at 7.

⁴⁵ *Id.* at 10-11.

⁴⁶ Compliance Filing at 26.

⁴⁷ TRM Order, 131 FERC ¶ 61, 244 at P 13.

the rate is integral to our evaluation of whether the OMP results in comparable and not unduly discriminatory transmission service. Accordingly, we find that the TRM Order is inapposite.

39. With respect to the guidance provided in the Compliance Order regarding the cost allocation methodology, we found there,⁴⁸ and continue to find here, that Bonneville has not demonstrated how a 50/50 cost sharing arrangement would result in comparable transmission service for generating resources connected to Bonneville's system. Neither Joint Intervenors nor Bonneville raise any arguments on rehearing that convince us that allocating half of the displacement costs to wind generation that represents only a fraction of the firm transmission service provided during oversupply conditions achieves comparable transmission service consistent with the Commission's directive. Further, we emphasize that the Commission did not make any findings with regard to a cost allocation methodology based on transmission usage during oversupply conditions. Rather, the Commission suggested just one possible approach as an option that may result in an equitable allocation of costs, and also recognized that other approaches are possible.⁴⁹ Thus, we need not address arguments that the Commission failed to support its "finding."

40. We find that Bonneville's and Joint Intervenors' arguments regarding the timing of Bonneville's compliance are moot. In the February 2013 Order, the Commission extended the time for Bonneville to comply with the Compliance Order until 30 days after Bonneville submits the OMP rate decision to the Commission. Thus, Bonneville's compliance filing is due after its completion of the Northwest Power Act rate case.

41. In addition, we find that the other cost allocation arguments on rehearing are premature. The Compliance Order found that Bonneville had not demonstrated that its intended 50/50 cost sharing arrangement would result in comparable transmission service for all resources and, therefore, the Commission provided guidance regarding a possible alternative cost sharing method, but did not make any determination on an appropriate cost allocation methodology.⁵⁰ Rather, the Commission directed Bonneville to devise a methodology that results in an equitable allocation of displacement costs and provides comparable transmission service.⁵¹ The Compliance Order did not make, and should not be interpreted as making, any determination as to the lawfulness, under any provisions other than section 211A, of allocating OMP-related costs to transmission rates.

⁴⁸ Compliance Order, 141 FERC ¶ 61,234 at P 45.

⁴⁹ *Id.* P 46.

⁵⁰ *Id.* PP 45-46.

⁵¹ *Id.* P 46.

42. For the same reasons, we find that the premise of Powerex's arguments is flawed. Powerex presumes that the Commission prescribed a particular methodology for allocating costs. This is not the case; the Commission did not direct Bonneville to allocate displacement costs in a particular manner. Rather, the Commission offered guidance regarding one option for allocating displacement costs, based on transmission usage during an oversupply situation. The Commission also expressly acknowledged the potential for other equitable cost allocation methodologies.⁵²

43. Bonneville will establish a cost allocation methodology through the ongoing Northwest Power Act rate case. Upon the completion of that rate proceeding, Bonneville is obligated to submit the cost allocation methodology to the Commission for review, to ensure it results in comparable transmission in compliance with our directive pursuant to section 211A. At that time, the Commission will evaluate the cost allocation methodology, along with the compensation and the non-rate terms and conditions of the OMP, to ensure that it results in comparable transmission service. In so doing, the Commission will consider at that time arguments made there regarding whether Bonneville's cost allocation methodology, coupled with the compensation and the non-rate terms and conditions elements of the OMP, results in comparable transmission service.

3. Other Matters

a. Modifications to LGIAs

44. Movants seek clarification that the Compliance Order did not intend to permit Bonneville to make changes to existing LGIAs that relate to Bonneville's Dispatcher's Standing Order (DSO) 216 policies. In the alternative, Movants seek rehearing if the Order on Compliance intended to permit Bonneville's inclusion of DSO 216-related provisions, along with provisions addressing the OMP, in amendments to existing LGIAs. Movants argue that Bonneville has proposed to unilaterally amend existing LGIAs to permit curtailments under both the OMP and DSO 216, even though DSO 216 is not part of the OMP. Movants also argue that DSO 216 is not comparable, is unduly discriminatory and preferential, and is inconsistent with Bonneville's tariff and existing LGIAs.⁵³

⁵² *Id.*

⁵³ Movants Rehearing Request at 14-18.

Commission Determination.

45. In the Compliance Order, the Commission addressed only Bonneville's revision of existing LGIAs as necessary to implement the OMP, concluding that such changes are being made pursuant to the Commission's authority under section 211A.⁵⁴ The Commission did not address Bonneville's right to make any other changes to existing LGIAs. Thus, we find that concerns related to Bonneville's implementation of DSO 216 are beyond the scope of this proceeding.⁵⁵

b. Voluntary Displacement

46. Movants seek clarification or, in the alternative, rehearing that the Compliance Order did not preclude voluntary displacement with compensation as a remedy that could be proposed by Bonneville in future compliance filings. Movants argue that, by finding that the rate and non-rate elements of the OMP are inextricably linked, the Compliance Order appears to support Bonneville's involuntary displacement approach. Movants assert that voluntary displacement coupled with compensation is an acceptable approach for addressing Bonneville's oversupply problems, but that involuntary displacement is not. They assert that, to the extent Bonneville cannot lawfully allocate OMP costs to transmission rates, it cannot proceed with the non-rate aspects of the OMP, as the Commission has found that the rate and non-rate aspects are intrinsically linked. Movants emphasize that Bonneville must find an approach that satisfies all of Bonneville's statutory obligations, including section 211A.⁵⁶

Commission Determination

47. The Commission did not preclude voluntary displacement with compensation as a means for Bonneville to provide comparable transmission service.⁵⁷ Rather, the Compliance Order considered only the OMP proposal submitted by Bonneville, which provides compensation for those generators involuntarily curtailed, to determine whether it satisfied our directive under section 211A. Bonneville is not foreclosed from proposing a future solution for addressing its oversupply problems that incorporates voluntary displacement combined with compensation, or proposing any other solution, as long as it results in comparable transmission service as directed by the Commission.

⁵⁴ Compliance Order, 141 FERC ¶ 61,234 at P 77.

⁵⁵ *See id.* P 60.

⁵⁶ *Id.* at 23-25.

⁵⁷ *See id.* P 46.

C. Request for Rehearing of the Rehearing Order

48. Joint Intervenors argue that the Commission failed to consider Bonneville's other statutory obligations in determining whether Bonneville is providing comparable transmission service. Joint Intervenors contend that the Commission erred in its reliance on Bonneville's compliance filing as evidence that Bonneville can comply with both FPA section 211A and with its other statutory obligations. Joint Intervenors assert that the Commission cannot conclude from Bonneville's effort to comply with the directives of the December 2011 Order that Bonneville was able to comply with section 211A without violating its other statutory directives. Joint Intervenors posit that the Commission's actions throughout this proceeding have impermissibly usurped Bonneville's authority under its organic statutes in favor of the requirements of section 211A.⁵⁸

Commission Determination

49. In the Rehearing Order, the Commission stressed that it did not find in the December 2011 Order that its authority under section 211A supersedes Bonneville's statutory obligations, and it recognized once again the burden Bonneville faces in satisfying its numerous statutory obligations. The Commission explained that it had determined in the underlying December 2011 Order that, among Bonneville's various statutory obligations, is the section 211A requirement for Bonneville to provide comparable transmission service. Moreover, in the underlying December 2011 Order, the Commission did not depend on Bonneville's compliance filing in making this determination. Rather, in the Rehearing Order, the Commission merely used the compliance filing as an example to illustrate that it is possible to comply with both.⁵⁹ Joint Intervenors have not presented any arguments on rehearing that persuade us to instead find that the Commission's action under section 211A preempts or contravenes Bonneville's other statutory obligations.

⁵⁸ Joint Intervenors January 22, 2012 Request for Rehearing of the December 20, 2012 Rehearing Order.

⁵⁹ Rehearing Order, 141 FERC ¶ 61,233 at PP 31-33.

The Commission orders:

The requests for rehearing and/or clarification of the Compliance Order and Rehearing Order are hereby denied, as discussed in the body of this order.

By the Commission. Chairman Wellinghoff is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.