

145 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Bonneville Power Administration

Docket Nos. NJ12-7-000
NJ12-13-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued November 21, 2013)

1. In this Order, the Commission accepts Bonneville Power Administration's (Bonneville) petition for declaratory order in part, subject to further modification of its open access transmission tariff (OATT or tariff). This Order finds that certain proposed changes to Bonneville's tariff substantially conform with or are superior to the Commission's *pro forma* tariff. Additionally, the Commission finds that several provisions of Bonneville's tariff must be modified in order to substantially conform with or be superior to the terms and conditions of the *pro forma* tariff. Therefore, the Commission is unable to grant Bonneville's request for safe harbor reciprocity status at this time. As discussed herein, this order identifies further changes to Schedule 9 of Bonneville's tariff, dealing with Generator Imbalance Service, and to Attachment C of its tariff, dealing with its Available Transfer Capacity methodology, necessary in order to grant safe harbor reciprocity status to Bonneville.

I. Background

2. Bonneville is not a public utility within the meaning of sections 201, 205, and 206 of the Federal Power Act.¹ In Order No. 888, the Commission established a safe harbor procedure for the filing of reciprocity tariffs by non-public utilities.² This procedure

¹ 16 U.S.C. §§ 824, 824d, 824e (2012).

² *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,760

(continued...)

permits non-public utilities, such as Bonneville, to voluntarily submit a tariff to the Commission and request a determination that the tariff satisfies the Commission's comparability (non-discrimination) standards. If the Commission finds that the terms and conditions of such tariff substantially conform with or are superior to those in the *pro forma* OATT, the Commission will deem it to be an acceptable reciprocity tariff and require public utilities to provide open access transmission service upon request to that particular non-public utility.³ Bonneville's tariff was previously determined to be an acceptable reciprocity tariff under Order No. 888.⁴

3. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to better ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity. Order No. 890 required any non-public utility with a safe harbor reciprocity tariff to amend its tariff so that its provisions would substantially conform with or be superior to the Order No. 890

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

³ In Order No. 888-A, the Commission clarified that, under the reciprocity condition, a non-public utility must also comply with the OASIS standards of conduct requirements, or obtain waiver of them. *See* Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,286.

⁴ *See United States Department of Energy – Bonneville Power Administration*, 80 FERC ¶ 61,119 (1997) (finding reciprocity tariff to be acceptable with modifications); *United States Department of Energy – Bonneville Power Administration*, 84 FERC ¶ 61,068 (1998) (finding reciprocity tariff to be acceptable with further modifications); *United States Department of Energy – Bonneville Power Administration*, 86 FERC ¶ 61,278 (1999) (finding reciprocity tariff to be acceptable).

pro forma tariff, if it wished to continue to qualify for safe harbor treatment.⁵ In order to retain safe harbor status, entities whose tariffs previously were found to warrant safe harbor treatment under the requirements of Order No. 888 needed to revise their tariffs to meet the requirements of Order No. 890.

4. In response to Order No. 890, Bonneville filed two petitions for declaratory order with the Commission. In the first petition, filed on September 6, 2007 in Docket No. NJ07-8-000, Bonneville sought a Commission finding that Bonneville's revised Attachment M (which corresponds to Attachment K in the Order No. 890 *pro forma* tariff) and several other amended tariff sections substantially conformed with or were superior to the terms and conditions of the Order No. 890 *pro forma* tariff. In the second petition, filed on October 3, 2008 in Docket No. NJ09-1-000, Bonneville sought a Commission finding that certain deviations in Bonneville's tariff substantially conformed with or were superior to the Order No. 890 *pro forma* tariff.

5. In an order issued on July 15, 2009 (July 15 Order), the Commission addressed both of Bonneville's petitions.⁶ The Commission granted the September 2007 petition, while it granted in part and denied in part Bonneville's October 2008 petition. In denying portions of Bonneville's October 2008 petition, the Commission explained that Bonneville's tariff was incomplete in several aspects, and the Commission explained what revisions Bonneville would need to make in order to qualify for safe harbor reciprocity status.

6. On March 29, 2012, Bonneville filed a petition for declaratory order in Docket No. NJ12-7-000 in response to the Commission's July 15 Order and again requested safe harbor reciprocity status based on the revisions made to its tariff. Bonneville's filing also includes other revisions that it asserts will satisfy specific Commission directives, as well as revisions that it made on its own initiative.

⁵ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 191, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁶ *United States Department of Energy – Bonneville Power Administration*, 128 FERC ¶ 61,057 (2009).

7. On September 4, 2012, in Docket No. NJ12-13-000, Bonneville submitted amendments to its tariff describing its implementation of a simultaneous submission window for short-term point-to-point transmission service that it claims are in compliance with Order No. 890, along with a petition for declaratory order requesting that the Commission find that its tariff, as amended by this filing, satisfies the requirements for safe harbor reciprocity status. Bonneville's request also includes a request for exemption from the filing fee.

II. Notice of Filing and Responsive Pleadings

8. Notice of Bonneville's March 29, 2012 filing in Docket No. NJ12-7-000 was published in the *Federal Register*, 77 Fed. Reg. 21,764 (2012), with interventions and protests due on or before on April 30, 2012. Notice of Bonneville's September 4, 2012 filing in Docket No. NJ12-13-000 was published in the *Federal Register*, 77 Fed. Reg. 56,639 (2012), with interventions and protests due on or before October 4, 2012. The Public Utility Commission of Oregon filed a notice of intervention in Docket No. NJ12-7-000. In an appendix to this order, we identify the entities that filed motions to intervene, and those that filed comments or protests.⁷

9. In addition, Bonneville filed an answer in Docket No. NJ12-7-000 on May 30, 2012. In that same docket, Protestors, M-S-R Public Power Agency, NextEra and Powerex each filed an answer on June 14, 2012. In addition, Bonneville filed an answer in Docket No. NJ12-13 on October 16, 2012.

10. On March 1, 2013, Bonneville submitted a tariff filing requesting approval of its oversupply management protocol (OMP) and submitted informational filings on its automation efforts on October 24, 2012 and April 5, 2013. Notice of Bonneville's March 1, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 15,718 (2013), with interventions and protests due on or before on March 26, 2013. Timely comments and/or protests were filed by Caithness, Renewable Northwest Project, E.ON Climate, Puget Sound, M-S-R, Powerex, and PGE. Bonneville filed an answer on April 19, 2013, and E.ON filed an answer on May 9, 2013.

⁷ This appendix also identifies the abbreviations we use in this order to identify the participants in both dockets.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene and the notice of intervention serve to make the entities that filed them parties in the proceeding in which they intervened. In addition, we will allow the late-filed interventions in Docket No. NJ12-7-000 given the parties' interests, the early stage of the proceeding and the lack of any undue prejudice or delay to other parties.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by Bonneville, Protestors, M-S-R Public Power Agency and Powerex because they have provided information that assisted us in our decision-making process.

B. Compliance with the July 15 Order

13. Bonneville states that it has engaged in several public processes, instituted system improvements to enhance its tariff implementation and worked with industry groups to meet its compliance obligation as directed in the July 15 Order. The revisions proposed in this filing, according to Bonneville, reflect its commitment to providing comparable, non-discriminatory transmission service and enable Bonneville to offer additional services and flexibility to its customers. Bonneville also proffers that it has several automation efforts underway that are necessary to implement certain of its tariff provisions, as discussed below, but that it is seeking safe harbor reciprocity status at this time.

14. In its July 15 Order, the Commission stated that, in order to grant safe harbor reciprocity status, Bonneville would need to: (1) further revise its tariff to offer conditional firm service and identify the system conditions where conditional curtailment may apply; (2) clarify whether it would permit a transmission customer to change its third party ancillary service provider prior to Bonneville's scheduling deadline; (3) incorporate into its tariff an Attachment J that incorporates the Western Electric Coordinating Council (WECC) Interconnection Reliability Operations and Coordination standards; (4) clarify the process by which capacity set aside for network service, and freed up as a result of seasonal adjustments, is made available for point-to-point third party use; (5) clarify certain aspects of its cluster study process; and (6) make certain modifications to Attachment C, which contains its Available Transfer Capacity (ATC) and Available Flowgate Capacity (AFC) methodologies.

15. In response to these compliance directives, Bonneville: (1) proposes to add a definition of “System Condition” to section 1.46 of its tariff, adopt the *pro forma* language regarding system conditions in sections 13.4, 15.4, and 19.3, and offer conditional firm service to network integration service customers based on system conditions; (2) clarifies that it would permit a transmission customer to change its third party ancillary service provider prior to Bonneville’s scheduling deadline; (3) incorporates WECC standards into Attachment J and proposes revisions to its tariff to state that the transmission provider may implement curtailments pursuant to the procedures addressing parallel flows set forth in Attachment J; (4) clarifies the process by which capacity set aside for network service will be made available for point-to-point third party use; (5) clarifies certain aspects of the cluster study process; and (6) makes certain modifications to Attachment C, which concern its ATC and AFC methodologies, as discussed below.

Commission Determination

16. We accept those tariff revisions proposed by Bonneville in response to the Commission’s July 15 Order that are not discussed below as requiring further modifications. We find that such revisions substantially conform with or are superior to the Commission’s *pro forma* tariff.

C. Generator Imbalance

17. Prior to Order No. 890, the Commission permitted a transmission provider to include provisions for Generator Imbalance Service, which is provided when there is a difference between a generator’s actual output and its delivery schedule in individual interconnection agreements.⁸ In Order No. 890, the Commission adopted a separate *pro forma* tariff schedule, Schedule 9, to standardize generator imbalance provisions.⁹ In the July 15 Order, the Commission found that Bonneville’s tariff was incomplete without a Schedule 9 addressing Generator Imbalance Service.¹⁰ In response to this finding, Bonneville proposes adding a new Schedule 9 to its tariff to include this service.

⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 631.

⁹ *Id.* P 663.

¹⁰ July 15 Order, 128 FERC ¶ 61,057 at P 32.

18. Bonneville states that its Schedule 9 deviates from the *pro forma* tariff in four ways. Specifically, Bonneville states that it will: (1) commit to supply Generator Imbalance Service from the balancing reserve capacity determined to be available for all imbalance service (including Schedules 3 and 4) pursuant to the process established under a new Schedule 10;¹¹ (2) include a statement that customers may use dynamic transfer if Bonneville can accommodate dynamic transfer; (3) include a provision allowing Bonneville to bill a generator owner directly for Generator Imbalance Service; and (4) remove the rate provisions from the schedule.¹²

19. Bonneville explains that it is limiting its provision of Generator Imbalance Service, pursuant to the new Schedule 10, because of the problem balancing variable resources creates when their capacity needs extend beyond the amount of balancing reserve capacity available. Bonneville states that it addresses this problem by determining through a rate case how much of this capacity it will be able to supply to both thermal and renewable resources. Bonneville explains that, on occasions when its need for imbalance capacity exceeds the pre-determined balancing reserve capacity, it employs a mechanism known as Dispatch Standing Order 216 (DSO 216). Under DSO216, after Bonneville deploys most of its balancing reserve capacity, it will instruct variable energy resources that are over their schedules by more than a set amount to curtail, and it will reduce the schedules of those that are generating below the schedules by more than a set amount. Bonneville notes that, to the extent variable energy resources want a higher quality of service, they can contract for additional balancing reserve capacity (Supplemental Service), but at a higher rate (under Bonneville's Supplemental Service Rate).¹³

¹¹ Included services are provided under Schedules 3 and 4. Bonneville notes that its proposed Schedule 10 is not related to the Commission's proposed Schedule 10 at issue in the notice of proposed rulemaking on *Integration of Variable Resources*, FERC Stats. & Regs. ¶ 32,664 (2010) (VER NOPR). Bonneville Petition at 27. The Commission issued its final rule in this proceeding on June 22, 2012. *Integration of Variable Resources*, Order No. 764, FERC Stats. & Regs. ¶ 31,331, *order on reh'g and clarification*, Order No. 764-A, 141 FERC ¶ 61,232 (2012), *order on clarification and reh'g*, Order No. 764-B, 144 FERC ¶ 61,222 (2013).

¹² Bonneville has also added a description of Generator Imbalance Service to section 3 of its tariff and has added section 3.7, which adds Generator Imbalance Service to the list of Ancillary Services.

¹³ Bonneville Petition at 26.

20. Bonneville states that the level of generator imbalance capacity established for each variable resource under DSO 216 will be set based on multiple factors. In addition to physical feasibility, Bonneville will also consider its statutory obligations as well as economic considerations in setting the amount of reserves used for all imbalance services, including the energy imbalance services described in Schedules 3 and 4.

21. Bonneville argues that a rate case under section 7(i) of the Northwest Power Act is the appropriate procedural vehicle to determine the amount of capacity available for Generator Imbalance Service. According to Bonneville, the rate case process allows all customers to make their positions known and to submit evidence and testimony regarding the amount of imbalance capacity Bonneville should make available to them. Bonneville notes that customers may also challenge its determination of the available imbalance capacity in the Ninth Circuit Court of Appeals and revisit the amount in a future rate case. Bonneville further states that the rate case process will allow Bonneville to provide customers with options on purchasing capacity. Bonneville states that the flexibility and openness of the rate case process makes it more beneficial to customers than considering requests for Generator Imbalance Service on a case-by-case basis as envisioned by Order No. 890.¹⁴ From Bonneville's perspective, customers will have substantial ability to affect Bonneville's determination through participating in the establishment of a set amount of imbalance capacity or a transparent formula. Thus, Bonneville asserts that its approach substantially conforms with or is superior to the *pro forma* tariff.

Protests and Comments

22. Several commenters support certain aspects of Bonneville's Generator Imbalance Service provisions. According to PPC, Schedule 10 and the additional language in Schedule 9, provide clarity regarding the actions that Bonneville will take to determine the amount of capacity that it is able to make available from its resources and some of the factors that will affect Bonneville's calculation of available capacity. PPC also asserts that Bonneville's proposed Schedules 9 and 10 are superior to the *pro forma* OATT Schedule 9 in that the generators can determine the level of imbalance service that they wish to take.¹⁵

23. Powerex states that it supports Bonneville's decision to limit the amount of balancing reserves capacity it makes available, provided that Bonneville: (1) does so in a non-discriminatory manner; (2) advises customers in advance regarding the amount of

¹⁴ *Id.* at 29.

¹⁵ PPC at 5-6.

reserves it will provide; (3) specifies which portion of a variable energy resource's output is firm and which portion is non-firm; and (4) gives customers the opportunity to self-supply additional reserves. However, Powerex contends that the Commission should require Bonneville to add language to Schedule 9 stating that, when Bonneville has fewer balancing reserves capacity than required by variable resources, the amount of firm schedules will be reduced on a pro-rata basis and the remaining schedules will be labeled as non-firm.¹⁶

24. Several commenters take issue with Bonneville's proposal and argue that it does not conform with the Commission's *pro forma* tariff provisions. These commenters argue that Schedule 9 is contrary to the Commission's direction because it would limit Bonneville's obligation to provide Generator Imbalance Service to "amounts established in future rate proceedings," and because it omits the requirement in the *pro forma* OATT that Bonneville offer the service to the extent it is physically feasible for Bonneville to do so.¹⁷ TransAlta Energy Marketing states that Bonneville's significant deviations from the *pro forma* OATT with respect to Schedules 9 and 10 amount to an attempt to shift the issues surrounding the supply and quality of imbalance service to be provided to a separate rate proceeding and, in doing so, creates significant uncertainty, and could lead to the loss of firm E-tags for all power in Bonneville's Balancing Authority Area (BAA), except for Bonneville's own generation. Xcel argues that Bonneville should be required to provide a clear methodology to determine the amount of Generator Imbalance Service that it will provide throughout the seasons of the year. PGE asserts that Bonneville's current business practices do not provide the framework necessary for Bonneville to secure sufficient imbalance capacity to supply to transmission customers who require it, and that these practices will be reinforced under the proposed OATT provisions.¹⁸

25. Xcel notes that, as an alternative to Generator Imbalance Service, Bonneville states that it will allow dynamic transfers, if possible. However, Xcel argues that, to the extent that Bonneville limits the amount of dynamic transfer that would be available in such circumstances, Bonneville should be required to provide comparable dynamic transfer service to all users of the system, including both internal network customers and point-to-point customers exporting generation. To the extent that modifications to Bonneville's transmission system are needed to provide more dynamic transfers as an alternative to Generator Imbalance Service, all associated costs to provide the dynamic

¹⁶ Powerex at 10.

¹⁷ Protestors at 9; TransAlta at 3; PGE at 5; AWEA at 7.

¹⁸ PGE at 5.

transfer service should be allocated in a manner similar to the way in which costs are allocated for transmission system upgrades for existing or new service.¹⁹ Further, Puget Sound argues that Bonneville should clarify the factors and processes to be used in determining Bonneville's ability to accommodate requests for dynamic transfers.

26. AWEA argues that Bonneville's proposed provision of Generator Imbalance Service is discriminatory because it does not treat non-federal generators and Bonneville's customers on a comparable basis.²⁰ AWEA notes that the service limitations contained in Schedules 9 and 10 apply only to Generator Imbalance Service, despite the fact that the same capacity is used for both Energy Imbalance Service in Schedule 3 and Regulation and Frequency Response in Schedule 4. AWEA further argues that Schedules 9 and 10 (describing imbalance service) are vague as compared with Schedules 3 and 4, despite the fact that these schedules describe similar services provided by the same resources.²¹ AWEA argues that Bonneville should accurately describe terms and conditions of the services under Schedules 9 and 10 to protect customers from undue discrimination and duplicative charges.²²

27. PGE is concerned that Bonneville is proposing to treat both dispatchable and variable energy resources as having equal requirements and costs associated with imbalance service.²³ In order to ensure that Bonneville's tariff substantially conforms with or is superior to the *pro forma* tariff, PGE argues that Bonneville should be required to revise Schedule 9 to include *pro forma* language to address generator imbalance for dispatchable resources. In addition, PGE contends that Bonneville should revise Schedule 10 to include language specifically addressing generator imbalance for variable energy resources and to offer Generator Imbalance Service on terms similar to Schedule 4.²⁴

¹⁹ Xcel at 6.

²⁰ AWEA at 9.

²¹ *Id.* at 9-10.

²² *Id.* at 11.

²³ PGE at 5.

²⁴ *Id.* at 6.

28. Protestors argue that forcing variable energy resources to choose between expensive Generator Imbalance Service and a limit on balancing reserves is inconsistent with Order No. 890 and the Commission's findings in the VERs NOPR. AWEA also argues that Schedules 9 and 10 are inconsistent with the Commission's VERs NOPR.²⁵ For example, AWEA notes that, in the VERs NOPR, the Commission stated that a transmission service provider could not charge variable resources for a larger volume of regulation until transmission operators have eliminated operating practices that discriminate against variable resources. AWEA argues that Bonneville has not eliminated such practices, but it still proposes to implement differential services and charges for variable energy resources.

29. NIPPC and M-S-R argue that establishing the methodology for Generator Imbalance Service charges in a Bonneville rate case is not superior to *pro forma* Schedule 9. NIPPC acknowledges that participants do have procedural rights under a ratemaking proceeding; Bonneville is the sole decision-maker. NIPPC asserts that Bonneville's case-by-case rate determinations leave Generator Imbalance Service customers guessing every two years about the level of Generator Imbalance Service that Bonneville will provide in the next transmission rate case and the cost of such service. Alternatively, M-S-R seeks transparency through a posting of the amount of capacity for Generator Imbalance Service available each month.²⁶ The proposed Schedules 9 and 10, according to M-S-R, would subject variable resources to schedule cuts within the hour, causing schedules to be essentially non-firm, while other resources enjoy full Generator Imbalance Services.²⁷

30. According to NIPPC, Bonneville does not have sufficient resources from its own system, or procured from others, to provide full Generator Imbalance Service. Therefore, generators will be forced to curtail output instead of purchasing high-cost Generator Imbalance Service resources to provide the last increments. NIPPC contends that the Commission should deny safe harbor status reciprocity status to the Bonneville OATT and suggests that Bonneville establish a Generator Imbalance Service rate methodology that conforms to the *pro forma* Schedule 9 in a section 7(i) rate proceeding. NIPPC also recommends the Commission require Bonneville to submit a revised Bonneville OATT

²⁵ AWEA at 12.

²⁶ M-S-R at 1.

²⁷ *Id.* at 17.

to the Commission that incorporates the rate methodology in the Schedule 9 of the revised Bonneville OATT.²⁸

31. NIPPC also objects to the fact that Bonneville's tariff Schedules 9 and 10 do not set charges based on incremental and decremental costs as required by the *pro forma* OATT. According to NIPPC, Schedule 9 requires incremental and decremental costs to be calculated based on Bonneville's actual average hourly cost of the last 10 MWs dispatched for any purpose, as well as the deviation bands for penalties. According to NIPPC, because Bonneville's schedules omit the *pro forma* Schedule 9 requirement in this regard, Bonneville's Schedule 9 omit references to incremental and decremental costs, this provision does not substantially conform with and is not superior to the *pro forma* Schedule 9. Moreover, rather than establishing a methodology for setting Generator Imbalance Services charges, NIPPC asserts that Bonneville assigns the cost of resources to provide Generator Imbalance Service to its Generator Imbalance Service rates based on Bonneville's interpretation of cost causation principles. According to NIPPC, Schedule 10 includes a non-exclusive list of considerations, some or none of which might affect Bonneville's charges for Generator Imbalance Service. NIPPC states that the Commission rejected a similar proposal from Entergy because it appeared to create higher costs than does the *pro forma* Schedule 9 requirement.²⁹ NIPPC also notes that there is no legal obligation that warrants Bonneville's noncompliance with the Commission's standard and that the Commission's standard (*pro forma* Schedule 9) is not incompatible with Bonneville's rate setting responsibilities under section 7(i) of the Northwest Power Act.

32. NIPPC also protests that Bonneville's offer of dynamic transfer service is not superior to the *pro forma* tariff. According to NIPPC, the Commission requires a transmission provider to accommodate the use of dynamic scheduling when it cannot provide Generator Imbalance Service. NIPPC argues that Bonneville does not offer dynamic scheduling service, as required by Order Nos. 890-A and 890-B, nor does it explain why it has substituted dynamic transfer services for dynamic scheduling.³⁰

33. Several commenters question Bonneville's use of the DSO 216 procedure. These commenters argue that DSO 216 is not a reliability protocol, because it has been used

²⁸ NIPPC Protest at 22.

²⁹ *Id.* at 15-17 (citing *Entergy Services, Inc.*, 120 FERC ¶ 61,042 (2007)).

³⁰ *Id.* at 24 – 25.

even when balancing reserves are available.³¹ Several commenters also assert that curtailments under DSO 216 could cause reliability problems in neighboring BAAs by causing energy shortfalls in those areas.³² Powerex states that Bonneville's practice of allowing schedules subject to DSO 216 to be E-tagged as firm energy creates significant issues in the market. By failing to distinguish between schedules that can be affected by DSO 216 and those that cannot, Bonneville causes all wind output from its system to be labeled non-firm.³³

34. Protestors and M-S-R argue that Bonneville's implementation of DSO 216 is discriminatory.³⁴ Protestors observe that Bonneville does not restrict the amount of imbalance reserves available to federal generation, as it does when imposing the DSO 216 protocol on non-federal generation.³⁵ Protestors argue that Bonneville's claim that non-federal generation subject to DSO 216 cannot be considered a firm product because of the potential for curtailment further burdens non-federal generation.³⁶ Protestors and Powerex note that Bonneville offers an extremely expensive supplemental product to reduce, but not eliminate exposure to DSO 216.³⁷ Protestors state that Bonneville justifies this higher price by claiming that the supplemental product confers a higher quality of service on those that purchase it. Protestors disagree, arguing that the more expensive supplemental product merely affords those who purchase it the same level of "normal" service enjoyed by other transmission providers that are not subject to DSO 216.³⁸

35. AWEA notes that Bonneville makes long-term fixed cost customers pay for a fixed amount of reserves throughout the year, but routinely decreases reserves during

³¹ Protestors at 12; AWEA at 6-7; PGE at 5; Powerex at 9.

³² Protestors at 15; Powerex at 9-10; NorthWestern at 4.

³³ Powerex at 9.

³⁴ M-S-R at 15; Protestors at 11.

³⁵ Protestors at 11.

³⁶ *Id.* at 13.

³⁷ *Id.*; Powerex at 10.

³⁸ Protestors at 13.

spring runoff. AWEA argues that this is done to avoid Bonneville's exposure to prices that are trending negative.³⁹

Bonneville's Answer

36. In its answer, Bonneville states that it has encouraged the development of wind generation in recent years, and it has had to develop creative solutions to integrate wind power while maintaining system reliability. Bonneville explains that its proposed Schedules 9 and 10, along with DSO 216, represent innovative operational solutions that allow it to integrate wind in a reliable and cost effective way. Bonneville also emphasizes the collaborative nature of the Northwest Power Act rate case process and its offer to procure more capacity for wind generators at a higher price, if needed, under its Supplemental Balancing Service. Bonneville further states that determining the amount of capacity in a ratemaking process gives transmission customers flexibility and substantially conforms with and is superior to the Commission's *pro forma* OATT.⁴⁰

37. Bonneville adds that it must adhere to the level of generator imbalance procured as a result of the ratemaking process. According to Bonneville, because of the complexity of its system, it must determine the amount of imbalance capacity it may offer far in advance. Bonneville explains that its system is energy limited because it relies on water, a finite resource that is dedicated to multiple uses. Bonneville also explains that its system is interconnected, and that the amount of power generated by one dam affects the amount of generation that can be produced by another dam because of water flow. Bonneville argues that it cannot choreograph this complex process without months of advance planning.⁴¹

38. Bonneville further responds that, contrary to the claims of commenters, it cannot temporarily increase or decrease the amount of reserves it holds to reduce the cost of holding reserves. Bonneville states that forecasting error in wind generation make this impossible because at any moment Bonneville may be called upon to increase rapidly the amount of Generator Imbalance Service that it provides.⁴²

³⁹ AWEA at 7-8.

⁴⁰ Bonneville Answer at 5-12.

⁴¹ *Id.* at 13-16.

⁴² *Id.* at 21 - 22.

39. Bonneville asserts that DSO 216 is a necessary tool to maintain system reliability. According to Bonneville, it does not use DSO 216 to limit its balancing obligations. Rather, Bonneville uses DSO 216 as a tool to maintain reliability. Bonneville argues that any BAA would need a tool like DSO 216 to maintain reliability when the amount of available balancing capacity is exhausted. Bonneville contends that, without DSO 216, reliability would be seriously compromised.⁴³ Bonneville states that if the Commission is considering revisiting DSO 216, it should first convene a technical conference to discuss the reliability implications of that decision with the industry.⁴⁴

40. Bonneville argues that DSO 216 is not unduly discriminatory because wind generation is not similarly situated to other generation sources. Bonneville argues that wind scheduling errors occur much more frequently than with other generation sources. And during the rare occasions when dispatchable generation has scheduling errors that threaten the reliability of the system, Bonneville orders dispatchable generators to take corrective actions similar to what Bonneville would require under DSO 216.⁴⁵

41. Bonneville also argues that energy imbalance and generator imbalance are not identical services, and contrary to arguments by AWEA, should not be treated in the same way. Bonneville notes that the Commission refused to allow netting outside of Tier 1 for both services because it would decrease the incentive for accurate scheduling even though it would enhance comparability.⁴⁶ Bonneville contends that, while it does require load to take corrective action when there is a scheduling error, it should not be required to

⁴³ *Id.* at 28.

⁴⁴ *Id.*

⁴⁵ *Id.* at 34 – 35.

⁴⁶ Bonneville has a three tiered generator imbalance pricing scheme that sets generator imbalance prices based on the size of the generator imbalance. In Order No. 890, the Commission adopted this approach for its *pro forma* tariff. Under this pricing scheme, the lowest tier of generator imbalances, Tier 1, is defined as an imbalance less than or equal to 1.5 percent of scheduled energy. Tier 1 imbalances are netted against each other on a monthly basis. Larger imbalances are settled on an absolute basis, and netting is not permitted. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 636, 663-664.

treat variable generation and load in the same way, because the chief responsibility of the BAA is to support load.⁴⁷

42. Bonneville also states that commenters' argument that DSO 216 must be used on a *pro rata* basis is incorrect, because what is occurring is not a curtailment as defined by either the *pro forma* tariff or Bonneville's tariff. Bonneville emphasizes that, under both the *pro forma* tariff and the Bonneville tariff, curtailment is defined as a reduction in firm or non-firm transmission service in response to a transfer capability shortage as a result of system reliability conditions. According to Bonneville, it implements DSO 216 as a result of balancing reserves capacity exhaustion, not as a result of transfer capability shortages.⁴⁸ Bonneville continues that, if it were to provide balancing service for the extreme schedule errors to which DSO 216 applies, it would "turn the reliability-based imbalance service into a *de facto* commercial firming service."⁴⁹ Bonneville argues that certain commenters seek to turn generation imbalance service into a firming service. However, Bonneville states that its tariff does not include a firming service and that its responsibility as a balancing authority is to maintain reliability, not to firm a third party's variable resource.⁵⁰

43. Bonneville disputes claims that DSO 216 will cause reliability disruptions in neighboring BAAs, asserting that neighboring BAAs are aware that wind resources are variable and intermittent and should have adequate capacity on hand to meet load. Moreover, Bonneville states that sink BAAs should only be affected when wind generation is curtailed, which Bonneville asserts happens extremely infrequently.⁵¹

44. Bonneville reiterates its argument that there is not any inconsistency between the Commission's *pro forma* tariff and Bonneville's use of the Northwest Power Act ratemaking process to establish its balancing capacity and the exclusion of rates for imbalance service from the Bonneville tariff. Bonneville argues that the ratemaking process is thorough and transparent and would provide the Commission with a thorough

⁴⁷ Bonneville Answer at 35 – 36.

⁴⁸ *Id.* at 37.

⁴⁹ *Id.*

⁵⁰ *Id.* at 37 – 38.

⁵¹ *Id.* at 38 – 40.

record on which to base any conclusions.⁵² Bonneville also argues that it is not the sole decision-maker in Northwest Power Act rate cases, as NIPPC and Protestors argue. While the final decision rests with Bonneville, it frequently incorporates customers' ideas into its final proposals and frequently accepts proposals in its customers' testimony and briefs. Bonneville also defends its practice of setting capacity every two years. Bonneville states that, without updating balancing capacity, it will not be able to respond to frequent changes in the market.⁵³

45. Bonneville also challenges two allegations as being improperly raised in the instant proceeding. First, with respect to concerns that Bonneville will allocate too great a share of the cost of balancing reserves capacity to variable energy resources than it allocates to other resources, Bonneville responds that it has not proposed any cost allocation in its reciprocity filing.⁵⁴ Second, with respect to allegations that Bonneville has not implemented the grid reforms proposed by the Commission in its VERs NOPR, Bonneville contends that the instant proceeding is not the appropriate place to address these concerns.

46. In response to M-S-R's assertion that Bonneville has not committed to posting the amount of capacity available to provide Generator Imbalance Service on its OASIS, Bonneville states that it will post a link from the website to the balancing capacity amount available.⁵⁵

47. In response to NIPCC's statement that Bonneville intends to replace dynamic scheduling with dynamic transfer service, Bonneville argues that dynamic transfer service is an inclusive term. Bonneville states that it consolidated all forms of dynamic transfer into one category in recognition of the need to provide a consistent assessment of the limits and associated implications to reliability. Bonneville states that the term does not limit a customer's election to dynamically schedule a resource.

48. In response to Puget Sound, Bonneville states that it has no intention of unreasonably denying the use of dynamic transfer. Bonneville states that its proposed Schedule 9 language reflects its system's inherent limitations. Bonneville argues that

⁵² *Id.* at 42 – 44.

⁵³ *Id.*

⁵⁴ *Id.* at 45.

⁵⁵ *Id.* at 46.

reliability implications prevent a transmission provider from making an unqualified offer to provide dynamic transfer.

49. Finally, Bonneville argues that its rates for imbalance services are properly excluded from its tariff. Bonneville explains that its rates are developed in a rate case under section 7(i) of the Northwest Power Act and are evaluated under a standard that differs from that used by the Commission to evaluate the reciprocity tariff. Bonneville notes that the Commission has accepted this rationale for excluding its rates from its tariff in Bonneville's previous reciprocity filings.⁵⁶

Answers of Protestors

50. In their answers, M-S-R and Powerex state that they support Bonneville's call for a technical conference to address the operation of DSO 216 and how it relates to the proposed imbalance provisions.⁵⁷ In addition, Powerex disputes Bonneville's assertion that DSO 216 is not likely to cause reliability issues in neighboring BAAs. Powerex notes that Bonneville provides no facts or analysis to support this claim and it urges the Commission to conduct its own inquiry into the matter. Powerex further argues that Bonneville's practice of E-tagging energy that may be affected by DSO 216 as firm harms transparency and jeopardizes reliability.⁵⁸

51. Powerex and Protestors both argue that Bonneville mischaracterizes DSO 216 as a reliability tool. According to Protestors, although wind generators did not consent to DSO 216, which was developed in the context of Bonneville's 2010 rate case, wind generators indicated during the development of DSO 216 that wind generators would be unlikely to challenge it if it were used for reliability purposes, was implemented transparently, and implementation was consistent with descriptions Bonneville handed out at a Bonneville rate case workshop on June 29, 2009. Protestors now argue that Bonneville did not implement DSO 216 in the manner presented to them at the workshop. Among other problems, Protestors allege that DSO 216 has been implemented when it was not required for reliability purposes and has not been implemented transparently.⁵⁹

⁵⁶ *Id.* (citing July 15 Order, 128 FERC ¶ 61,057 at P 12 & n.20 (where the Commission accepted various tariff provisions without rates and noted that Bonneville's rates are published in separate rate schedules pursuant to its statutory process)).

⁵⁷ M-S-R Answer at 4; Powerex Answer at 4.

⁵⁸ Powerex Answer at 5-6.

⁵⁹ Protestors Answer at 16 – 17.

Similarly, Powerex contends that DSO 216 is not a reliability tool but is used by Bonneville at times when there is no reliability need. According to Powerex, when it was adopted in the context of a rate case, DSO 216 allowed Bonneville to curtail wind generation after a set-aside capacity amount had been used. However, Powerex argues that the fact that this set-aside capacity had been used does not mean that there was no additional capacity on Bonneville's system.⁶⁰ Protestors argue further that DSO 216 is used in Bonneville's economic interest.

52. Protestors also dispute Bonneville's claim that it cannot make short-term adjustments in the amount of Generator Imbalance Service it can provide. Protestors argue that Bonneville has to make such adjustments with regard to its other services and that it frequently increases its generation to take advantage of high electricity prices. Protestors state that the fact that Bonneville's system is complex does not excuse its failure to provide service that conforms to the *pro forma* tariff.⁶¹

53. Protestors note that NorthWestern Corporation (NorthWestern) similarly attempted to require renewable generation to purchase separately or make arrangements to provide for their own regulation service when using transportation to export energy from the NorthWestern BAA. The Commission rejected the proposal, finding that by requiring renewable generators to select one of NorthWestern's three proposed service options that placed the obligation to obtain generator regulation service on the generator NorthWestern also essentially avoided any circumstance where it would provide Schedule 9 Generator Imbalance Service to the generators. Protestors argue that Bonneville's proposed Schedule 9 should be rejected for similar reasons.⁶²

Commission Determination

54. The Commission's *pro forma* Schedule 9, as adopted in Order No. 890, requires the transmission provider to provide Generator Imbalance Service to the extent it is physically feasible. This requirement reflects the Commission's clarification in Order No. 890-A that it did not intend to require transmission providers to provide Generator Imbalance Service to the extent it would "unreasonably impair reliability."⁶³ The

⁶⁰ Powerex Answer at 9.

⁶¹ Protestors Answer at 11.

⁶² Protestors Answer at 12 (citing *NorthWestern Corp.*, 131 FERC ¶ 61,202 at P 9 (2010)).

⁶³ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 289.

Commission stated that a transmission provider's determination of whether it was able to offer resources from its own system for imbalance service should be based on an analysis of the physical characteristics of its system.⁶⁴ The Commission further emphasized that this did not remove the obligation of the transmission provider to seek outside resources to allow its customers to acquire Generator Imbalance Service.⁶⁵ We find that Bonneville has not demonstrated that Schedules 9 and 10 of its tariff substantially conform with or are superior to this *pro forma* OATT obligation.

55. Consistent with Order No. 890-A, a transmission provider can determine what resources must be reserved for all its reliability needs, including imbalance service. However, Bonneville's Schedules 9 and 10 give Bonneville broad authority to limit its provision of imbalance service (through a rate proceeding under the Northwest Power Act) based on a range of factors including "customer willingness to pay" and "economic considerations." While we appreciate that the nature of Bonneville's system is complex, as proposed Bonneville's Schedule 9 and 10 would give Bonneville virtually unlimited discretion to set a level of imbalance service based on whatever factors and whatever weighting of these factors it deems appropriate. This does not substantially conform with, nor has it been shown to be superior to, Schedule 9 of the Commission's *pro forma* tariff. Bonneville has not explained how its statutory obligations are inconsistent with the obligations of public utility transmission providers in the *pro forma* OATT to provide generator imbalance service when doing so would not unreasonably impair reliability, as required by Order No. 890 and Order No. 890-A. Bonneville could meet this requirement by developing a long term planning methodology that allows it to provide imbalance service consistent with the *pro forma* tariff while also taking into account the various and complex factors that affect its system. One possible way that Bonneville could accomplish this is by determining the amount of capacity that needs to be set aside to reliably operate its system at different times of the year. This would allow Bonneville to set aside capacity to reliably operate its system without giving it complete discretion to withhold capacity based on whatever factors it deems appropriate. In any event, Bonneville should incorporate the process it intends to use to set the level of imbalance service that it will provide in its OATT and not in individual rate cases.

56. The Commission declines to address the concerns raised by various commenters concerning DSO 216. Bonneville states the primary purpose of DSO 216 is to enforce the generator imbalance provisions described in Bonneville's Schedules 9 and 10. Given that we have found that those provisions do not substantially conform with and are not

⁶⁴ *Id.*

⁶⁵ *Id.* P 290.

superior to the *pro forma* tariff, it is unnecessary to evaluate the specific provisions of the protocol intended to enforce those provisions. However, to the extent Bonneville intends to employ DSO 216 or a similar operational protocol to enforce its generator imbalance provisions, it should include this protocol in its compliance filing so that the Commission can determine whether it should be included in the tariff.⁶⁶

D. Oversupply Management Protocol-- Attachment P and Section 36

57. During the spring, Bonneville's hydroelectric system experiences high water flow which requires Bonneville to either use the water to generate electricity or "spill" the water over the dam into the downstream river. As the latter alternative may harm aquatic life, Bonneville explains that it must rely on the former alternative and generate electricity from its hydroelectric system even during times of relatively low demand. As a consequence, Bonneville requires non-hydroelectric generators (non-federal resources) to reduce their output during oversupply situations.⁶⁷ However, the owners of wind generators have been reluctant to be displaced during oversupply events because doing so would violate contractual obligations to deliver electricity generated from wind to satisfy state renewable energy standards. In addition, when displaced, the owners of wind generation stand to lose production tax credits issued to renewable energy producers.

58. To remedy this impasse, Bonneville created an Environmental Redispatch Policy, which gave Bonneville the authority to curtail wind generators involuntarily during oversupply events. Protestors filed a petition for declaratory order with the Commission alleging that Bonneville used the Environmental Redispatch Policy to curtail wind

⁶⁶ In *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at PP 1369-1371 (2006), the Commission addressed the question of which documents belong in the utility's tariff. In that order, the Commission explained that the determination of whether provisions intended for inclusion in the Business Practice Manuals must be filed under section 205 of the FPA is based on the "rule of reason," which governs the types of documents that must be filed for Commission approval. The Commission further explained that applying the "rule of reason" test required a case-by-case analysis, comparing what was in the Tariff against what was in the Business Practice Manuals. This same rule has been applied in other cases, such as *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271, PP 16-18 (2008); *see also Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,081, at P 118 (2005).

⁶⁷ Bonneville Answer at 49 – 52.

generation in a discriminatory manner to avoid the cost of compensating wind generators to curtail through negative pricing.⁶⁸

59. The Commission, in an order issued on December 7, 2011, concluded that Bonneville's Environmental Redispatch Policy resulted in noncomparable treatment of non-federal generation connected to Bonneville's transmission system, based on the terms and conditions of transmission service offered to federal and non-federal generation.⁶⁹ In the December Order, based on its authority under section 211A of the FPA, the Commission directed Bonneville to provide comparable transmission service.

60. Accordingly, the Commission directed Bonneville to file tariff revisions to address the comparability concerns raised in the Complaint Proceeding.⁷⁰ Additionally, the Commission required Bonneville to exercise its statutory authority in a manner consistent with the provision of comparable transmission service that is not unduly discriminatory or preferential.⁷¹

61. In response to the Commission's December Order, Bonneville filed a compliance filing on March 6, 2012. Bonneville stated that its compliance filing represented a short-term measure, to apply for one year (from March 21, 2012 through March 30, 2013) and was not intended as a complete and updated open access tariff.⁷²

62. Here, Bonneville proposes to amend its OATT to include section 36 and Attachment P—Oversupply Management Protocol (OMP). These provisions set forth terms and conditions for displacing generation during certain oversupply periods.⁷³

⁶⁸ In this order, we will refer to the proceeding that resulted from the Protestors' petition as the "Complaint Proceeding."

⁶⁹ *Iberdrola, Inc. v. Bonneville Power Admin.*, 137 FERC ¶ 61,185 (2011) (December Order), *order denying reh'g*, 141 FERC ¶ 61,233 (2012).

⁷⁰ December Order, 137 FERC ¶ 61,185 at P 64.

⁷¹ *Id.* at P 65.

⁷² Compliance Filing in Docket No. EL11-44-000, Transmittal Letter at 1-2 (citing December Order, 137 FERC ¶ 61,185).

⁷³ All transmission customers that own or operate generating facilities in Bonneville's control area are subject to displacement under the OMP. The OMP also applies to generating facilities that are dynamically scheduled out of Bonneville's control

(continued...)

Bonneville's OMP is described in detail in the Complaint Proceeding. Several parties to this proceeding raise many of the same concerns being discussed in the Complaint Proceeding. They argue that Bonneville's implementation of the OMP is unclear and unduly discriminatory toward non-federal generators.

63. On December 20, 2012, the Commission issued an order conditionally accepting Bonneville's OMP as an acceptable interim solution to its oversupply problem.⁷⁴ The Commission noted that its acceptance of the OMP was contingent on Bonneville filing a cost allocation methodology that equitably allocates displacement costs in a manner that ensures comparability in the provision of transmission service.⁷⁵ On January 22, 2013, Bonneville requested a stay of its compliance obligation set forth in the Order on Compliance, until it files its final OMP rate decision with the Commission under the Northwest Power Act. On February 19, 2013, the Commission issued an order granting Bonneville an extension of time, which allows Bonneville to file its cost allocation methodology within thirty days after filing the final OMP rate decision with the Commission under the Northwest Power Act.

64. On March, 1, 2013, Bonneville filed a revised Attachment P, noting that Bonneville's initial OMP expired by its own terms on March 30, 2013. Commenting parties argue whether the OMP as revised complies with the Commission's directive in the Complaint Proceeding by offering comparable transmission service in accordance with section 211A.⁷⁶

area, but does not include generating facilities are transferred out of the control area by pseudo-tie.

⁷⁴ *Iberdrola Renewables*, 141 FERC ¶ 61,234 (2011) (Order on Compliance).

⁷⁵ *Id.* P 46.

⁷⁶ Caithness, M-S-R, Puget and PGE filed comments on the revised Attachment P in Docket Nos. NJ12-7-001 and EL11-44-006. Powerex, Iberdrola Renewables, LLC, and E.ON Climate and Renewables North America, LLC filed protests of the revised Attachment P in those same dockets. In addition, Southern California Edison Company filed comments in Docket No. EL11-44-006. All these comments and protests were filed on March 26, 2013.

Commission Determination

65. The Commission addressed Bonneville's initial OMP in the Complaint Proceeding. In the Order on Compliance in that proceeding, the Commission conditionally accepted the OMP as an interim solution to the oversupply situation on Bonneville's system and found that it complies with our directive under section 211A of the FPA.⁷⁷ The revised OMP filed by Bonneville on March 1, 2013 was intended, in part, to address concerns raised by the Commission in the Order on Compliance. The Commission will evaluate in the Complaint Proceeding whether the revised OMP complies with our directive under section 211A of the FPA. Thus, the appropriate venue for evaluating Bonneville's OMP, as revised in the March 1, 2013 filing, is the Complaint Proceeding and not in the instant proceeding. For this reason, the Commission will not address, at this time, whether the OMP satisfies the Commission's reciprocity standard. Given the Commission's prior determination that revisions to Bonneville's existing LGIAs to implement the OMP were being made pursuant to the Commission's directives under section 211A,⁷⁸ we also will not address in this order arguments challenging Bonneville's authority to amend existing interconnection agreements to implement the OMP. At such times as Bonneville has an OMP that the Commission has determined complies with the Commission's directive under section 211A in the Complaint Proceeding, we will consider the Commission's reciprocity standard was satisfied regarding the OMP.

E. Price Cap on Capacity Assignments and Financial Facilitation of Assignments

66. In Order No. 890, the Commission found that the removal of a price cap for all transmission customers reassigning transmission capacity would foster the development of a more robust secondary market for transmission capacity.⁷⁹ In Order No. 890-A the Commission affirmed its decision to remove the price cap but limited the period during which reassignments could occur above the cap to a two year pilot period, ending on October 1, 2010, so that the Commission could review the results of a staff report on the lifting of the price cap to see if changes were needed based on the actual operation of the reassignment program.⁸⁰ In addition, to implement the removal of the price cap, the

⁷⁷ *Order on Compliance*, 141 FERC ¶ 61,234 at P 46.

⁷⁸ *Id.* P 77.

⁷⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 808.

⁸⁰ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at PP 388, 390.

Commission added a provision to the *pro forma* tariff under which the transmission provider charges or credits the reseller of transmission capacity for the difference between the price charged by the transmission provider to the original transmission customer and the price charged to the assignee (i.e., the financial facilitation provision).⁸¹ In Order No. 739, after the two year pilot period, the Commission reaffirmed the findings in Order No. 890 and directed transmission providers to lift the price cap permanently.⁸²

67. In Bonneville's two year pilot program, which has now expired, it adopted the Order No. 890 provision that eliminated the price cap. It did not adopt the financial facilitation provision, citing the large volume of reassignments on its system or the difficulty of updating its software to manage this capability.⁸³ The price cap in Bonneville's Tariff automatically was reinstated when its two-year pilot period expired.

68. In this filing, Bonneville proposes to keep its existing tariff language retaining the price cap. Bonneville states that, because the financial facilitation provision serves to implement the lifting of the price cap, it also has not adopted the financial facilitation provision.

69. Bonneville claims that, even though the Commission made a finding in Order No. 890 that price caps should be eliminated from jurisdictional open access transmission tariffs, the Commission has previously upheld, for purposes of reciprocity, the Western Area Power Administration's (Western) retention of the price cap and omission of the financial facilitation provisions.⁸⁴ Bonneville asks for the same treatment afforded Western and reiterates Western's argument that, because it does not make a profit on the sales of transmission capacity, it would not be appropriate to allow third parties to assign the capacity at a profit. Bonneville also agrees with Western's argument that lifting the price cap would be inconsistent with its obligation under the Flood Control Act of 1944 to transmit power at the "lowest possible rates to consumers consistent with sound

⁸¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 816. Bonneville's Oct. 3, 2008 Filing in Docket No. NJ09-1-000 (Order No. 890 Filing) at 20-23.

⁸² See *Promoting a Competitive Market for Capacity Reassignment*, Order No. 739, 132 FERC ¶ 61,238, at PP 25-26 (2010), *reh'g denied*, Order No. 739-A, 135 FERC ¶ 61,137, at PP 15-16 (2011).

⁸³ Bonneville's Oct. 3, 2008 Filing in Docket No. NJ09-1-000 (Order No. 890 Filing) at 20-23.

⁸⁴ *Western Area Power Admin.*, 133 FERC ¶ 61,193, at P 27 (2010).

business principles.”⁸⁵ In this regard, Bonneville states that, under section 9 of the Federal Columbia River Transmission System Act, it similarly is required to provide for the transmission of Federal *and non-Federal power* “at the lowest possible rates to consumers consistent with sound business principles.”⁸⁶

70. Bonneville states that the Commission also approved Western’s omission of the financial facilitation provision, and this same ruling should apply equally to Bonneville.⁸⁷ Bonneville states that, although it lifted the price cap during the two-year pilot period set forth in Order No. 890-A, it has reassessed its statutory obligations. Bonneville claims that it has created a robust market for reassignments, both in terms of number of assignments and of volume of capacity reassigned, therefore, it contends that its approach has not impeded the market for assignments in the Northwest. Bonneville states that, because its reinstatement of the price cap and its decision not to perform financial facilitation honors Bonneville’s statutory obligations while furthering the Commission’s objective of maintaining robust markets, its approach substantially conforms with or is superior to the *pro forma* tariff.

1. Protests and Comments

71. PPC comments that it is neither appropriate nor necessary for Bonneville to take on the role of “financial middleman” in resale transactions, and Bonneville should be permitted a deviation from the *pro forma* tariff in this regard. PPC asserts that the results of the Commission’s pilot program to test the depth of the secondary resale market demonstrated definitively that the Northwest market functions well and is robust, despite Bonneville not playing the role of financial facilitator of these transactions. Furthermore, the automated systems needed to permit Bonneville’s role would be expensive and Bonneville’s involvement in these transactions would create risk to Bonneville’s

⁸⁵ See Western Area Power Administration’s Oct. 1, 2009 Filing in Docket No. NJ10-1-000 (Order No. 890 Filing) at section I.A.13 (citing section 9(c) of the Reclamation Act, 43 U.S.C. § 485h(c) (2006), and section 5 of the Flood Control Act of 1944, 16 U.S.C. § 825s (2006); see also *Western Area Power Admin.*, 133 FERC ¶ 61,193, at P 24 (2010) (*Western*)).

⁸⁶ 16 U.S.C. § 838g (2012).

⁸⁷ *Western*, 133 FERC ¶ 61,193 at P 27.

customers were they required to make up losses due to the inability to track and enforce credit requirements.⁸⁸

72. PGE protests Bonneville's price cap on transmission capacity reassignments, alleging that Bonneville has presented no data indicating that the removal of the price cap may harm customers. PGE argues that the level of activity in Bonneville's transmission resale market makes it unique from other resale markets, including Western Area Power Administration.⁸⁹ Protestors note that Bonneville owns 80 percent of transmission in the Northwest and handles 30 percent of sales in its marketing area.⁹⁰ Western by contrast, only handles 6 percent of sales in its market area. Protestors thus believe that Bonneville should adopt the *pro forma* version of section 23, in light of the importance of the pro-competitive effect of the Commission's lifting of the price cap for the reassignment of transmission capacity and the chilling effect Bonneville, as a dominant market participant, could have on the market if it does not lift its price cap.⁹¹

73. Powerex states that, if the Commission allows Bonneville to maintain its price cap, the Commission should require Bonneville to clarify how it applies its existing price cap. Specifically, Powerex states that it is unclear if a transmission customer violates the price cap if it resells capacity at a variable rate that at some points exceeds the price cap while, on average, stays below the cap.⁹²

74. Powerex also argues that Bonneville has insufficiently justified its assertion that lifting the price cap on capacity reassignments would be inconsistent with its statutory obligations under the Flood Control Act of 1944 to transmit power at the lowest possible rates to consumers. However, Powerex contends that Bonneville does not explain how this obligation relates to the price at which transmission customers can reassign their transmission capacity.⁹³ Powerex argues that Bonneville lifted its price cap during the

⁸⁸ PPC at 12.

⁸⁹ PGE at 7.

⁹⁰ Protestors at 18.

⁹¹ *Id.* at 18.

⁹² Powerex at 13-14.

⁹³ *Id.* at 12.

two-year pilot period set forth in Order No. 890-A without contravening its statutory obligations; and Puget Sound adds that it did so without challenge.⁹⁴

75. Puget Sound also notes that Bonneville's price cap is at a level that is in excess of Bonneville's cost-based rate, which will allow parties to earn a profit on reassignments of transmission capacity. Thus, Puget concludes that Bonneville's price cap proposal contravenes its statutory argument that Bonneville is required to have a cost-based price cap.⁹⁵

76. Protestors further note that the Commission found in Order No. 739-A that entities could file stand-alone rate schedules governing reassignments of transmission capacity on non-jurisdictional systems to allow for transmission capacity reassignments above the price cap.⁹⁶ Protestors note that PGE filed such a rate schedule and that the Commission accepted the rate schedule in a letter order.⁹⁷

2. Bonneville Answer

77. Bonneville contends that the fact that Bonneville's market for resale capacity is greater than Western's is irrelevant to the legal issue of whether Bonneville is required to lift the price cap. Moreover Bonneville contends that the number of capacity reassignments on its system does not change the statutory language or meaning. Bonneville states that, if anything, the number of reassignments makes Bonneville's case even stronger than Western's, as the potential deviation from cost-based rates is that much greater.⁹⁸

78. Bonneville disagrees with Protestors, Powerex, and Puget, who challenge Bonneville's reliance on statutory interpretation in maintaining the cap, while they point out that Bonneville lifted the price cap during the two-year pilot period. Bonneville explains that it has reassessed its statutory obligations and maintains that, to the contrary,

⁹⁴ *Id.*, Puget Sound at 15.

⁹⁵ Puget Sound at 17.

⁹⁶ Protestors at 17 (citing Order No. 739-A 135 FERC ¶ 61,137).

⁹⁷ *Id.* (citing *Portland General Electric Co.*, 138 FERC ¶ 61,009, at P 9 (2012) (PGE Order)).

⁹⁸ Bonneville Answer at 57-58.

its past actions do not change the statutory language or authorize the Commission to ignore Bonneville's statutory obligations.⁹⁹

79. Bonneville challenges as "too narrow" Puget Sound's argument that maintaining the price cap contravenes Bonneville's reliance on statutory interpretation because it would allow parties to reassign capacity above Bonneville's cost-based rate. According to Bonneville, Puget Sound apparently is referring to section iii, which allows reassignments at the cost of expansion. Bonneville states that cost of expansion is a cost-based rate that is based on the costs Bonneville would have incurred to expand its transmission system to provide the capacity had the assignee requested the capacity directly from Bonneville. Bonneville maintains that the price cap the Commission approved for Western is identical to Bonneville's price cap.¹⁰⁰

80. Bonneville states that the PGE Order does not authorize parties to reassign transmission capacity above Bonneville's price cap. Bonneville notes that, in the PGE Order, the Commission stated that its acceptance of PGE's rate schedule was not intended to settle any dispute with Bonneville as to whether reassignments of capacity above the price cap are allowable under PGE's transmission service agreements with Bonneville.¹⁰¹

Commission Determination

81. In Order No. 890, the Commission stated that removing the price cap on capacity reassignments would create economic incentives by fostering the development of a more robust secondary market for transmission capacity. Shortly thereafter, in evaluating a reciprocity filing in *Western* that was uncontested on this issue, the Commission agreed with Western that because Western had statutory language obliging it to sell power to consumers at the lowest possible rates, it was statutorily barred from lifting its price cap on the reassignment of transmission capacity.¹⁰² The Commission accepted the rationale provided by Western that allowing transmission capacity to be resold above the price cap violated this principle. However, upon further consideration and with the benefit of comments on both sides of this statutory question, we now conclude that this finding is contrary to the objectives that led to the lifting of the price cap in order No. 739 and

⁹⁹ *Id.* at 58.

¹⁰⁰ *Id.* at 59.

¹⁰¹ *Id.* at 60 (citing PGE Order, 138 FERC ¶ 61,009 at P 11).

¹⁰² *See supra* note 84.

Order No. 890.¹⁰³ The Commission is now confronted with the choice of affirming our finding in *Western* or our findings in Order Nos. 739 and 890. We cannot do both.

82. In Order No. 739, the Commission found (based on its experience with the two year pilot period) that permanently lifting the price cap on transmission capacity reassignments would foster a more robust market for transmission capacity and allow transmission to be put to more efficient use.¹⁰⁴ We expect this more efficient use of the grid to reduce costs to customers overall even if the price for reassigned capacity rises above the cap at times.

83. The Commission further found that because transmission customers can request new transmission from a transmission provider if the cost of reassigned capacity becomes too great, the price of the reassigned capacity would remain effectively capped at the cost of new transmission. The Commission also did not find evidence of significant market power in the market for the reassignment of transmission capacity. So, the Commission found no evidence that raising the price cap increases transmission prices beyond what was driven by market fundamentals. Consistent with Order No. 739, we no longer accept the premise that achieving the lowest possible rates to consumers will be accomplished by retaining the price cap.

84. Further, while our finding here is inconsistent with our finding in *Western*, it is consistent with our procedural history with *Bonneville*. The Commission rejected *Bonneville*'s request for a blanket exemption from the requirements of Order No. 739 based on its statutory requirement.¹⁰⁵ Moreover, we note that, in the July 15 Order, the Commission required *Bonneville* to implement the Order No. 890 requirement that transmission capacity reassignments be conducted under its tariff by acting as the financial intermediary on reassignment transactions.¹⁰⁶ This finding was made in the

¹⁰³ We have found here that our rationale for allowing the price cap to remain in place for the purposes of reciprocity in *Western* was flawed; however, on a case-by-case basis there may be an instance where an entity can validly obtain a waiver from the requirement to lift the price cap. In Order No. 739, we stated that we would not grant a blanket waiver, but would consider individual waivers on a case-by-case basis. *See* Order No. 739, 132 FERC ¶ 61,238 at P 37.

¹⁰⁴ *Id.* P 25.

¹⁰⁵ *Id.* P 25.

¹⁰⁶ July 15 Order, 128 FERC ¶ 61,057 at P 24.

context of Bonneville lifting its price cap for transmission capacity reassignments. We did not contemplate at that time that Bonneville's statutory requirements were an impediment to it fully implementing the requirements of Order No. 739.

85. Consistent with that finding in our July 15 Order and in Order Nos. 739 and 890, we continue to find that Bonneville's tariff is incomplete and, therefore, we find it does not meet the safe harbor reciprocity requirements without the removal of the price cap on transmission capacity reassignments and the inclusion of the transmission capacity reassignment provisions under *pro forma* OATT section 23.1. Thus, Bonneville should submit a compliance tariff filing detailing its plan for compliance with Order Nos. 739 and 890, and communicate its timeline to its customers.

F. Cluster Study Provisions

86. Bonneville states that, in the July 15 Order, the Commission approved Bonneville's cluster study provisions subject to Bonneville modifying its processes in three respects: (1) to provide that Bonneville may require a customer to sign a precedent transmission service agreement in the cluster study process; (2) to provide further specificity and identify the circumstances that will trigger Bonneville's decision to require a customer to sign a precedent transmission service agreement in order to participate in a cluster study; and (3) to provide further specificity regarding how Bonneville will determine a customer's share of the cluster study costs if the customer chooses to opt-out of the cluster study and how Bonneville will communicate that cost to the customer in advance of its opting-out of the cluster study.¹⁰⁷

87. Bonneville expresses concern, however, with the requirement in the July 15 Order that Bonneville modify section 17.5 of the *pro forma* tariff to allow Bonneville to require a customer to sign a precedent agreement in the cluster study process. According to Bonneville, placing the requirement in section 17.5 may be inconsistent with the *pro forma* tariff structure and could lead to confusion, because section 19.10 of Bonneville's tariff already includes that requirement. Bonneville states that, instead of duplicating the *pro forma* tariff language, section 17.5 of Bonneville's tariff requires Bonneville to notify the customer if it will include the customer's request in a cluster study conducted "pursuant to section 19.10." Section 19.10(i) provides that Bonneville may require customers with service requests identified for a cluster study to sign a precedent transmission service agreement.¹⁰⁸

¹⁰⁷ *Id.* P 61.

¹⁰⁸ Bonneville Petition at 13.

88. Bonneville contends that, unless the customer requests an individual study, the cluster study is triggered by a customer's request for service on Bonneville's network. Bonneville states that a customer is not required to sign a precedent transmission service agreement if it requests an individual study.¹⁰⁹

89. Bonneville explains that informing the customer of its share of the study costs presents a practical challenge if that information is requested before the final study costs are known. According to Bonneville, at the time a customer is considering opting out, the study will be incomplete and Bonneville may not know yet if re-study will be necessary. Bonneville states that the cluster study agreement allows the customer to request an up-to-date estimate of its share of the study costs and the cost of re-study, which will assist the customer in making an informed decision.¹¹⁰

Protests and Comments

90. PGE argues that Bonneville's proposal to coordinate the opt-out period for the Network Open Season and opt-in deadline is a step in the right direction but falls short of customer needs.¹¹¹ PGE asserts that Bonneville's customers need flexibility to submit transmission service requests for study when system planning shows that these requests are required, rather than at periods set by Bonneville.¹¹² PGE notes that this flexibility may result in additional costs to the customers requesting the flexibility, but these costs may be necessary to ensure regional load is served in an effective and reliable manner.¹¹³

91. PGE is concerned that Bonneville's proposed OATT will result in extended timelines for transmission studies.¹¹⁴ PGE notes that, as currently proposed, Bonneville may close the opt-out period without notice, which does not provide Bonneville's customers with enough notice to make informed decisions.¹¹⁵ Therefore, PGE argues,

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 14.

¹¹¹ PGE at 8.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

Bonneville should adopt *pro forma* language for transmission study timelines and seek waivers on a case-by-case basis if it is not able to meet these timelines.¹¹⁶

92. Powerex contends that, with regard to the procedures to opt out of the cluster study, it is unclear whether a customer will be given reasonable advance notice of the deadline by which it must request Bonneville to study its application for transmission service individually. Powerex recommends that the Commission direct Bonneville to clarify that customers who wish Bonneville to study their application for transmission service individually be given reasonable advance notice of the deadline for doing so.¹¹⁷

Bonneville Answer

93. In response to Powerex's request for clarification, Bonneville agrees that it should provide reasonable advance notice of the deadline for requesting an individual study and commits to working with its customers to determine how much notice is appropriate.

Commission Determination

94. In the July 15 Order, the Commission accepted Bonneville's proposal for cluster studies but ordered it to make certain clarifications. Bonneville has made these clarifications here and we accept Bonneville's clarifications.

95. Bonneville clarifies that it will provide reasonable advance notice regarding the end of the opt-out period. Consistent with this commitment, though, we add that Bonneville should work with its customers to develop an appropriate minimum notice period and file changes to the relevant tariff provision in a subsequent compliance filing.

96. We decline to direct further modifications to Bonneville's cluster study provisions. The Commission accepted Bonneville's cluster study filing in addition to its individual study process, which is also available to Bonneville's customers. Presently, Bonneville allows customers to request individual studies, if they file their requests before Bonneville posts notice that the application for transmission service will be part of a cluster study. Thus, a customer may avail itself of the individual study process to the extent the customer believes the cluster study process to be inadequate. With respect to PGE's claim that Bonneville's proposed OATT will result in extended timelines for transmission studies, we find this argument unpersuasive because Bonneville's OATT

¹¹⁶ *Id.*

¹¹⁷ Powerex at 15.

specifically requires it to use due diligence to complete cluster studies within 120 days. With the development of appropriate advance notice provisions between Bonneville and its customers in the compliance filing discussed above, we find this process to be reasonable and will provide customers with sufficient flexibility in order to make an informed decision. Therefore, we do not believe additional prescriptive timelines are necessary.

G. Automation Efforts

97. Bonneville states that, because it processes more transmission service requests and E-tags than any other transmission provider in the country that operates outside of an organized market, and even more than some operators of organized markets, it needs to develop and implement automated means to process transactions that other transmission providers may be able to implement manually.¹¹⁸ For this reason, Bonneville explains that it is developing further automation in order to address: (i) competitions and preemptions of short-term transmission requests; (ii) redirects and reassignments of point-to-point conditional firm service; (iii) posting of ATC for all posted paths, as required by the Commission's regulations; (iv) sale of non-firm point-to-point products and secondary network service other than hourly non-firm; and (v) the simultaneous submission window for short-term firm transmission service requests.¹¹⁹

98. Bonneville believes compliance may be achieved reliably within a year and plans to implement its automation efforts by April 2013.¹²⁰ According to Bonneville, it is prepared to file periodic reports with the Commission in order to obtain reciprocity status at this time.

99. Bonneville filed a report updating the Commission on its automation efforts on April 5, 2013. Bonneville indicated that it had completed automation efforts regarding (1) redirects and reassignments of point-to-point conditional firm service; (2) posting of ATC for all posted paths, as required by the Commission's regulations; and (3) sale of non-firm point-to-point products and secondary network service other than hourly non-firm. Bonneville indicated that it expected to complete its automation efforts regarding a

¹¹⁸ *Id.* at 47.

¹¹⁹ *Id.*

¹²⁰ Bonneville states that it may have to reduce the amount of time available for customer involvement and collaboration, which may create risk of incompatibility between Bonneville's systems and those of customers.

simultaneous submission window for short term firm transmission requests by the end of April 2013. Bonneville stated that the final automation effort addressing competitions and preemptions of short-term transmission requests would be implemented by late summer or early fall.

Protests and Comments

100. Xcel notes that Bonneville plans to adopt a plan for automating and implementing a simultaneous transmission window. Xcel also notes that Bonneville states that it will use one of the methodologies that the Commission has already approved, but Xcel states that Bonneville has not yet done so. Xcel argues that, until Bonneville selects a methodology for automating and implementing simultaneous windows, it is premature to find that Bonneville's tariff meets the criteria for reciprocity.¹²¹

101. Protestors note that it has been three years since Bonneville committed to an automation effort and has not yet completed it. Protestors state that despite Bonneville's commitments to complete the efforts within a year, the automation deadline will likely slip, based on Bonneville's prior practices. Accordingly, Protestors request that the Commission deny Bonneville reciprocity status until it has completed the automation efforts.¹²²

102. City of Seattle urges a more realistic implementation target date for Bonneville's automation process and asserts there is no reason to find completion of this transition essential to reciprocity.¹²³ City of Seattle asserts that Bonneville's proposed schedule for automating preemption and competition for short term non-firm transmission is "unduly aggressive" and will result in wasted costs. City of Seattle expresses concern that Bonneville's customers will need to modify their own systems to interface with Bonneville's modified system and that Bonneville's customers are not ready for this, even if Bonneville meets its proposed schedule. City of Seattle also argues that it would be best to defer implementation until the North American Energy Standards Board (NAESB) adopts standards on short term non-firm transmission that can be copied and implemented by Bonneville to avoid waste and mismatches from acting prematurely.¹²⁴

¹²¹ Xcel at 3.

¹²² Protestors Protest at 35-36.

¹²³ City of Seattle at 4.

¹²⁴ *Id.* at 3.

103. City of Seattle also fears that premature implementation of automated preemption will disrupt regional and transmission markets and reliability.¹²⁵ City of Seattle argues that customers will need to scramble to respond to unexpected curtailments or service denials and this may be expensive, which could lead to operational disruptions that may affect reliability. For these reasons, City of Seattle urges the Commission to grant reciprocity without requiring Bonneville to complete its automation of short-term competition.¹²⁶

104. PGE is concerned that Bonneville's proposed methodology for managing short-term transmission requests will cause unforeseen and unwarranted increases in costs and could negatively impact system reliability.¹²⁷ PGE encourages Bonneville to continue its work with NAESB to develop additional industry standards prior to implementing short-term competitions on its system.¹²⁸

Bonneville Answer

105. Bonneville answers that it has developed a project plan to complete automation necessary to conduct preemption and competition for short-term service by April 2013, while simultaneously participating in the on-going NAESB process. According to Bonneville, once NAESB's standards are approved by the Commission, Bonneville will determine whether any changes to its automation are necessary.¹²⁹

106. Bonneville acknowledges the concerns raised by the commenters and states that it will continue to engage with customers, solicit comments on these projects through a series of ongoing workshops and conference calls. Bonneville asserts that it will keep the Commission informed regarding the progress of its automation projects.¹³⁰

¹²⁵ *Id.* at 2.

¹²⁶ *Id.* at 4.

¹²⁷ PGE at 8.

¹²⁸ *Id.* at 8-9.

¹²⁹ Bonneville Answer at 69.

¹³⁰ *Id.* at 70.

Commission Determination

107. On April 5, 2013, Bonneville updated the Commission on the progress of its automation efforts. In that update, Bonneville noted that it had completed automation efforts regarding: (i) redirects and reassignments of point-to-point conditional firm service; (ii) the posting of ATC for all posted paths; and (iii) the sale of non-firm point-to-point products and secondary network service other than hourly non-firm.¹³¹ Bonneville stated that it was on schedule to complete the automation of the simultaneous submission window for short-term firm transmission service requests by the end of April 2013.¹³² Bonneville stated that it expects to complete the automation involving competitions and preemptions of short-term transmission requests and reservations by early fall 2013.¹³³ Based on this substantial progress, the Commission will not withhold reciprocity status for Bonneville's tariff based on its ongoing automation efforts.

H. ATC Methodology

108. In its Order No. 890 filing, Bonneville proposed revisions to Attachment C, which included a high-level description of Bonneville's ATC and AFC methodologies and links to the methodologies, which are posted on Bonneville's website. The July 15 Order approved Bonneville's Attachment C and directed Bonneville to make the following modifications: (1) provide a link to the mathematical algorithm for non-firm ATC; (2) provide a process flow diagram; (3) explain the difference, if any, between Bonneville's Total Transfer Capability (TTC) methodology for the operating and planning horizon and provide the databases used in the assessments; (4) explain how rollover rights are accounted for in determining Existing Transmission Commitments (ETC); and (5) explain the process for ensuring that non-firm capacity is released as non-firm ATC.¹³⁴

109. Bonneville states that it has modified Attachment C pursuant to the Commission's direction in the July 15 Order. Bonneville declares that it has included the mathematical algorithm for non-firm ATC in Attachment C itself. According to Bonneville, it also has posted a process flow diagram for the calculation of ATC and AFC on its website, and its

¹³¹ Bonneville Second Informational Filing Regarding Automation Efforts at 2.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ July 15 Order, 128 FERC ¶ 61,057 at PP 72, 75, 78, and 81.

OASIS contains a link to such site. Bonneville maintains that it has added the TTC and Total Flowgate Capability (TFC) descriptions to the ATC and AFC methodology documents on its website and that databases used in the TTC and TFC assessments are the WECC base cases. Bonneville adds that it has added a rollover rights explanation to Attachment C, which states that Bonneville includes the capacity associated with rollover rights in ETC.¹³⁵ In its transmittal letter, Bonneville clarifies that the firm transfer capability that was reserved for Bonneville's existing transmission commitments but not scheduled before the real-time horizon is released as non-firm ATC and AFC.¹³⁶

110. In addition to changes addressing the Commission's directives in the July 15 Order, Bonneville proposes to make revisions to the methodologies to reflect implementation of the North American Electric Reliability Corporation (NERC) MOD series of reliability standards and NAESB business practice standards, updates to the high-level descriptions of the components of the ATC and AFC calculations, and an update to the website link.¹³⁷

111. Bonneville explains that it has modified the description of the ETC component of ATC and AFC to provide greater transparency about Bonneville's service commitments made pursuant to Bonneville's statutory and treaty obligations. Bonneville maintains that, in order to fulfill statutory reservations of federally generated hydroelectric project power to irrigators, it is obligated by statute and contract to deliver power to irrigation districts associated with the United States Bureau of Reclamation. Bonneville also states that, under the Columbia River Treaty, transmission must be reserved for the return of energy to Canada. Bonneville states that, for purposes of calculating ETC, Bonneville considers the return of energy to Canada to be a committed use as long as the current treaty or an amended, new, or replacement treaty exists.¹³⁸

Protests and Comments

112. NIPPC protests that Attachment C's committed use exclusions for service to Bureau of Reclamation Irrigation District Loads and the delivery of Canadian Entitlement pursuant to the Columbia River Treaty from Existing Transmission Commitments (ETC)

¹³⁵ Bonneville Petition at 16-17.

¹³⁶ *Id.* at 18.

¹³⁷ *Id.* at 15.

¹³⁸ *Id.* at 19.

capacity discriminate in favor of certain uses and, thus, argues that Attachment C is not superior to the *pro forma* OATT.¹³⁹

113. NIPPC acknowledges Bonneville is obligated by statute and contract to deliver power to irrigation districts associated with the Bureau of Reclamation; however, Attachment C should not permit Bonneville to hold capacity in reserve for irrigation district loads that might never materialize. NIPPC believes that Bonneville can fulfill its statutory responsibility by itself reserving and paying for transmission capacity in the manner provided in its tariff.¹⁴⁰

114. According to NIPPC, the exchange agreements providing for the disposition of Canada's downstream power benefits in the United States have expired, so there can be no statutory obligation to reserve transmission capacity for that energy. NIPPC states that the statutory obligation defined in the Columbia River Treaty only applies to the original Canadian Entitlement. NIPPC believes that there is no statutory basis for Bonneville to treat deliveries under an amended or follow-on replacement Columbia River Treaty as a committed use. NIPPC explains that there are practical problems with Bonneville's committed use doctrine, given that the amounts and delivery points of energy Canada is entitled to receive may change under an amended or replacement treaty. NIPPC asserts that this negates the statutory basis for an exception to the reciprocity safe harbor standard.¹⁴¹ For these reasons, NIPPC argues that Attachment C is not superior to the *pro forma* OATT.¹⁴²

115. Protestors state that they have no objection to the inclusion of the two specific statutory obligations, but they oppose the inclusion of a broad catch-all category that may include anything that Bonneville determines is within its statutory obligations.¹⁴³ Protestors explain that they are particularly concerned about this proposal in light of

¹³⁹ NIPPC at 25.

¹⁴⁰ *Id.* at 25-26.

¹⁴¹ *Id.* at 26-28.

¹⁴² *Id.* at 25.

¹⁴³ Protestors at 31.

Bonneville's attempts to provide it unfettered discretion to grant "priority access to federal transmission."¹⁴⁴

116. Protestors acknowledge that there may be certain circumstances where Bonneville's statutory obligations may need to be reconciled with the ATC calculation and transmission queue requirements of the OATT. However, Protestors argue that proper transmission planning should obviate any need for queue jumping or priority access to ATC in most cases. Protestors state that when any unusual situation arises, Bonneville should be able to explain the competing obligations and request relief from the tariff restrictions. Protestors argue that Bonneville should not have unsupervised authority to reserve ATC or jump to the top of the queue. Protestors contend that such language would be in direct conflict with the Commission's stated purpose in Order 890 to require transmission providers to increase the transparency and consistency of ATC calculations to reduce the potential for undue discrimination.¹⁴⁵

117. Protestors state that this deviation might be allowable if the section were regulated under an FPA jurisdictional tariff, since complainants could seek relief from the Commission if Bonneville interpreted such language in a manner that was unduly discriminatory or preferential. However Protestors contend that under a reciprocity tariff there is no such protection, and absent Commission oversight, Protestors "have no meaningful remedies."¹⁴⁶

Bonneville Answer

118. Bonneville counters that it has proposed only a ministerial change to the definition of ETC; it has proposed to add the word "other" before "commitments." Bonneville notes that the provision allowing Bonneville to include these treaty obligations and commitments as part of ETC was included in its October 3, 2008 petition and was approved by the Commission. According to Bonneville, the language is not a "deviation" because *pro forma* Attachment C is blank.¹⁴⁷

¹⁴⁴ *Id.* at 32.

¹⁴⁵ *Id.* at 33.

¹⁴⁶ *Id.* at 33.

¹⁴⁷ Bonneville Answer at 61.

119. With respect to NIPPC's protest, Bonneville points out that NIPPC does not object to the new language to Attachment C indicating that, in calculating ETC, Bonneville is obligated by statute and contract to provide power to several irrigation districts and considers those deliveries to be a committed use. Instead, Bonneville claims that NIPPC is merely speculating as to a possible interpretation of that language. Bonneville also confirms that it does not reserve transfer capability for irrigation district loads that may never materialize.¹⁴⁸

120. As far as Bonneville's reserve transfer capability is concerned, Bonneville contends that it must reserve sufficient transmission capacity for the return of energy to Canada under the Columbia River Treaty regardless of whether it occurs under the current treaty or under an amended, new, or replacement treaty. According to Bonneville, its tariff (which reflects agency policy) cannot trump the treaty-making power or the foreign policy of the United States. Bonneville states that amendments of existing treaties do not abrogate those treaties or turn them into "new" treaties, any more than contractual amendments abrogate existing contracts or turn them into "new" contracts.¹⁴⁹

121. Bonneville also notes that NIPPC offers no evidence to support its assertion that Canada is likely to be entitled to substantially less energy under a new treaty. Bonneville adds that it made clear in its petition that, "[i]f the ETC being held for the current treaty exceeds what is needed for the new or replacement treaty, Bonneville will release the excess transfer capability to ATC and AFC inventory."¹⁵⁰ Bonneville further adds that, if the treaty is indeed amended or replaced, "Bonneville will subsequently transfer the capability held for the current treaty to the new or replacement treaty consistent with the terms of any return obligation in the new or replacement treaty"¹⁵¹ — that is, the amount needed for the new treaty, not an amount that exceeds the return obligation.¹⁵²

¹⁴⁸ *Id.* at 62.

¹⁴⁹ *Id.* at 63.

¹⁵⁰ *Id.* at 21.

¹⁵¹ *Id.* at 20.

¹⁵² *Id.* at 64.

Commission Determination

122. Bonneville's proposed Attachment C includes the mathematical algorithms for non-firm ATC and explains how it accounts for rollover rights. Bonneville's ATC Implementation Document describes the difference between Bonneville's methodology for calculating TTC for the operating and planning horizons and provides the databases used in the assessments. Bonneville's ATC Implementation Document also explains how its process ensures that non-firm capacity is released for use by third-parties. However, Bonneville merely referenced the process flow diagram, which can be found on its ATC Methodology webpage, instead of adding the process flow diagram to its Attachment C, as required by Order No. 890.¹⁵³ Subject to Bonneville submitting a revision of its Attachment C to include a process flow diagram, we find that Bonneville's changes to its Attachment C substantially conform with, or are superior to, the Order No. 890 *pro forma* tariff.

123. Bonneville modified the description of ETC in its Attachment C to include "other" commitments made pursuant to Bonneville's statutory and treaty obligations. Specifically, Bonneville's proposed Attachment C states that Bonneville is obligated by statute and contract to provide power to several irrigation districts and is obligated by the Columbia River Treaty to return energy to Canada, and thus requires transmission capacity to fulfill these obligations. For the purposes of calculating firm ETC, Bonneville's proposed Attachment C states that these obligations are considered a committed use. We agree with Bonneville that this tariff provision was previously approved as part of Bonneville's initial filing in compliance with Order No. 890, and that the inclusion of the word "other" does not materially alter Bonneville's ability to include treaty obligations under ETC. We note that any "other" capacity reservations, as stated in the NERC MOD standards,¹⁵⁴ must be for contracts or agreements that use transmission service. We find that Bonneville's modified description of ETC substantially conforms with, or is superior to, the Order No. 890 *pro forma* tariff. We agree with Bonneville that any specific objection to its application of its Attachment C should be addressed by the Commission in the context of a future complaint.

¹⁵³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 323; *pro forma* OATT, Att. C.

¹⁵⁴ *E.g.*, NERC MOD-028 R8 and R9.

I. Miscellaneous Issues

124. In the July 15 Order, the Commission accepted certain deviations from its *pro forma* OATT to allow Bonneville to permit short-term sales from network resources to third-parties without undesignation of the network resource. However, the Commission conditioned its acceptance of the deviation on Bonneville explaining the process by which capacity set aside for network service and freed up as a result of seasonal adjustment will be made available for third party use.

125. In the instant petition, Bonneville explains that capacity above that needed to serve forecasted load is freed for point-to-point transmission sales. Bonneville also states that it releases all reserved transfer capacity if a schedule for that capacity has not been submitted by 10 PM on the day before the start of service.

126. Bonneville also requests that the Commission waive its filing fees for both petitions for declaratory order.

Protests and Comments

127. Puget Sound argues that Bonneville should clarify how the proposed deviations from sections 29.2(viii), 30.1, 30.2, 30.4, 1.26, and 1.29 of the *pro forma* tariff comply with the prohibition on firm sales to third parties from designated network resources.¹⁵⁵ Puget Sound argues that Bonneville has not made clear how network transmission that has been set aside to deliver energy from network resources to network load will be made available on other than a short term, non-firm basis for point-to-point transmission use.

128. Puget Sound emphasizes that Order No. 888 required customers to undesignate their network resources when making third party sales. Puget Sound notes that while Order No.890-B allowed for transmission providers to deviate from this rule if their ATC calculations allowed for flexibility in implementing undesignation requirements, the order required that any proposed variation address the incentive of network customers to designate unlimited amounts of generation as network resources.¹⁵⁶

129. According to Puget Sound, Bonneville operates under a Memorandum of Agreement for the Management of Network Integration Transmission Service which seeks to establish the procedures, terms, and conditions between Bonneville's Power and

¹⁵⁵ Puget Sound at 10-11.

¹⁵⁶ *Id.* at 11.

Transmission Services for the management of transmission arraignments needed to deliver power from federal resources. Puget Sound argues that Bonneville should explain the role of this agreement and how it is consistent with the *pro forma* OATT.¹⁵⁷

130. Puget Sound does not question the procedures set forth in the proposed Attachment M by which Bonneville will redispach federal system resources. However, Puget Sound requests that the Commission require Bonneville to clarify that the proposed Attachment M applies only to the redispach of federal system resources and does not affect the procedures under which Bonneville will redispach non-federal system resources to preserve system reliability.¹⁵⁸

131. PPC supports Bonneville's request to deviate from the *pro forma* OATT by permitting short-term sales of power from Designated Network Resources without undesignation. PPC agrees with Bonneville that excess transfer capability associated with the Designated Network Resources is freed up in the calculation of the ATC and AFC. PPC also supports Bonneville's clarification that makes the excess transfer capability available to the short-term point-to-point market.¹⁵⁹

132. NorthWestern also asks the Commission to clarify that Bonneville has an ongoing obligation to provide open access service, which includes the exchange of transmission capacity with its neighboring BAAs at its borders.¹⁶⁰ NorthWestern encourages the Commission to include the various agreements that govern the interties of capacity between Bonneville and its adjacent BAs in any determination of whether Bonneville provides just and reasonable transmission service or whether reciprocity status is merited, because many of these agreements are out-dated under "grandfathered" status. Consequently, NorthWestern asks the Commission to clarify that Bonneville's obligations to provide open access extend to its interties with neighboring BAs, and not simply to how Bonneville offers transmission service to its own customers within its own BA.¹⁶¹

¹⁵⁷ *Id.* at 12

¹⁵⁸ *Id.* at 13.

¹⁵⁹ PPC at 12.

¹⁶⁰ NorthWestern at 4.

¹⁶¹ *Id.* at 5.

Bonneville Answer

133. Bonneville argues that the Puget Sound's requests for clarification are unrelated to Bonneville's clarification in the instant petition, and instead relate to Bonneville's requested deviation, which was approved by the Commission.¹⁶² Bonneville states that its proposed deviation does not relate to the long term sale of point-to-point transmission. According to Bonneville, short term sales do not affect its AFC or ATC values; rather AFC and ATC values are only affected by sales of greater than one year, and these sales still require the undesignation of network resources under Bonneville's tariff. Bonneville explains that network customers do not have an incentive to designate excessive network resources, because Bonneville reserves transfer capacity for network transmission based on forecasted load, not on designated resources. Bonneville states that a customer would have nothing to gain by designating excessive network resources.¹⁶³

134. Bonneville states that Puget Sound's request for an explanation of its Memorandum of Agreement is not related to the undesignation of network resources or any other issue in its petition. Bonneville states that the agreement simply documents how Bonneville and network customers comply with OATT requirements.¹⁶⁴

In response to Puget Sound's comments on Attachment M, Bonneville clarifies that Attachment M only relates to the dispatch of federal resources and does not apply to non-federal resources.¹⁶⁵

Commission Determination

135. The Commission finds that Bonneville has provided a satisfactory explanation of the process by which capacity is set aside for network service and freed up for seasonal adjustments. Thus, its proposal complies with the Commission directive in the July 2009 Order.¹⁶⁶

¹⁶² Bonneville Answer at 67.

¹⁶³ *Id.* at 66-67.

¹⁶⁴ *Id.* at 67-68.

¹⁶⁵ *Id.* at 70.

¹⁶⁶ July 15 Order, 128 FERC ¶ 61,057 at P 39.

136. Puget Sound requests clarification that Bonneville's deviations comply with the Commission's prohibition on sales to third parties from designated network resources. However, this question was already answered in the Commission's July 15 Order and we decline to reconsider this question here. The Commission also agrees with Bonneville that its Memorandum of Agreement is not relevant to the instant filing, as it doesn't relate to determining Bonneville's reciprocity status.

137. With regard to Puget Sound's request for clarification regarding Attachment M, Bonneville appears to have made the clarification requested by Puget Sound in its Answer, where it stated that, "Attachment M addresses redispach of federal system resources and does not affect the procedures for redispach of non-federal resources to preserve system reliability." Thus, no further clarification is necessary.¹⁶⁷

138. In response to NorthWestern's request for clarification, we clarify that Bonneville must provide open access transmission service through its OATT on terms and conditions that substantially conform with or are superior to the Commission's *pro forma* OATT. The agreements alluded to by NorthWestern are not before the Commission here, and NorthWestern has not identified specific agreements or provisions that show that the terms and conditions of Bonneville's OATT do not substantially conform with or are not superior to the Commission's *pro forma* OATT. Accordingly, NorthWestern's request is beyond the scope of this proceeding.

139. We grant Bonneville's request for waiver of the filing fees because it is a non-public utility and a federal agency. Therefore, it is exempt from the Commission's filing fees.¹⁶⁸

J. Tariff Amendments Related to Implementation of a Simultaneous Submission Window for Short-Term Point-To-Point Transmission Service

140. On September 4, 2012, in Docket No. NJ12-13-000, Bonneville submitted amendments to its tariff describing Bonneville's implementation of a simultaneous transmission request submission window for short-term point-to-point transmission service (September 2012 Filing). According to Bonneville, these amendments are in compliance with Order No. 890. Bonneville filed these amendments along with a petition for declaratory order requesting that the Commission find that its tariff, as amended by this filing, satisfies the requirements for reciprocity status. Specifically

¹⁶⁷ Bonneville Answer at 70.

¹⁶⁸ 18 C.F.R. §§ 381.102(a), 381.108(a), 381.302(c) (2013).

Bonneville proposes a revised tariff section to: (1) establish a simultaneous submission window; (2) accord all transmission requests submitted within the window the same queue time; (3) prioritize requests based on duration, pre-confirmation status, and price; and (4) assign transmission to customers with equal priority based on the parameters through a lottery.

Protests and Comments

141. Although Protestors regard the proposal to accomplish simultaneous transmission request window functionality to be comparable and not unduly discriminatory, Protestors object to the proposal, because it was filed in a petition for declaratory order granting reciprocity status. Protestors explain that their opposition to this proposal is similar to their opposition to Bonneville's OATT filed in Docket No. NJ-12-7-000: Bonneville did not comply with the Commission's direction in the December Order to file a full section 211A tariff. According to Protestors, by filing the proposal in a reciprocity petition in this docket, Bonneville seeks to have the Commission evaluate the proposal under the reciprocity standards, which would require only a finding that any variations to the *pro forma* OATT substantially conform with or are superior to the requirements of Order Nos. 888 and 890. Protestors continue to assert that the Commission should review such *pro forma* OATT deviations under the standards of FPA section 211A to ensure that such deviations are comparable and not unduly discriminatory or preferential.¹⁶⁹

Commission Determination

142. The Commission finds that Bonneville's proposal on the simultaneous transmission request window substantially conforms with or is superior to the Commission *pro forma* tariff. The Commission has accepted similar proposals which include a lottery to determine reservation priority for otherwise equivalent transmission requests within the submission window, finding that such an allocation is reasonable and compliant with Order No. 890.¹⁷⁰

143. With respect to Protestors' objection that Bonneville did not file the proposal under FPA section 211A, as previously explained in the Commission's Order on Compliance in the Complaint Proceeding, the Commission did not require Bonneville to file a full FPA section 211A tariff.¹⁷¹ Thus, the Commission rejects Protestors' assertion

¹⁶⁹ Protestors Protest at 4-5.

¹⁷⁰ *Mid-Continent Area Power Pool*, 123 FERC ¶ 61,177, at P 29 (2008).

¹⁷¹ Order on Compliance, 141 FERC ¶ 61,234 at PP 31-32.

that Bonneville is required to file its proposal to incorporate the Commission's simultaneous transmission window requirement as a section 211A-jurisdictional tariff section rather than through a reciprocity petition.

The Commission orders:

(A) Bonneville's request for a finding that its tariff substantially conforms with, or is superior to, the Commission's *pro forma* tariff is hereby granted in part, and denied in part, as discussed in the body of this order.

(B) Bonneville's petition for a declaratory order finding that it qualifies for safe harbor reciprocity status is hereby denied, as discussed in the body of this order.

(C) Bonneville's request for an exemption from the requirement to pay a filing fee in Docket Nos. NJ12 -7-000 and NJ12-13-000 is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix
List of Commenters/ Protestors¹⁷²

<u>Commenter/Protestor</u>	<u>Short Name or Acronym</u>	<u>Docket(s)</u>
American Wind Energy Association (jointly with Renewable Northwest Project)	AWEA	NJ12-7
Bonneville Power Administration	Bonneville	applicant in both
Caithness Shepherds Flat, LLC	Caithness	NJ12-7
PacifiCorp, et al. ¹⁷³	Protestors	protested in both ¹⁷⁴
Industrial Customers of Northwest Utilities	Industrials	NJ12-7
M-S-R Public Power Agency ¹⁷⁵	M-S-R	intervened in both
NorthWestern Corporation	NorthWestern	NJ12-7
Northwest & Intermountain Power Producers Coalition (late-filed)	NIPPC	NJ12-7
Portland General Electric Company	PGE	intervened in both
Public Power Council	PPC	intervened in both
PPL EnergyPlus LLC and PPL Montana LLC	PPL	intervened in both
Powerex Corporation	Powerex	intervened in both
Puget Sound Energy, Inc.	Puget Sound	NJ12-7

¹⁷² In addition, timely motions to intervene that did not contain comments or a protest were filed by E.ON Climate & Renewables North America, LLC (in NJ12-7-000) (E.ON Climate), Avista Corp. (in NJ12-7-000), Turlock Irrigation District (in NJ12-7-000), Snohomish County PUD No. 1 (in both dockets), Pacific Northwest Generating Cooperative (in NJ12-7-000), Modesto Irrigation District (in NJ12-7-000), Northwest Requirements Utilities (in NJ12-7-000), Southern California Edison Company (in NJ12-7-000), EDP Renewables North America LLC (in NJ12-13), PacifiCorp (in NJ12-13), Western Public Agencies Group (late-filed) (in NJ12-7). Public Utility Commission of Oregon filed a notice of intervention in Docket No. NJ12-7-000.

¹⁷³ Iberdrola Renewables, LLC, PacifiCorp, NextEra Energy Resources, LLC, Invenergy Wind North America LLC and EDP Renewables North America LLC (as successor in interest to Horizon Wind Energy LLC) filed jointly in both dockets. These entities also filed individual motions to intervene.

¹⁷⁴ Protestors were the sole protestor/commenter in Docket No. NJ12-13-000.

¹⁷⁵ M-S-R filed its motions to intervene in the two dockets jointly with Cities of Santa Clara, California and Redding, California.

City of Seattle, Washington
TransAlta Energy Marketing (U.S.) Inc.
Xcel Energy Services Inc.

City of Seattle
TransAlta
Xcel

intervened in both
NJ12-7
NJ12-7