

150 FERC ¶ 61,113  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
Norman C. Bay, and Colette D. Honorable.

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

Docket No. EL11-44-008

v.

Bonneville Power Administration

ORDER DENYING REHEARING

(Issued February 19, 2015)

1. On October 16, 2014, the Commission issued an order finding that the cost allocation methodology proposed by the Bonneville Power Administration (Bonneville) for its Oversupply Management Protocol (OMP) complied with the Commission's prior directives on this issue, and accepting Bonneville's revised OMP proposal.<sup>1</sup> In this order, the Commission denies requests for rehearing of the October 2014 Order, as discussed below.

**I. Background**

2. This proceeding<sup>2</sup> arises out of a complaint filed on June 13, 2011 by Iberdrola Renewables, Inc. (Iberdrola), PacifiCorp, NextEra Energy Resources, LLC, Invenergy

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<sup>1</sup> *Iberdrola Renewables, Inc. v. Bonneville Power Administration*, 149 FERC ¶ 61,044 (2014) (October 2014 Order).

<sup>2</sup> The lengthy procedural history of this proceeding has been described in detail in the October 2014 Order and in other proceedings and will not be repeated here. *See, e.g., Iberdrola Renewables, Inc. v. Bonneville Power Administration*, 141 FERC ¶ 61,234

(continued...)

Wind North America, LLC, and Horizon Wind Energy LLC (collectively, Complainants), which alleged that Bonneville, under its Environmental Redispatch and Negative Pricing Policy (Environmental Redispatch Policy),<sup>3</sup> had acted in an unduly discriminatory manner by directing the displacement of wind generators' generating capacity and then using the wind generators' firm transmission rights to deliver federal hydropower to the wind generators' customers, resulting in transmission service that was not comparable to what Bonneville provided to itself. Complainants requested that the Commission invoke its authority under section 211A of the Federal Power Act (FPA)<sup>4</sup> to direct Bonneville to change its curtailment practices and to file a revised open access transmission tariff (OATT) with the Commission.<sup>5</sup>

3. Upon finding that Bonneville's Environmental Redispatch Policy resulted in non-comparable treatment of certain generating resources under FPA section 211A in the December 2011 Order, the Commission directed Bonneville to submit OATT revisions that provided for transmission service under terms and conditions that were comparable to those under which Bonneville provides transmission service to itself and that were not unduly discriminatory or preferential.<sup>6</sup> On compliance Bonneville proposed the OMP, which set forth the terms and conditions for displacing and compensating generation during periods of oversupply. Bonneville proposed to compensate generation displaced under the OMP for certain costs, including: (1) compensation for production tax credits that a wind generator would have received but for the displacement; (2) compensation for lost renewable energy credits unbundled from the sale of power; and (3) lost revenues or penalties for the failure to generate renewable energy, with respect to power sales contracts executed on or before March 6, 2012.<sup>7</sup>

4. Bonneville also proposed to fund the compensation to displaced generators through transmission reserves, and it sought to recover those funds once a cost allocation

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(2012) (2012 Compliance Order); *Iberdrola Renewables, Inc. v. Bonneville Power Administration*, 137 FERC ¶ 61,185 (2011) (December 2011 Order).

<sup>3</sup> Under Bonneville's Environmental Redispatch Policy, Bonneville would address excess water supply by substituting free federal hydropower for wind or other generation, but did not compensate generators for the costs associated with the displacement.

<sup>4</sup> 16 U.S.C. § 824j-1 (2012).

<sup>5</sup> Complainants' June 13, 2011 Complaint.

<sup>6</sup> December 2011 Order, 137 FERC ¶ 61,185 at PP 62-65.

<sup>7</sup> Bonneville March 6, 2012 Compliance Filing at 12-18 (2012 OMP Filing).

methodology was established in a formal rate case conducted pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). Bonneville stated that it intended to propose a methodology that allocated 50 percent of the displacement costs under the OMP to generators who submit displacement costs, and 50 percent of the displacement costs under the OMP to purchasers of power from the Federal Base System.<sup>8</sup>

5. The Commission conditionally accepted the OMP in the 2012 Compliance Order as a balanced interim measure that addressed Bonneville's oversupply problems, subject to Bonneville submitting a further compliance filing that set forth a cost allocation methodology that equitably allocates displacement costs to all firm transmission customers. The Commission suggested a methodology based on generators' respective transmission usage during oversupply situations, but it did not require any specific methodology, noting that Bonneville could establish any methodology that ensures comparability in the provision of transmission service by Bonneville. The Commission stated that it would evaluate whether such methodology, coupled with the non-rate terms and conditions under the OMP, ensures comparable transmission service for all resources.<sup>9</sup> The Commission also noted that, because the OMP was designed as a short-term measure that would expire on March 31, 2013, Bonneville would be under a continuing obligation to file for Commission review proposals to manage oversupply conditions until such time as a long-term solution has been approved.<sup>10</sup>

6. On March 1, 2013, in response to the Commission's statement in the Compliance Order that Bonneville would be under a continuing obligation to submit for Commission review any proposals to manage oversupply conditions, Bonneville filed the revised OMP, which was substantially similar to the OMP.<sup>11</sup> On May 23, 2014, upon conclusion of the Northwest Power Act rate case, Bonneville filed its proposed cost allocation

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<sup>8</sup> The Federal Base System includes the Columbia River hydroelectric projects and certain other projects acquired by Bonneville.

<sup>9</sup> 2012 Compliance Order, 141 FERC ¶ 61,234 at P 46.

<sup>10</sup> *Id.* P 47.

<sup>11</sup> Bonneville March 1, 2013 Revised OMP Proposal. For purposes of simplicity, and because the non-rate terms and conditions of the OMP and revised OMP are substantially similar, this order will refer to the original and revised protocols simply as "the OMP."

methodology, under which it would allocate displacement costs to transmission customers based on scheduled transmission use during oversupply situations.<sup>12</sup>

## **II. October 2014 Order**

7. In the October 2014 Order, the Commission found that the cost allocation methodology proposed by Bonneville complied with the directive in the 2012 Compliance Order to establish a cost allocation methodology that equitably allocates displacement or oversupply costs and ensures comparable service for all transmission customers. In particular, the Commission found that oversupply costs are properly categorized as transmission costs. Thus, the Commission found that these costs are properly allocable to Bonneville's transmission rates and rejected arguments that the proposed cost allocation methodology constitutes an improper subsidy to Bonneville's preference customers through their power rates.<sup>13</sup> Further, the Commission found that a cost allocation based on the scheduled transmission use is consistent with comparability requirements and cost causation principles because the "scheduled use of transmission serves as a proxy for the amount of generation occurring during an oversupply event,"<sup>14</sup> and it is the excess generation seeking to use the transmission system that results in Bonneville incurring oversupply costs.

8. The Commission also found that the non-rate terms and conditions of the OMP, in combination with the proposed cost allocation methodology, result in comparable transmission service.<sup>15</sup> The Commission rejected arguments that the OMP violates contractual transmission rights to redirect or resell transmission service because, when the OMP is utilized, the "scheduled transmission service is simply not available" for any use other than Bonneville's need to manage the oversupply event.<sup>16</sup> In addition, the Commission rejected arguments that Bonneville had not demonstrated the ongoing need for the OMP, finding that commenters' objections expressed a preference for other methods of managing oversupply, but commenters did not refute the clear need for

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<sup>12</sup> Bonneville May 23, 2014 OMP Cost Allocation Methodology Proposal (Cost Allocation Proposal).

<sup>13</sup> October 2014 Order, 149 FERC ¶ 61,044 at P 40.

<sup>14</sup> *Id.* P 41.

<sup>15</sup> *Id.* P 52.

<sup>16</sup> *Id.* P 53.

Bonneville to retain a measure of last resort for managing oversupply events after other alternatives have been exhausted.<sup>17</sup>

9. The Commission declined to require Bonneville to consider selling its excess hydropower at negative prices, explaining that Bonneville had satisfied the directives of the 2012 Compliance Order, which did not mandate the inclusion of negative pricing as one of the alternative actions Bonneville should take to manage oversupply events before using the OMP. Further, the Commission found that commenters had not provided any compelling reasons to revisit the issue of negative pricing.<sup>18</sup>

10. On November 17, 2014, Iberdrola and Caithness Shepherds Flat, LLC (Caithness) filed requests for rehearing and/or clarification of the October 2014 Order.

11. On December 1, 2014, Bonneville filed an answer.

### **III. Discussion**

#### **A. Procedural Matters**

12. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2014), prohibits answers to a request for rehearing. Therefore, we will reject Bonneville's answer.

#### **B. Requests for Rehearing and/or Clarification**

13. Iberdrola and Caithness question the Commission's finding that oversupply costs are properly allocated to Bonneville's transmission customers.<sup>19</sup> According to Caithness, the October 2014 Order is based on the erroneous presumption that the OMP is necessary for Bonneville to manage constraints on its transmission system during oversupply events. Caithness asserts that the relationship between transmission availability and

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<sup>17</sup> *Id.* P 54.

<sup>18</sup> *Id.* P 59. Although not relevant to this order denying rehearing, in the October 2014 Order the Commission also rejected arguments related to (1) OMP compensation; and (2) e-Tag practices. *Id.* PP 59, 69-71, 76.

<sup>19</sup> We note that Caithness combined in a single filing its request for hearing of the October 2014 Order with request for rehearing of a related order issued in Docket Nos. EF14-5-000 and EF14-5-001. *Bonneville Power Admin.*, 149 FERC ¶ 61,043 (2014). The portion of Caithness's request for rehearing that addresses those other two dockets is being addressed in an order issued concurrently with this one. *Bonneville Power Administration*, 150 FERC ¶ 61,112 (2015).

oversupply events that give rise to the use of the OMP was clarified during the Northwest Power Act rate case, where Bonneville acknowledged that an oversupply event is not due to an insufficiency of Bonneville's transmission system. Rather, Caithness states that Bonneville staff testified in the Northwest Power Act rate case that "oversupply is too much electricity relative to load, not a lack of transmission capacity."<sup>20</sup> Likewise, Iberdrola quotes testimony from the Northwest Power Act rate case to support its position that oversupply events do not cause issues on the transmission system and do not affect available transmission capacity or reliability.<sup>21</sup>

14. Caithness contends that the purpose of the OMP is to control power markets by removing wind generation and augmenting the demand for federal hydropower so that Bonneville's marketing function can avoid accepting a negative price for surplus power during times of oversupply. Caithness argues, therefore, that curtailments under the OMP are not for legitimate reasons under Part II of the FPA or *pro forma* OATT, and in fact are unduly discriminatory in violation of FPA section 211A.<sup>22</sup>

15. Iberdrola also requests rehearing of the Commission's finding that allocating oversupply costs based on scheduled transmission use equitably distributes these costs and meets comparability requirements. Iberdrola argues that Bonneville is the only user of the transmission system when Bonneville displaces other transmission schedules under the OMP, but it does not account for this usage in the cost allocation methodology because Bonneville allocates costs to generators that do not actually use the transmission system during oversupply events. Thus, Iberdrola contends that this methodology cannot be found to be comparable because Bonneville treats itself more favorably than non-federal generation by maintaining other users' transmission schedules for purposes of cost allocation while depriving them of the ability to make use of the transmission rights associated with that schedule. Iberdrola maintains that the substitution of free federal power to serve displaced generators' loads does not correct for this noncomparability because the *pro forma* OATT does not permit such interference with transmission customers' transmission rights.<sup>23</sup>

16. Iberdrola also alleges that the Commission erred by rejecting arguments that the revised OMP violates contractual rights to redirect or resell transmission service because

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<sup>20</sup> Caithness November 17, 2014 Request for Rehearing at 4 (Caithness Rehearing Request).

<sup>21</sup> Iberdrola Rehearing Request at 11-12.

<sup>22</sup> *Id.* at 4-5.

<sup>23</sup> *Id.* at 12-14.

the scheduled transmission service is no longer available for the customer's use during an oversupply event. Iberdrola repeats its prior argument<sup>24</sup> that it is not aware of any provision in the *pro forma* OATT or Commission precedent that permits an entity to use unilaterally a transmission customer's firm transmission rights so long as the interfering party delivers the originally scheduled quantity of energy. Further, Iberdrola contends that this practice is inconsistent with section 13.6 of Bonneville's tariff, which specifies that curtailments of point-to-point transmission service must be applied first to non-firm service and then to firm service on a pro rata basis.<sup>25</sup>

17. Finally, Iberdrola argues that the Commission erred in finding that Bonneville has demonstrated its willingness to exhaust other alternatives before using the OMP and that the OMP remains necessary. Iberdrola asserts that negative pricing is a viable alternative to using the OMP that Bonneville has not considered or attempted to use. Iberdrola states that Bonneville has previously addressed oversupply by negotiating with counterparties, in some cases paying negative prices. Iberdrola contends that the Commission failed to consider and address Bonneville's past payment of negative prices as an alternative to address oversupply situations.<sup>26</sup>

### **C. Commission Determination**

18. We will deny Iberdrola's, and also Caithness's, rehearing requests for the reasons discussed below.

19. We continue to find that the cost allocation methodology proposed by Bonneville complies with the Commission's directive for Bonneville to establish a cost allocation methodology for the OMP that equitably allocates oversupply costs and ensures comparable treatment. The methodology allocates these oversupply costs to transmission customers based on scheduled transmission usage during oversupply event hours, reflecting that it is the generators that schedule in these hours (measured by their transmission schedules) that cause Bonneville to need to displace generation and hence create oversupply costs, and thus it is those generators that should be charged oversupply costs.<sup>27</sup> Neither Iberdrola nor Caithness dispute the premise in the October 2014 Order

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<sup>24</sup> Movants March 27, 2012 Protest at 32-33; Movants March 26, 2013 Protest at 13.

<sup>25</sup> Iberdrola Rehearing Request at 16-17.

<sup>26</sup> *Id.* at 17-19.

<sup>27</sup> We recognize that it is not a lack of transmission capacity that causes the need to displace generators, but rather a need to match generation being delivered over the system with load. Oversupply costs are nevertheless appropriately viewed as

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that “scheduled use of transmission serves as a proxy measure for the amount of generation occurring during an oversupply event.”<sup>28</sup> We thus affirm the Commission’s prior finding that scheduled transmission usage constitutes an equitable method for determining how users of the transmission system should bear the costs of Bonneville’s need to manage oversupply events and meet its statutory responsibilities. For these same reasons, we find that reliance by Caithness and Iberdrola on testimony from the Northwest Power Act rate case, which they state acknowledged that oversupply situations are not due to an insufficiency of Bonneville’s transmission system, are misplaced.<sup>29</sup> Simply put, the mere existence of transmission capacity during oversupply events does not mean that oversupply costs are unrelated to transmission.

20. Moreover, because scheduled transmission serves as a proxy for generators’ contribution to the need for Bonneville to incur OMP costs, we are not persuaded by arguments that only Bonneville uses the transmission system during an oversupply event. Not only does Bonneville use those transmission schedules for the benefit of the curtailed generators to deliver free hydroelectric power to those generators’ load, thus ensuring that those generators’ obligations to their load are satisfied, but the curtailed generators are also compensated. We add that, as explained by the Commission in the October 2014 Order, under this methodology, federal generation would bear the vast majority of the oversupply costs, in proportion to its contribution to the oversupply event, consistent with cost causation principles.<sup>30</sup>

21. Further, neither Caithness nor Iberdrola refute the Commission’s finding that compensation under the OMP puts wind generators in a similar financial position as if they were allowed to generate and deliver power.<sup>31</sup> This finding, along with the finding that transmission schedules are an appropriate proxy for excess generation, continues to justify the Commission’s conclusion that the OMP, with its cost allocation methodology,

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transmission costs because it is generation scheduled to be delivered over the system, as phrased in the October 2014 Order (i.e., “seeking to use the transmission system,” *see* October 2014 Order, 149 FERC ¶61,044 at P 41), which is then displaced that creates the oversupply costs.

<sup>28</sup> October 2014 Order, 149 FERC ¶ 61,044 at P 41.

<sup>29</sup> As noted above, however, that that may be the case does not mean that Bonneville’s OMP and cost allocation methodology do not meet FPA section 211A’s comparability requirement or are otherwise inequitable.

<sup>30</sup> *Id.* P 42.

<sup>31</sup> *Id.* P 41.

results in comparable service. Thus, we continue to find that the OMP is a fair and reasonable method for managing oversupply events, given Bonneville's obligations to both protect fish and wildlife and to satisfy the comparability requirements of FPA section 211A.

22. With regard to contentions that Bonneville's actions under the OMP are inconsistent with requirements under the *pro forma* OATT, we note that the Commission already has considered and rejected such arguments. On rehearing of the December 2011 Order, parties argued that Bonneville's actions did not constitute the type of conduct that would fall within the definition of either "curtailment" or "interruption" under Order No. 890<sup>32</sup> or the *pro forma* OATT. The Commission rejected these arguments, explaining that "[t]he Commission did not use those terms in the December [2011] Order as terms of art as they are defined in the *pro forma* OATT or Order No. 890. Rather, the Commission used those terms in the December [2011] Order and uses them in this order to describe the nature of Bonneville's conduct and the impact of that conduct on non-federal resources' ability to inject power onto Bonneville's transmission system."<sup>33</sup> Throughout these proceedings, the Commission has continued to use these terms in a more general, descriptive way, and not in the formal, definitional sense. Thus, we find no merit in arguments on rehearing that Bonneville's action under the OMP is inconsistent with the *pro forma* OATT definition of "curtailment" or the Commission's prior findings regarding the OMP. Moreover, as Bonneville is an exempt public entity under FPA section 201(f),<sup>34</sup> it is not required to have an OATT, but may choose whether to have an OATT and what transmission services to offer under any such OATT.

23. We continue to reject Iberdrola's argument that Bonneville's use of the OMP violates contractual transmission rights to redirect or resell transmission service. As discussed above, we find no merit in arguments that Bonneville's actions are inconsistent with the requirements in the *pro forma* OATT. We likewise find no inconsistencies between section 13.6 of Bonneville's OATT, which applies expressly to curtailments for reliability reasons, and the OMP, which creates an independent set of circumstances and

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<sup>32</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *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).

<sup>33</sup> *Iberdrola Renewables, Inc. v. Bonneville Power Administration*, 141 FERC ¶ 61,233 at P 60.

<sup>34</sup> 16 U.S.C. § 824(f) (2012).

procedures for curtailments.<sup>35</sup> Thus, we find that neither the *pro forma* OATT nor section 13.6 of the Bonneville OATT contradicts the Commission's prior finding that the OMP, including the associated cost allocation methodology, results in comparable transmission service during oversupply events. As such, we find that the inability to redirect or resell transmission service does not constitute a violation of contractual rights; rather, it is an implicit result of Bonneville's use of the OMP, a process found by the Commission to result in comparable transmission service.<sup>36</sup> As stated in the October 2014 Order, when Bonneville uses the OMP to manage oversupply conditions, "the scheduled transmission service is simply not available for any other use,"<sup>37</sup> including the potential option of redirecting or reselling that service.

24. Finally, we reject Iberdrola's claim that the Commission erred in finding a continuing need for the OMP. Similar to the arguments considered and rejected by the Commission in the October 2014 Order,<sup>38</sup> we find that Iberdrola's assertions here express a preference for a mechanism other than the OMP for managing oversupply conditions. We continue to find that Iberdrola's objections to the OMP do not diminish the appropriateness of a backstop that Bonneville may use during oversupply events. We are also unpersuaded by Iberdrola's contention that Bonneville has used negative pricing to manage oversupply previously but has not done so here.<sup>39</sup> Use of negative pricing has been raised by commenters throughout this lengthy proceeding and the Commission has consistently declined to require Bonneville to adopt negative pricing as an alternative.<sup>40</sup> We see no reason to do so now. That Bonneville may have used negative pricing in the past does not require that it do so now, when Bonneville instead has opted for a different approach that the Commission has found meets the requirements of FPA section 211A

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<sup>35</sup> See Bonneville, OATT, § 36 (stating that the OMP does not apply to curtailments under section 13.6 of Bonneville's OATT).

<sup>36</sup> October 2014 Order, 149 FERC ¶ 61,044 at P 52.

<sup>37</sup> *Id.* P 53.

<sup>38</sup> *Id.* P 54.

<sup>39</sup> We note that Iberdrola raises this issue for the first time on rehearing. The Commission has explained that parties "are not permitted to raise new issues on rehearing . . . [because] 'raising issues for the first time on rehearing is disruptive to the administrative process and denies parties the opportunity to respond.'" See, e.g., *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 136 FERC ¶ 61,200 at P 4 (2011) (citations omitted).

<sup>40</sup> *Id.* P 59; December 2011 Order, 137 FERC ¶ 61,185 at P 66.

(and the Northwest Power Act).<sup>41</sup> We continue to find that the OMP remains necessary and appropriate until Bonneville, in coordination with stakeholders, develops a durable mechanism for managing oversupply events.

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>41</sup> Moreover, the Commission has not prescribed any specific set of alternative actions that Bonneville must utilize before using the OMP. *See* October 2014 Order, 149 FERC ¶ 61,044 at P 59; 2012 Compliance Order, 141 FERC ¶ 61,234 at P 56.

We note that the OMP will expire on September 30, 2015. As before, we encourage Bonneville to submit to work with its stakeholders to submit to the Commission a proposal for a durable, long-term solution to address oversupply events.