

141 FERC ¶ 61,234
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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

Docket No. EL11-44-002

v.

Bonneville Power Administration

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued December 20, 2012)

1. In this order, the Commission conditionally accepts Bonneville Power Administration's (Bonneville) Oversupply Management Protocol (OMP) for filing, conditioned upon Bonneville submitting a further compliance filing under section 211A of the Federal Power Act (FPA),¹ as discussed below. In the compliance filing, Bonneville should propose a cost allocation methodology under the OMP to allocate displacement costs in a manner that, in conjunction with the non-rate terms and conditions of the OMP, ensures comparable transmission service.

¹ 16 U.S.C. § 824j-1(2006).

I. Background**A. Petition**

2. On June 13, 2011, under sections 210, 211A, 212, 307, 308, and 309 of the FPA,² Iberdrola Renewables, Inc., PacifiCorp, NextEra Energy Resources, LLC, Invenergy Wind North America LLC, and Horizon Wind Energy LLC (collectively, Petitioners), filed a petition alleging that Bonneville used transmission market power to displace wind generators in an unduly discriminatory manner under its Interim Environmental Redispatch and Negative Pricing Policies (Environmental Redispatch Policy). Petitioners asked the Commission to invoke its authority under section 211A to direct Bonneville to revise its curtailment practices under the Environmental Redispatch Policy and to file a revised open access transmission tariff (OATT) with the Commission. Petitioners also asked the Commission, under sections 210 and 212(i), to direct Bonneville to abide by the terms of its interconnection agreements with Petitioners by immediately ceasing its curtailment practices.

3. Bonneville responded that it utilized its Environmental Redispatch Policy to address excess water supply by temporarily substituting federal hydropower, at no cost, for wind or other generators in its balancing authority area. Bonneville initially curtailed thermal generators to their lowest generating level possible without threatening reliability. However, when Bonneville determined that additional generation displacement was needed, it curtailed wind generators on a *pro rata* basis and, pursuant to the Environmental Redispatch Policy, those curtailed generators were not compensated. Purchasers of energy from curtailed generators continued to receive their full energy deliveries consistent with their transmission schedules, but the energy originated from the Federal Columbia River Power System (Columbia River System) (i.e., federal hydropower generators), instead of from the curtailed generators (i.e., predominantly wind).

B. December Order

4. On December 7, 2011, the Commission issued an order concluding that Bonneville's Environmental Redispatch Policy resulted in noncomparable treatment of certain generation connected to Bonneville's transmission system, and under section

² 16 U.S.C. §§ 824i, 824j-1, 824k, 825f, 825g and 825h (2006).

211A, the Commission directed Bonneville to provide comparable transmission service.³ The Commission found that, by directing such generators to reduce generation under the Environmental Redispatch Policy, Bonneville affected their ability to inject energy at the point of receipt and interrupted their firm point-to-point transmission service, without causing similar interruptions to firm transmission service held by Bonneville's resources.⁴

5. Pursuant to section 211A of the FPA,⁵ the Commission directed Bonneville to file tariff revisions to address the comparability concerns identified by the Commission in a manner that provides for transmission service on terms and conditions that are comparable to those under which Bonneville provides transmission services to itself, and that are not unduly discriminatory or preferential.⁶ The Commission did not, however, specify the precise terms and conditions that Bonneville must set forth in order to remedy the non-comparable service that results from its Environmental Redispatch Policy. In this regard, the Commission acknowledged Bonneville's competing statutory obligations, when it required Bonneville to reconcile comparable service under section 211A with those obligations.⁷

II. Compliance Filing

A. Bonneville's OMP

6. On March 6, 2012, Bonneville filed its compliance filing (Compliance Filing). Bonneville states that its Compliance Filing is based on an understanding that the

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

⁴ December Order, 137 FERC ¶ 61,185 at P 62.

⁵ Section 211A provides that the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services: (1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and (2) on terms and conditions (not relating to rates) that are comparable to those under which the unregulated utility provides transmission services to itself and that are not unduly discriminatory or preferential. *See* 16 U.S.C. § 824(j-1) (2006).

⁶ December Order, 137 FERC 61,185 at ¶ P 64.

⁷ *Id.* P 65.

December Order required Bonneville to file tariff revisions specifically addressing the Commission's comparability concerns with respect to the Environmental Redispatch Policy on a prospective basis, and not an entirely revised OATT, under section 211A. Bonneville explains that its proposed solution is a short-term measure to be made effective on March 31, 2012, and to extend for one year through March 30, 2013.

7. Bonneville proposes to amend its OATT to include section 38 and Attachment P – OMP, which sets forth terms and conditions for displacing generation during certain oversupply periods⁸ and proposes compensation of costs incurred by wind generators as a result of such displacement. Proposed section 38 states:

[t]he [OMP] will apply when [Bonneville] displaces generation in its Control Area with generation from the federal hydroelectric system in order to moderate total dissolved gas levels in the Columbia River. When [Bonneville] determines that it is probable that the total dissolved gas levels ... exceed Oregon and Washington water quality standards at projects that are spilling past unloaded turbines, [Bonneville] has the right to initiate the [OMP] in Attachment P. All transmission customers that own or operate generating facilities in [Bonneville's] Control Area and all generators that own or operate generating facilities ... shall act in accordance with the [OMP] in Attachment P.[⁹]

8. Bonneville states that it will take all reasonable actions to reduce or avoid the need to implement the OMP, including voluntary displacement of generation with low cost or free hydropower, and it will implement the OMP when it determines that the total dissolved gas levels, measured by the Corp of Engineers, will exceed or has exceeded

⁸ 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 area but does not apply to generating facilities that are transferred out of the control area by pseudo-tie.

⁹ Section 38 also states that the OMP rules and practices do not apply to curtailments under sections 13.6, 14.7, or 33 of the Tariff. These sections address curtailment of firm point-to-point transmission service, curtailment or interruption of non-firm point-to-point transmission service, and load shedding and curtailments of network transmission service, respectively.

Oregon and Washington water quality standards at hydroelectric projects that are spilling past unloaded turbines.¹⁰

9. Upon initiation of the OMP, Bonneville states that it will issue dispatch instructions requiring certain generating facilities in its control area (predominantly wind) to reduce output so that Bonneville can substitute free federal hydroelectric energy in place of energy produced by those resources. Bonneville proposes to displace generation using a least cost displacement curve until the required displacement is achieved.

10. Under the OMP, generators that choose to be compensated for their displacement costs must submit their nameplate generating capacity and costs of displacement (\$/MWh), as discussed below, for each month¹¹ to an independent evaluator who will aggregate the costs and construct the least-cost displacement curve for implementation by Bonneville. Generators may establish a minimum generation level or a maximum ramp rate for a generating facility. In the event that no parameters are established, Bonneville may direct the generator to reduce its generation to zero.

11. As noted, under the OMP, Bonneville proposes to compensate generators who choose to be compensated for their displacement costs.¹² These displacement costs include: (1) compensation for PTCs that the generator would have received but will not receive because of the displacement; (2) compensation for lost RECs unbundled from the

¹⁰ Compliance Filing at 13.

¹¹ The generators were required to make an election under the OMP by March 31, 2012 for each generating facility. Each generating unit must submit the nameplate generating capacity and the costs of displacement (\$/MWh) (separately reflected for light load hours and heavy load hours) for each month of the following April through March. The generator must certify that the nameplate capacity and the costs are accurate and must include supporting data and documentation.

¹² Generators who choose not to be compensated for their displacement costs and generators without production tax credits (PTC), renewable energy credit (REC) losses, or unavoidable contract costs will have a displacement cost of zero and, if not voluntarily displaced, these generators will be displaced first down to their minimum generation levels within the maximum ramp rates they establish.

sale of power;¹³ and (3) certain contract costs related to the bundled sale and purchase of both RECs and energy for a single price.¹⁴

12. According to Bonneville, however, entities entering into contracts executed after March 6, 2012 may structure contracts to address the substitution of hydropower for other power without penalty and without loss of revenue. Therefore, for contracts executed after this date, generators will not receive compensation for lost contract revenues or penalties. According to Bonneville, this provision serves to limit the cost to the region, going forward, by disallowing costs that generators can avoid through their contract structure.¹⁵

13. The independent evaluator will validate the displacement costs submitted by the generator and will submit the least cost displacement curve to Bonneville (together with the total cost of displacement for each facility). A generator submitting displacement costs must provide any supporting data the independent evaluator reasonably requests. If the independent evaluator determines that any costs warrant further review, it may provide the cost information including supporting documentation to Bonneville. In such case, Bonneville may file a complaint or other appropriate request with the Commission for review of the costs and appropriate action, if any.¹⁶

14. Bonneville states that it will also use the independent evaluator to ensure accurate scheduling practices by generators. Under the OMP, in the event that Bonneville believes the schedule submitted is inaccurate or inflated, Bonneville may ask the independent evaluator to review such schedule. The independent evaluator may seek

¹³ These include: (1) the amount that the generator is not paid by its contracting party because of its failure to deliver RECs; and (2) the amount, if any, the generator must pay its contracting party as a penalty for its failure to generate. Compliance Filing, Exh. A, Original Sheet No. 455.

¹⁴ These include: (1) the contract price, if the generator is not entitled to payment for any hour in which the generator does not generate, or the difference between the full contract price and the reduced price if the generator is entitled only to a reduced price, for any hour in which the generator does not generate, and (2) the amount, if any, the generator must pay its contracting party as a penalty for its failure to generate. *Id.*

¹⁵ See Compliance Filing at 14-15 and Exh. A, Original Sheet No. 455.

¹⁶ Compliance Filing, Exh. A, Original Sheet Nos. 455-456.

supporting documentation from the generator, which the generator must provide. The independent evaluator will reach a determination on the matter based on the information provided. Bonneville may then file a complaint with the Commission seeking an investigation of the generator's scheduling practices, if necessary.¹⁷

15. Bonneville states that, during displacement of generation, it will not charge or compensate the generator for generator imbalance service. Bonneville also states that it will post an annual report on its website that includes the MWh of energy displaced and the cost of displacement.

16. Bonneville argues that the OMP provides an equitable, short-term solution that addresses the Commission's concern that Environmental Redispatch Policy impinges on the transmission service obtained by non-federal generation and imposes business, commercial, and economic impacts. Bonneville also believes that its proposal achieves a reasonable balance by reconciling the standard of comparable and not unduly discriminatory or preferential transmission service with Bonneville's statutory responsibilities.¹⁸ Finally, Bonneville notes that the OMP is a short-term approach to its oversupply problem, and will be put in place from March 31, 2012 to March 30, 2013, while parties in the region examine a long-term solution.

B. Cost Allocation under the OMP

17. Bonneville states that, during 2012, it will use transmission reserves to fund the compensation to displaced generators and will seek recovery of these funds once a cost allocation methodology is established under the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act)¹⁹ through a formal rate case. Bonneville explains that, for purposes of the instant Compliance Filing, it cannot commit to any particular cost allocation or rate design because it is not permitted to establish rates outside the process prescribed by the Northwest Power Act. However, Bonneville states it intends to propose a cost allocation methodology that will allocate 50 percent of the costs of displacement under the OMP to those generators that submit displacement costs

¹⁷ *Id.*

¹⁸ Compliance Filing at 26.

¹⁹ 16 U.S.C. §§ 839 *et seq.* (2006).

and 50 percent to purchasers of power from the Federal Base System.²⁰ Bonneville states that it believes that a 50/50 cost allocation is reasonable and fair, and the allocation aligns costs and benefits because both federal hydroelectric resources and wind resources contribute to the oversupply situation.²¹

18. The Commission notes that Bonneville has convened a formal rate proceeding under section 7(i) of the Northwest Power Act²² to establish a rate to allocate the costs of the OMP after which, as required by section 7(a)(2) of the Northwest Power Act,²³ it will submit the proposed rate to the Commission for review and approval.²⁴

C. Amendments to Existing Large Generator Interconnection Agreements (LGIA)

19. Although the OMP applies to all generators in Bonneville's balancing authority area, and Bonneville has modified its OATT to incorporate the OMP as Attachment P, Bonneville recognizes that not all generators are transmission customers under the OATT. Therefore, Bonneville proposes to amend Appendix C in its existing LGIAs to make clear that the terms and conditions included in Attachment P of Bonneville's OATT

²⁰ The Federal Base System includes the Columbia River System hydroelectric projects, resources acquired by the Administrator under long-term contracts in force on the effective date of the Northwest Power Act (December 5, 1980), and resources acquired by the Administrator to replace reductions in those resources.

²¹ As noted above, a generator may elect to submit the facility's costs of displacement, in which case the generator shall be subject to the cost allocation methodology for costs incurred under the OMP. If a generator does not make an election to submit costs for a facility or makes an election but does not submit costs, the costs of displacement for the facility will be deemed \$0/MWh and the generator will not be subject to cost allocation under the OMP.

²² 16 U.S.C. § 839e(i) (2006).

²³ 16 U.S.C. § 839e(a)(2) (2006).

²⁴ On December 5, 2012, Bonneville informed the Commission that it has established a rate case under the Northwest Power Act for purposes of setting the cost allocation methodology related to the displacement of generation during oversupply situations.

apply to all generators located in Bonneville's balancing authority area through their current interconnection agreements. Bonneville states that amending the LGIAs is necessary to ensure that all generators are subject to the same treatment under the OMP and to ensure that Bonneville is able to meet its reliability requirements and environmental responsibilities.

20. Bonneville asserts that Article 9.3 of the LGIAs gives Bonneville the unilateral right to amend Appendix C in its existing LGIAs for operational and reliability reasons. Article 9.3 states:

Transmission Provider shall cause the Transmission System and Transmission Provider's Interconnection Facilities to be operated maintained and controlled in a safe and reliable manner and in accordance with this LGIA. Transmission provider may provide operating instructions to Interconnection customer consistent with this LGIA and Transmission Provider's operating protocols and procedures as they may change from time to time. Transmission Provider will consider changes to its operating protocols and procedures proposed by Interconnection Customer.

Bonneville adds that the Commission has previously made clear that a transmission provider has the right under Article 9.3 to amend Appendix C for operational and reliability reasons.²⁵ On this basis, Bonneville explains, it has amended its existing LGIAs to incorporate Attachment P.

D. Requested Waivers

21. Bonneville notes that, in the December Order, the Commission ordered the filing of tariff revisions by March 6, 2012. Because the provisions in Attachment P must be in place before the high water season (in April) and because the OMP requires that generators provide cost information to the independent third party evaluator by March 31, 2012, Bonneville seeks waiver, to the extent necessary to permit an effective date of March 31, 2012 for the OMP. Bonneville contends that good cause exists for waiver because of the need to have the rules and procedures in place in April. Bonneville also notes that all parties will have full rights in Bonneville's rate case to make their proposals for appropriate allocation of displacement costs.

²⁵ United States Department of Energy, Bonneville Power Administration, 112 FERC ¶ 61,195 at P 20 (2005) (*Bonneville*).

22. Bonneville also requests waiver of the eTariff filing requirements set out in Order No. 714, to the extent they apply. Bonneville states that it is unable to file the tariff revisions using the eTariff process because it did not have a baseline filing in place. Therefore, Bonneville requests that the Commission accept the revisions in the format submitted.

III. Notice of Filing and Responsive Pleadings

23. Notice of Bonneville's Compliance Filing was published in the Federal Register, 77 Fed. Reg. 15,096 (2012), with protests and interventions due on or before March 27, 2012. The Commission received a motion to intervene from E.ON Climate & Renewables, North America, LLC, and comments and protests from 18 entities, as listed in Appendix A. On April 11, 2012, answers were filed by Western Public Agencies Group, Joint Interveners,²⁶ and National Rural Electric Cooperative Association (NRECA). On April 12, 2012 an answer was filed by E.ON Climate & Renewables. On April 23, 2012 and April 24, 2012, respectively, Bonneville and Large Public Power Council submitted requests for leave to answer and answer to the protests. On April 30, 2012, Petitioners submitted a supplemental protest requesting to supplement the record with the safe harbor filing Bonneville made in Docket No. NJ12-7-000. On May 11, 2012 Bonneville filed a response to Petitioners' supplemental protest. On May 15, 2012, NRECA filed motion for leave to answer and answer to Bonneville's supplemental protest.

IV. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by Western Public Agencies Group, NRECA, Joint Interveners and E.ON Climate & Renewables. We will also

²⁶ Joint Interveners include Public Power Council, Pacific Northwest Generating Coop., and Northwest Requirement Utilities.

accept the answers filed by Bonneville and Large Public Power Council. We accept these answers because they have provided information that assisted us in our decision-making process.

26. We will deny the Petitioners' request to supplement the record with Bonneville's "safe harbor" filing in Docket No. NJ12-07-000. We find that information contained in that filing does not aid our determination in this case. For this reason, we also reject the answers filed in response to the Petitioners' request to supplement the record.

27. We find Bonneville's request for waiver of the Order No. 714 eTariff filing requirements for its OMP is moot, because Bonneville has since submitted the OMP in e-Tariff, as part of its safe harbor OATT filing in NJ12-7-000.²⁷

B. Compliance Filing Fails to Include an Entire OATT under Section 211A

28. Petitioners argue that Bonneville's Compliance Filing fails to include an entirely revised OATT as required by the December Order. Petitioners state that Bonneville's submission of a safe harbor tariff in a separate proceeding does not satisfy the Commission's directive "to file a tariff providing for transmission service on terms and conditions that are comparable to those under which Bonneville provides to itself and that are not unduly discriminatory or preferential."²⁸ The Oregon Commission and NIPPC urge the Commission to reject the Compliance Filing and require Bonneville to submit an entirely revised OATT.²⁹ Petitioners and the Oregon Commission argue that a safe harbor tariff is a voluntary filing that Bonneville can modify, ignore, or withdraw at any time with no review or redress.³⁰ Petitioners argue that a safe harbor tariff is a "wholly inadequate substitute for compliance with the Commission's directive."³¹ Petitioners and NIPPC state that Bonneville should be required to file and maintain an OATT that meets section 211A's standards and that can only be revised pursuant to Commission approval

²⁷ We also note that on August 1, 2011, Bonneville established a tariff database in Docket No. EF11-8-000 with an effective date of October 1, 2011.

²⁸ Petitioners at 16.

²⁹ Oregon Commission at 2; NIPPC at 14-15.

³⁰ Petitioners at 8, 16-17; Oregon Commission at 2.

³¹ Petitioners at 24.

under section 211A. According to Petitioners and NIPPC, this will enable the Commission to retain jurisdiction to require Bonneville to provide comparable transmission service.³²

29. Joint Intervenors support Bonneville's submission of tariff revisions that are limited to addressing the Commission's comparability concerns with respect to the Environmental Redispatch Policy. They do not believe the December Order required Bonneville to submit a full OATT.³³

30. In response, Bonneville states that the December Order is unclear with respect to Bonneville's filing obligations, but asserts that the Commission intended only for Bonneville to file tariff revisions.³⁴ Consistent with that understanding, Bonneville asserts that it filed tariff revisions that address comparability concerns about its Environmental Redispatch Policy.³⁵

Commission Determination

31. In the Order Denying Rehearing being issued concurrently, in Docket No. EL11-44-001, the Commission reaffirms that Bonneville needed to file tariff revisions that address the comparability concerns raised by the Commission with respect to Bonneville's Environmental Redispatch Policy. Such tariff revisions must govern the provision of transmission service for non-federal resources on terms and conditions comparable to those under which Bonneville provides transmission services to itself and that are not unduly discriminatory or preferential.³⁶

³² Petitioners at 26; NIPPC at 14-15.

³³ According to Joint Intervenors, the Commission did not address any Bonneville policy, practice, or procedure in the proceeding other than environmental redispatch. Joint Intervenors at 7-8.

³⁴ See Bonneville Answer at 5 (citing Request for Clarification and in the Alternative Rehearing of the Bonneville Power Administration, filed January 6, 2012 at 8-9).

³⁵ Bonneville Answer at 5-6.

³⁶ See *Iberdrola Renewables, Inc., et al. v. Bonneville Power Administration*, 141 FERC ¶ 61,233 (2012).

32. By filing tariff revisions that address the comparability concerns resulting from the Environmental Redispatch Policy, Bonneville has acted in accordance with the December Order.

C. OMP Continues Impermissible Curtailment Practice Despite Additional Options for Compliance

33. Protesters make various arguments for why Bonneville's Compliance Filing should be modified or rejected.³⁷ Protesters argue that under the OMP, Bonneville proposes to curtail resources in a manner that is virtually identical to curtailments under the Environmental Redispatch Policy, which the Commission found resulted in non-comparable transmission service.³⁸ They assert that, by continuing to treat renewable resources differently from federal hydroelectric resources for the purposes of transmission curtailments, Bonneville extends the same discriminatory treatment that the Commission rejected in the December Order.³⁹ Protesters also state that a partial payment for costs incurred for curtailment is an insufficient means to achieve comparability as required by the December Order.⁴⁰

34. Petitioners point out that under the Environmental Redispatch Policy, wind generators were initially responsible for 100 percent of the costs for oversupply, while under the OMP wind generators would be responsible for approximately 50 percent of the costs. While some protesters view this modification as a "modest improvement," they argue that the OMP contains the same comparability and undue discrimination issues as Bonneville's Environmental Redispatch Policy.⁴¹ Thus, they argue that the OMP fails to comply with the December Order, and does not satisfy Bonneville's prospective obligations under section 211A.

³⁷ Xcel at 5, Powerex at 8, Calpine at 2-3, Northwest Wind Group at 5, Oregon Commission at 2, Caithness at 4; Petitioners at 13, 72-73, NIPPC at 14-15

³⁸ Petitioners at 13, 72-73, NIPPC at 14-15,

³⁹ Xcel at 5, Powerex at 8, Calpine at 2-3, Northwest Wind Group at 5, Oregon Commission at 2, Caithness at 4.

⁴⁰ Petitioners at 19, 54; Powerex at 7-8; Calpine at 4.

⁴¹ Petitioners at 57, Xcel at 5, Oregon Commission at 2, Powerex at 7-8, Calpine at 4.

35. The Oregon Commission contends that markets cannot properly function if a party can abandon its contractual obligation to provide firm transmission and instead use its transmission system to benefit federal customers.

36. M-S-R argues that the central issue is an economic market issue reflecting a fundamental change in competition for a scarce resource. M-S-R asserts that there is competition for the availability of load during periods when there is an oversupply of energy.⁴² As a result, M-S-R believes that the traditional solution of offering low-cost or free hydroelectric energy to “secure load” from competing generators is no longer effective with the influx of wind generation.⁴³

37. Protesters assert that Bonneville has several non-discriminatory options to manage the oversupply problem. Northwest Wind Group supports the use of long term contracting and selling its excess energy at the prevailing market price, rather than implementing the OMP. Xcel suggest that Bonneville negotiate a price at which market participants would accept Bonneville energy to accommodate excess hydropower, rather than instituting unilateral curtailments. NIPPC states that Bonneville can dispose of the excess power through its FPS-12 rates or through bilateral contracts.⁴⁴ Turlock asserts that market-based pricing does not discriminate between generators, and would treat all customers comparably in accordance with the December Order.⁴⁵

38. Powerex argues that the Commission should direct Bonneville to consider alternatives to its proposal, including: (1) allowing integrated and interdependent markets in the West to work and respond to positive and negative price signals; (2) disposing of excess energy by entering into agreements with neighboring balancing authorities; and (3) evaluating whether Bonneville can employ hedging strategies to sell

⁴² M-S-R explains that it is more difficult for Bonneville to market its excess federal energy to third parties in the Northwest and California because its competition for load is no longer limited to thermal generators that have fuel costs when they run; rather Bonneville must now compete with wind generation that has no fuel cost and whose output has value for PTCs, and that has contractual obligations to run whenever possible in order to deliver renewable energy to the purchaser. M-S-R at 8.

⁴³ M-S-R at 9-11.

⁴⁴ NIPPC at 16-17.

⁴⁵ Turlock at 12-16.

its maximum forecasted excess energy in forward markets and buy back energy if there is a shortfall.⁴⁶ Petitioners also argue that Bonneville should look outside its balancing authority area for additional solutions to alleviate the oversupply situation.⁴⁷

39. PGE argues that the best long term solution is for Bonneville to participate in regional markets. PGE asks the Commission to encourage Bonneville to move in this direction. However, given the challenges and limited time period that the proposal would be in effect, PGE supports inclusion of the proposal in Bonneville's OATT as a short term solution. Caithness states that the Commission should ensure that the OMP remains enforceable by the Commission.⁴⁸

40. Industrial Customers of Northwest Utilities (Industrial Customers) argue that the OMP is a reasonable short-term solution that addresses Bonneville's immediate oversupply problems, while allowing the region work toward a long-term solution.⁴⁹ Industrial Customers generally support Commission approval of the OMP for a one-year period to allow parties to address any remaining concerns.

41. In response, Bonneville explains that the Compliance Filing is the product of a formal public process that included discussions in the region, a public meeting to discuss the proposal, comments, and revisions to the OMP in response to comments received. However, Bonneville points out that the limited period of time for discussion did not produce an alternative to generation displacement that would provide assurance that Bonneville could meet its statutory requirements to maintain reliability and protect aquatic species at reasonable costs. According to Bonneville parties in the public process reached substantial, but not complete, agreement on a wide variety of issues that led to the filing of Bonneville's safe harbor filing. Bonneville points out that its March 29, 2012 filing requests reciprocity tariff status. Bonneville also states that costs incurred under the OMP must be allocated among customer groups. Therefore, Bonneville contends that the allocation must be proposed in a separate rate case under the Northwest Power Act.

⁴⁶ Powerex at 24-25.

⁴⁷ Petitioners at 57.

⁴⁸ Caithness at 4.

⁴⁹ Industrial Customers at 3.

42. Joint Intervenors also state that Bonneville will decide the issues of cost allocation and cost recovery in a future rate case governed by section 7 of the Northwest Power Act, and therefore, these issues are not before the Commission in this proceeding.⁵⁰

Commission Determination

43. Bonneville's proposal to comply with the Commission's December Order expands upon its original Environmental Redispatch Policy in a number of meaningful ways. While the Environmental Dispatch Policy at issue in the December Order involved only non-rate terms and conditions of Bonneville's OATT, in response Bonneville has submitted a compliance proposal that involves both rates for and non-rate terms and conditions of transmission service. Under the OMP, Bonneville proposes to retain its practice of displacing certain resources unilaterally,⁵¹ while compensating such involuntarily displaced wind generators for costs incurred as a result of their displacement using an independent evaluator to validate displacement costs submitted by those generators, subject to potential allocation of costs at a later date.⁵² The rate and non-rate aspects of Bonneville's proposal are intrinsically linked. As a result, the Commission concludes that it must consider both the rate and non-rate aspects of the compliance proposal to determine whether, consistent with section 211A of the Federal Power Act, Bonneville's proposal results in comparable and not unduly discriminatory treatment of all generating resources connected to Bonneville's transmission system.

⁵⁰ Joint Intervenors at 9.

⁵¹ Bonneville will continue to issue dispatch orders that direct generators to reduce output (some will be required to reduce output to zero) and will deliver federal hydroelectric energy to replace the displaced generation in order to meet transmission customers' transmission schedules.

⁵² Bonneville will also displace generators using a least cost displacement curve; generators may establish minimum operating levels and maximum ramp rates based on specific factors, and Bonneville will abide by those operating levels and ramp rates in displacing generation. The factors include, among other things, generation levels needed for local reactive power support, generation levels required for compliance with environmental laws and regulations, generation levels that can be achieved within 60 minutes or that allow return to normal operations within 60 minutes, minimum fuel take obligations, minimum stable and safe generation levels, and maximum 10-minute ramp rates.

44. Under the OMP, Bonneville states that it will compensate displaced wind generators for lost PTCs, RECs, and unavoidable contract costs. Bonneville explains that, in 2012, it will use a “transmission reserves fund”⁵³ to compensate displaced generators. Bonneville will establish a cost allocation methodology to determine how displacement costs will be allocated through a separate rate case under the Northwest Power Act.⁵⁴ In that proceeding, Bonneville would propose a cost sharing arrangement where 50 percent of the costs of displacement under the OMP would be assigned to customers of the Federal Base System and 50 percent of the costs would be assigned to those wind generators who submit displacement costs under the OMP.

45. The Commission finds that, taken together, the rates and non-rate terms and conditions of the OMP and the cost sharing arrangement proposed by Bonneville do not result in transmission service for generating resources at rates that are comparable to those Bonneville charges itself, and on terms and conditions that are comparable to those under which Bonneville provides to itself and that are not unduly discriminatory or preferential. The Commission appreciates the additional specificity Bonneville has provided in the non-rate terms and conditions of the OMP, including the use of least cost displacement curves and the ability of wind generators seeking displacement costs to refine the operational parameters used by Bonneville. However, Bonneville has not demonstrated that all customers taking firm transmission service would bear an appropriate cost burden related to Bonneville’s management of the transmission system during oversupply situations. Transmission service for wind generators that submit displacement costs represents a fraction of the firm transmission service on Bonneville’s system during oversupply situations, yet those entities are allocated half of displacement costs. Based on the record in this proceeding, we are not persuaded that a 50/50 sharing of displacement costs results in comparable transmission service for displaced wind generators.

⁵³ Bonneville explains that the reserves are simply the source of cash for compensation payments until the appropriate allocation has been established in the rate case. No transmission customer or non-federal generator will pay to cover Bonneville’s displacement costs until the cost allocation methodology is adopted, and then parties will pay according to the methodology. Bonneville Answer at 17.

⁵⁴ Bonneville Status Report, EL11-44-000 (filed December 5, 2012) (informing the Commission that it planned to hold a formal rate case to establish the cost allocation methodology and rate for cost recovery related to the OMP).

46. Thus, we will conditionally accept the OMP as a balanced interim measure that complies with our December Order, subject to Bonneville submitting a further compliance filing. Pursuant to our authority under section 211A(g), we will direct Bonneville to submit a compliance filing under section 211A within 90 days of the date of this order setting forth a methodology to allocate displacement costs in a manner that equitably allocates such costs to all firm transmission customers based on their respective transmission usage during oversupply situations,⁵⁵ or setting forth a different method altogether that ensures comparability in the provision of transmission service by Bonneville.⁵⁶ The Commission will evaluate that compliance filing to determine whether that proposed cost allocation methodology, coupled with the compensation and non-rate terms and conditions under the OMP, ensures comparable transmission service for all resources.

47. The Commission recognizes that the OMP expires by its own terms on March 30, 2013. To date, Bonneville has sought to manage oversupply conditions through short-term proposals pending development of a long-term solution.⁵⁷ Bonneville will be under a continuing obligation to file proposals to manage oversupply conditions for Commission review, until such time as a long-term solution that provides comparable service has been proposed and approved by the Commission under FPA section 211A.

⁵⁵ As described by Bonneville, curtailments during oversupply conditions are undertaken in order to honor firm delivery commitments at the point of delivery while ensuring compliance with Bonneville's statutory obligations. Therefore, allocating the costs of displacement to all firm customers based on their respective transmission usage during oversupply situations is a means to ensure comparable treatment of federal and non-federal resources.

⁵⁶ The Commission appreciates that any cost allocation methodology proposed by Bonneville in response to this order may be subject to a formal rate case under the Northwest Power Act. Bonneville should address in its compliance filing in this proceeding how it would bring before this Commission any changes that may result in the proposed cost allocation methodology during such a rate case.

⁵⁷ The Commission encourages Bonneville and stakeholders to develop mutually agreeable long-term solutions to address over-generation during high water periods.

D. Treatment of Thermal Generators Under OMP

48. Petitioners argue that the non-comparable and unduly discriminatory effects of Bonneville's OMP are not limited to wind generators because the curtailments also adversely affect thermal and biomass fueled facilities.⁵⁸ NIPPC argues that the OMP is discriminatory against thermal generation because it does not compensate that generation for involuntary displacements.⁵⁹

49. Calpine notes that Bonneville arbitrarily assigns thermal generators a zero cost of curtailment based on their historical practice of accepting free hydroelectric power on a voluntary basis. Calpine argues the OMP thus discriminates against thermal resources by recognizing lost opportunity costs for variable energy resources, but not providing thermal generators with the chance to demonstrate compensable curtailment costs.⁶⁰

50. On the other hand, SCE argues that, in order to maintain comparability, the Commission should modify Bonneville's proposed treatment of thermal generation under its OMP. This is because, if a thermal generator is backed down during oversupply situations, the thermal generator can save gas for future use or sell it, which is a cost savings for the generator. SCE suggests that Bonneville receive a payment from thermal generators based on their realized savings, which could be used to offset payments made to generators with actual displacement costs.⁶¹

51. Industrial Customers express concern about the application of the OMP to the operations of cogeneration facilities, and they believe that additional information may be needed to ensure the OMP is appropriately applied to cogeneration facilities in a way that recognizes their unique characteristics. Industrial Customers states that cogeneration facilities operate differently from traditional thermal generation because their generation is tied to load, steam output or operational characteristics, and changes in their generation

⁵⁸ Petition at 62. Petitioners state that thermal and/or biomass generators may incur costs associated with reduced efficiency, or single point of delivery obligation, as a result of oversupply displacement under the OMP.

⁵⁹ NIPPC at 21-25.

⁶⁰ Calpine at 5-6, 9.

⁶¹ SCE at 2-3.

must occur in a deliberate manner.⁶² Industrial Customers suggest that the Commission defer resolution of this issue until Bonneville files a new protocol in 2013.

52. Bonneville responds that REC, PTC, and contract costs caused by failure to generate will be the only costs compensable under the OMP. Bonneville notes that, while there may be other costs associated with reducing thermal generation during oversupply situations, it believes that these costs are offset by replacing the scheduled energy with free federal power, thereby reducing fuel costs for thermal generators. Bonneville further notes that historically, thermal generators in the balancing authority agree to displacement on a voluntary basis in return for free federal hydropower, indicating that their savings is at least equal to any costs.⁶³

Commission Determination

53. Displacement costs under the OMP are limited to PTCs, RECs and certain penalties assessed for wind resources failure to generate; therefore under the OMP, other displaced resources such as thermal generators and biomass facilities are not eligible to receive reimbursement for displacement costs. That thermal generation has historically been displaced during oversupply situations suggests that fuel cost savings from voluntary displacement of those resources outweigh the costs resulting from displacement. While no thermal generator has identified specific uncompensated costs resulting from involuntary curtailment, to ensure comparable service under section 211A, all resources subject to involuntary curtailment should be afforded the opportunity to demonstrate such costs. In developing a proposal to address future oversupply situations, Bonneville and the parties should consider such displacement costs, to the extent thermal resources or any other resource can demonstrate such costs. We also expect Bonneville and the parties to consider concerns raised by Industrial Customers in developing the next proposal.

E. Specific Actions Prior to Implementation of the OMP

54. Protesters argue that Bonneville needs to identify the specific actions it will take before implementing the OMP. M-S-R states that the Record of Decision adopting the Environmental Redispatch Policy identified 13 actions Bonneville would take before implementing environmental redispatch and these specific actions are no longer reflected

⁶² See Industrial Customers at 5-7.

⁶³ Bonneville Answer at 25.

under the OMP. Rather, M-S-R notes that the OMP states that Bonneville “will take actions it deems reasonable to reduce or avoid the need for displacement.”⁶⁴ PGE argues that the Commission should require Bonneville to define what actions it will take to mitigate total dissolved gas levels before implementation of the OMP.⁶⁵

55. Bonneville notes that, in 2011, it undertook a variety of actions to mitigate high water conditions before implementing environmental redispatch, and it represents that it will continue to take all reasonable actions before implementing the OMP. However, Bonneville explains that it cannot specify a specific set of actions that it will take for each event because, in responding to high water events, it must balance a number of factors including the impact on total dissolved gas levels, transmission reliability, flood control, other Biological Opinion objectives, reliable load service, and safety.⁶⁶

Commission Determination

56. Because Bonneville’s actions preceding the implementation of generation displacement may affect the amount and level of generation displacement during oversupply situations, we share protesters’ concerns that generators that are subject to displacement under the OMP should be made fully aware of the specific actions Bonneville would take to prior to implementing generation displacement. In particular, we find that the transparency achieved by identifying specific actions will help to ensure comparability. Therefore, we direct Bonneville to identify those specific actions it will take prior to displacing generation in any future proposal submitted to the Commission to address oversupply situations.⁶⁷

F. Provisions of the OMP

57. Protesters object to a number of specific provisions of the OMP, including that: (1) the process for developing the cost curve lacks transparency;⁶⁸ (2) the Commission

⁶⁴ M-S-R at 13-14.

⁶⁵ PGE at 5.

⁶⁶ See Bonneville Answer, Attachment A at 5-6.

⁶⁷ We note that Bonneville previously identified a list of specific actions it would take prior to displacing non-federal resources under its Environmental Redispatch Policy.

⁶⁸ Western Public Agencies Group at 9.

should ensure that cost data submitted to the independent evaluator are not shared impermissibly;⁶⁹ (3) Bonneville should provide prior notice to a generator if it intends to file a complaint with the Commission;⁷⁰ (4) Bonneville's annual report (stating the MWh of energy displaced and the cost of displacement), posted on its website, should include a description of the events that triggered the oversupply situation;⁷¹ and, (4) Bonneville should respect contractually required operating conditions in setting minimum generating levels and maximum ramp rates.⁷²

58. SOS Intervenors suggest that Bonneville should request a waiver of the Washington total dissolved gas standard in favor of the Oregon standard, stating that, while such a waiver would not completely eliminate generation displacement every year, it would limit it. SOS Intervenors also assert that Bonneville should manage the need to spill water over a dam based on biological monitoring rather than the proposed system-wide limits. PGE argues that the Commission should direct Bonneville to clarify its operating practices and objectives regarding Dispatch Standing Order 216 before and after oversupply situations. In addition, PGE seeks clarification as to how entities that have purchased generation imbalance service from Bonneville will be reimbursed if the service is suspended during actual oversupply events.⁷³

Commission Determination

59. We find that the issues identified above with regard to these particular aspects of the OMP are not related to the central question before us here: whether the rates and non-rate terms and conditions of Bonneville's proposal result in comparable transmission service under section 211A. Our objective in this proceeding is to ensure that Bonneville's proposal to address oversupply conditions satisfy our December Order by resulting in transmission service at rates, terms and conditions that are comparable to those under which Bonneville provides transmission service to itself, and that are not

⁶⁹ Powerex at 23.

⁷⁰ PGE at 8.

⁷¹ PGE at 5.

⁷² PPL at 10.

⁷³ Powerex at 7.

unduly discriminatory or preferential.⁷⁴ We find above that Bonneville's proposal does not. Therefore, rather than ruling on the discrete provisions of the OMP raised by protestors, we encourage Bonneville to continue to work through these additional issues with stakeholders in connection with the development of a compliance proposal in response to this order.

60. We similarly find that concerns raised by SOS Intervenors regarding the waiver of total dissolved gas standards and the concerns raised by PGE regarding Dispatch Standing Order 216 are outside the scope of this Compliance Filing. Thus, we need not reach a determination on these issues.

G. Other Issues

1. Changes to E-tags

61. Powerex notes that the December Order instructed Bonneville to update e-Tags in accordance with applicable North American Electric Reliability Corporation and North American Energy Standards Board standards to the extent that Bonneville changes the source of a point-to-point transaction.⁷⁵ Powerex states that the Compliance Filing does not indicate whether Bonneville will modify the source information on e-Tags for displaced generation, and thus Bonneville has not explained whether or how it will comply with the Commission's directive. Powerex argues that Bonneville's argument that displacement under the OMP is akin to generation imbalance service that does not require any change to e-Tags is unconvincing. According to Powerex, the OMP is not a generation imbalance service resulting from unforeseen changes in generation output; rather it is a price-based decision made by Bonneville. Powerex argues that it is inappropriate for Bonneville to disguise resupply by failing to change e-Tag source information and Bonneville should not be permitted to make use of reliability standards to so do.⁷⁶

⁷⁴ We also note that many of these issues have been addressed by Bonneville in its stakeholder process leading up to its compliance filing. *See* Bonneville Answer, Attachment A.

⁷⁵ Powerex at 19-20 (citing the December Order, 137 FERC ¶ 61,185 at P 76).

⁷⁶ Powerex at 21.

62. Powerex further argues that, because Bonneville has not proposed to modify e-Tags when it substitutes federal power under the OMP for renewable generation, third party purchasers may not be able to reflect accurately what type of generation they are actually receiving. In turn, this may complicate their ability to submit information with regulators administering renewable portfolio standard programs.⁷⁷

63. PGE argues that Bonneville's OMP should state that Bonneville will update e-Tags when it changes generation sources, consistent with the Commission's directive.⁷⁸

64. In response, Bonneville states that implementation of the OMP is consistent with all applicable e-Tagging standards, and displacement transactions that occur prior to the start of the operating hour are appropriately tagged using the Columbia River System as the source. However, Bonneville explains that OMP is not implemented until after the start of the operating hour. Bonneville states that displacement under the OMP is similar to the provision of generator imbalance service where no changes to the e-Tags are required.⁷⁹

Commission Determination

65. In the December Order, we noted that, "to the extent that Bonneville changes the source of a point-to-point transaction (e.g., substituting hydropower for wind power), it should update e-Tags in accordance with applicable [NERC] and [NAESB] standards."⁸⁰ Bonneville explains that displacement transactions that occur prior to the operating hour are appropriately tagged using the Columbia River System as the source point. Those transactions that occur after the start of the operating hour are unchanged. We find this to be consistent with applicable NERC and NAESB standards. However, in those instances in which an oversupply event lasts longer than one hour, we expect, as Bonneville

⁷⁷ Powerex at 15.

⁷⁸ PGE at 6.

⁷⁹ Bonneville Answer at 11.

⁸⁰ December Order, 137 FERC ¶ 61,185 at P 76.

represents, that appropriate changes to e-Tags will be made for any subsequent hour that the oversupply event persists.⁸¹

2. OMP should only apply to generators who sink in Bonneville's Balancing Authority Area

66. Powerex argues that Bonneville has not justified its proposal to curtail dynamically scheduled resources serving external load. Powerex argues that generation in Bonneville's balancing authority area that is serving load external to Bonneville's balancing authority area in no way contributes to Bonneville's oversupply situation. Turlock argues that Bonneville has not justified treating a generator that is pseudo-tied out of the balancing authority area differently from one that has a firm transmission schedule out of the balancing authority area.

67. Xcel argues that, if the Commission allows displacement of generators located in the Bonneville balancing authority area, the Commission should clarify that it applies only to schedules sourcing or sinking in Bonneville's balancing authority area and not to schedules involving through transmission.⁸²

68. PGE requests that the OMP explicitly exclude generation that is located in Bonneville's balancing authority area and dynamically scheduled or moved to another control area by pseudo-tie. PGE argues that generation that is physically located in Bonneville's balancing authority area, but managed by another balancing authority area should not be subject to the proposed OMP because it is not under Bonneville's control. In addition, PGE requests that the Commission ensure that the OMP applies only to generators directly interconnected to Bonneville's balancing authority area.⁸³

69. Bonneville states that it is responsible for displacing those resources that interconnect to Bonneville's transmission system and affect the operation of the hydroelectric system (for example, resources integrated into Bonneville's automatic generation control). Accordingly, Bonneville states that the OMP excludes only those

⁸¹ See NERC Reliability Standards INT-004-2, INT-010-1 and NAESB WEQ Coordinate Interchange Standard WEQ-004 Appendix D establishing time-tables for submitting e-tags prior to the operating hour.

⁸² Xcel at 8.

⁸³ PGE at 6.

generating facilities smaller than 3 MW aggregate nameplate generating capacity (which are not operationally integrated into Bonneville's balancing authority area via automatic generation control) and those generating facilities that are moved out of Bonneville's balancing authority area via pseudo-tie. In contrast, Bonneville explains that those generators that are dynamically scheduled to another balancing authority area are still integrated into Bonneville's automatic generation control system, and therefore are subject to the OMP.⁸⁴

Commission Determination

70. We agree with Bonneville that it is appropriate to distinguish between non-Federal generating resources that are located in Bonneville's balancing authority but are dynamically scheduled to external load and those that are moved to another balancing authority by pseudo-tie. Dynamically scheduled resources remain under Bonneville's operational control, whereas those generators whose output is transferred out by pseudo-tie are not under Bonneville's operational control.

71. With respect to XCel's request for clarification, Bonneville's OMP applies when Bonneville displaces generation in its Control Area. A schedule involving transmission through Bonneville that does not source or sink in Bonneville's Control Area would not involve the injection of power from generation resources in that Control Area. Thus, based on Bonneville's explanation of the OMP, through transmission would not be subject to the OMP.

H. Amending Existing LGIAs

72. Bonneville states that the OMP applies to all generators in its balancing authority area, as described above, with two exceptions and explains that it proposes to modify its OATT to incorporate the OMP as Attachment P. However, Bonneville notes that not all generators are transmission customers under the OATT;⁸⁵ therefore, Bonneville states that it will amend Appendix C to existing LGIAs to make clear that the terms and conditions of the OMP apply to generators located in Bonneville's balancing authority area through their existing interconnection agreements. Bonneville explains that amending the agreements is necessary to ensure that generators are subject to the same

⁸⁴ Bonneville Answer at 23.

⁸⁵ Bonneville states that all future interconnection agreement will make clear that the OMP will apply to generators through their interconnection agreements.

treatment under the OMP and to ensure that Bonneville meets its reliability requirements and environmental responsibilities.

73. In support, Bonneville states that Article 9.3 of the LGIA gives Bonneville the right to amend Appendix C to the LGIA for operational and reliability reasons. Moreover, Bonneville asserts that the Commission has made clear that the transmission provider has the right under Article 9.3 to amend Appendix C for operational and reliability reasons.⁸⁶ Article 9.3 states:

Transmission Provider shall cause the Transmission System and Transmission Provider's Interconnection Facilities to be operated maintained and controlled in a safe and reliable manner and in accordance with this LGIA. Transmission provider may provide operating instructions to Interconnection customer consistent with this LGIA and Transmission Provider's operating protocols and procedures as they may change from time to time. Transmission Provider will consider changes to its operating protocols and procedures proposed by Interconnection Customer.

74. PPL Companies argue that the Commission should reject Bonneville's proposal to unilaterally modify existing LGIAs to include a provision that requires compliance with the OMP.⁸⁷ PPL Companies, Caithness, and Petitioners argue that the Article 9.3 modifications to Appendix C of the LGIAs are limited to modifications of reliability requirements. They argue that, because Bonneville's amendment to implement the proposed OMP does not concern reliability criteria, operating instructions or operating protocols, Bonneville may not rely on Article 9.3 to support its action.⁸⁸ Caithness argues that this case involves the economic consequences of oversupply and, as such,

⁸⁶ Compliance Filing at 20, citing *Bonneville Power Administration*, 112 FERC ¶ 61,195 at P 20 (2005) (*Bonneville*), which states:

an executed LGIA is a service agreement under a Transmission Provider's OATT and, as such, the Transmission Provider is primarily responsible for identifying the applicable reliability criteria. While the Interconnection Customer does have the right to agree to modifications to the agreement, the LGIA should be read as granting the Transmission Provider the right to determine the applicable reliability criteria.

⁸⁷ PPL at 5-8.

⁸⁸ PPL Companies at 5-8; Caithness at 8-9; Petitioners at 64-65.

Bonneville does not have such right to impose the OMP unilaterally through amendments to LGIAs. PPL Companies argue that there are several options available to Bonneville to address its environmental responsibilities that do not required the curtailment of existing generation interconnected to Bonneville's transmission system and the fact that certain solutions may increase costs to certain classes of Bonneville customers does not create a reliability concern.⁸⁹

75. PGE and Petitioners note that Bonneville's LGIAs contain provisions prohibiting unilateral amendments to the contract, and thus require that amendments be agreed to by both signing parties.⁹⁰

76. Bonneville responds that Article 9.3 of the LGIA gives it the right to make unilateral changes to Appendix C for operational and reliability reasons. Bonneville states that the Commission ruled in *Bonneville* that Article 9.3 gives the transmission provider this right. According to Bonneville, the OMP is an operational protocol that falls within the scope of Article 9.3.⁹¹

Commission Determination

77. As discussed above, we conditionally accept the OMP as complying with our directive under section 211A to provide comparable transmission service on a prospective basis, subject to the submission of a further compliance filing by Bonneville. Therefore changes to Appendix C of Bonneville's existing LGIAs necessary to implement the OMP are being made pursuant to the Commission's authority under section 211A of the FPA. Bonneville's authority under Article 9.3 of the LGIA to unilaterally implement changes is not relevant to this proceeding and is not addressed here.

⁸⁹ PPL at 5-8.

⁹⁰ PGE at 3, citing LGIA, Article 30.9; Petitioners at 66, citing Article 30.10 which states "[t]he Parties may by mutual agreement amend the Appendices to this LGIA by a written instrument duly executed by the Parties. Such amendment shall become effective and a part of this LGIA upon satisfaction of all Applicable Laws and Regulations."

⁹¹ Bonneville Answer, Appendix A at 11.

The Commission orders:

(A) Bonneville's OMP is hereby conditionally accepted, as an interim remedy, conditioned upon the submission of a compliance filing as discussed in the body of this order.

(B) Bonneville is hereby directed to submit a compliance filing within 90 days of the date of this order that proposes a methodology for allocating displacement costs under the OMP in a manner that results in comparability in the provision of transmission service for all resources, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.