

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Preventing Undue Discrimination and) Docket No. RM05-25-000
Preference in Transmission Services) RM05-17-000

BONNEVILLE POWER ADMINISTRATION’S AMENDED REQUEST FOR
REHEARING AND CLARIFICATION

The Bonneville Power Administration (BPA) hereby files this amended request for rehearing and clarification of the Commission’s Final Rule Preventing Undue Discrimination and Preference in Transmission Service, 118 FERC ¶ 61,119 (2007) (*Order 890*). BPA filed its request for rehearing and clarification on March 19, 2007, the due date for such requests. It files this amended pleading as an erratum, to correct technical errors in the filing; specifically, to add a statement of issues. BPA has not relied on any Commission or court precedent in its pleading and has clearly stated in the body of the pleading the issues it is raising. BPA is also a party to a joint request for clarification filed by the Pacific Northwest Parties.

I. Statement of Issues (including issues on which BPA requested clarification)

- A. The Commission erred in requiring transmission providers to execute a service agreement with assignees of transmission capacity before service to the assignee can commence, and in requiring transmission providers to charge the assignee the price that the assignee negotiated with the assignor.
- B. The Commission should clarify that transmission customers that redirect service must redirect service for one year in order to obtain rollover rights at the redirected points.
- C. The Commission should clarify whether customers that have filed a request for transmission service, but do not yet have a reservation, have the right to exercise a

reservation priority. The Commission should also clarify how transmission providers should apply the right of first refusal when a longer-term request seeks capacity allocated to multiple shorter-term requests.

D. The Commission erred in failing to allow system sales based on hydroelectric resources to qualify as network resources when the sales are sourced from generation within the transmission provider's control area.

E. The Commission erred in failing to allow transmission customers that are redirecting service or that are simultaneously undesignating one network resource and designating another to be first in line for the capacity they are freeing up.

II. ARGUMENT

A. Capacity Reassignment

In its comments on the Notice of Proposed Rulemaking (NOPR), BPA opposed lifting of the price cap for reassignment of transmission capacity. Bonneville Power Administration Response to Notice of Proposed Rulemaking 27-28. BPA reiterates here that it has serious concerns about the lifting of the cap, and may be unable to adopt this policy if the Commission adheres to it on rehearing.

In the event that the Commission adheres to this policy on rehearing, BPA has the following comments. Section 23.1 of the new OATT provides that an assignee must execute a service agreement with the transmission provider before service to the assignee commences. In addition, the transmission provider must bill the assignee at the negotiated rate for the assignment, and bill or credit the assignor for the difference between the negotiated rate and the assignor's original rate. *Order 890*, par. 816 n.496. Finally, section 23.3 of the new OATT provides that all assignments of transmission

capacity must be conducted through or otherwise posted on OASIS before service commences. BPA asks the Commission to clarify or reconsider these conclusions.

BPA understands the Commission's desire to more closely monitor reassignments of capacity now that the price cap for reassignment has been removed. However, requiring transmission providers to execute service agreements with assignees and bill assignees at the negotiated rate are unnecessary to achieving this goal. They are unrelated to the ability to monitor assignments. In addition, they will be onerous for transmission providers. Because the Commission has proposed these requirements for the first time in the final rule, parties have not had an opportunity to comment on them before now.

A requirement to execute a service agreement with an assignee before service commences would be onerous for three reasons:

1) It would be virtually impossible to meet this requirement for daily or hourly assignments, or even many other short-term assignments. The market for assignments of short-term transmission could be severely harmed.

2) The Commission requires all original transactions — those between a transmission provider and a customer — to be conducted over OASIS. If a written contract is required for assignments, however, OASIS transactions between an assignor and assignee will not be binding. This conclusion appears to be a retreat from the move toward electronic transactions, and will require the transmission provider to maintain two systems for transactions, one electronic and one for paper transactions.

3) The requirement to execute a contract leaves open the possibility that the assignor and assignee conclude an assignment over OASIS, after which the assignee fails

to return an executed service agreement. Therefore, transmission service cannot commence. This would leave the transmission provider in a difficult position. It is unclear whether in this circumstance the transmission provider must continue providing service to the assignor as if the assignment had not occurred. Moreover, under the Commission's OASIS standards the transmission provider has no ability to invalidate, refuse, decline, retract, or annul an assignment on OASIS, and therefore has no way to recall the assigned capacity from the assignee and return it to the assignor. Because OASIS would show the reservation in the name of the assignee, the assignee would be able to schedule transmission even though it had not executed a service agreement, effectively nullifying the requirement to do so.

In most if not all cases the assignee will be an existing transmission customers. Therefore, BPA respectfully asks the Commission to clarify that the requirement of a service agreement with the assignee is satisfied by an umbrella agreement previously executed between the transmission provider and the assignee, and that the execution of a service agreement covering the assignment itself is not required.

BPA also respectfully asks the Commission to reconsider its determination that the transmission provider must charge the assignee the negotiated rate for the assignment and charge or credit the assignor with any difference between the negotiated rate and the assignor's original rate. Transmission providers are not set up to charge assignees rates that are different from the normal transmission rate. If a robust assignment market does develop, this rule could result in transmission providers having to charge dozens of different rates, as the value of transmission and consequently the charge for an assignment may vary from day to day or even from hour to hour. Since both the assignor

and the assignee are likely to be purchasing other transmission in addition to the assigned capacity, the transmission provider will have to charge at least two different rates to the same customer. Significant changes would have to be made to all transmission providers' billing systems at substantial cost to the industry.

In addition, this rule would insert the transmission provider into the financial arrangements between the assignor and the assignee. The transmission provider should not have to in effect monitor the parties' business arrangement and adjust its own operations to compensate. BPA asks the Commission to modify its requirements and allow transmission providers to continue to bill the assignor for the assigned capacity. The assignee then would pay the assignor for the assigned capacity at their agreed-upon rate, just as in any business assignment.

B. Modification of Receipt and Delivery Points and Rollover Rights

BPA requests clarification of the Commission's determination concerning the application of rollover rights in cases of modification of receipt or delivery points (redirects). Under revised section 2.2 of the OATT, transmission customers must give one-year's notice of their intent to exercise their rollover rights. With respect to redirects, however, the Commission said that "the rollover right follows the redirect, regardless of the duration of the redirect." *Order No. 890*, par. 1280.

BPA asks the Commission to clarify that it intended for section 2.2 and the Commission's redirect policy to be consistent with each other. Under a literal reading, they contradict each other. Under the Commission's redirect policy, if a customer redirects service for the last two months of its service agreement (or another period of less than one year), it obtains rollover rights at the new points even though it is unable to

give a year's notice of its intent to rollover service at those points. To resolve this contradiction, BPA asks that the Commission clarify that unless a customer redirects service for at least one year, its rollover rights remain with its original points.

BPA understands that the rule that rollover rights follow the redirect regardless of duration is existing Commission policy. Under the existing policy, however, a customer need give only 60 days' notice to exercise its rollover rights. Once the revised section 2.2 takes effect, however, customers will have to give one-year's notice. The Commission selected the new notice period in order to balance the interests of customers "and the interests of transmission providers in attempting to plan their system." *Id.* par. 1246. The Commission concluded that the "60-day period . . . is no longer reasonable for a rollover right with a minimum five-year term." *Id.* If customers can obtain rollover rights at new points by redirecting for less than one year — perhaps for as little as 60 days — in many cases the balance the Commission struck between the interests of customers and transmission providers will be lost. Therefore, BPA seeks clarification that the same rollover policy, including the one-year notice period, applies whether a customer redirects service or not.

If the Commission does not adopt the clarification suggested here, redirecting customers will have greater rights than customers that do not redirect, who must give one-year's notice. Furthermore, a customer should not be permitted to give one-year's notice at its original points, and have that notice apply to new points when it later redirects for less than one year. The extended notice period is not of benefit to the transmission provider if the points to which the notice applies can change. To reiterate, BPA is not suggesting that customers may not redirect for the remaining term of their

service agreement if there is less than one year remaining, or that customers forfeit rollover rights if they do redirect in this circumstance. Rather, BPA is asking only for clarification that in such case the rollover rights remain with the original points.

C. Reservation Priority

1) Exercise of Right of First Refusal

Bonneville seeks clarification regarding which customers have a right of first refusal (ROFR) under section 13.2 of the OATT. In the NOPR, the Commission proposed to amend section 13.2 to read that before the conditional reservation deadline, an eligible customer with a reservation for shorter term service has the right of first refusal to match “any longer term reservation” before losing its reservation priority. In Order 890 the Commission said that a “reservation” is a confirmed request, and it amended the proposed language to provide that an eligible customer with a reservation for shorter term service has the right of first refusal to match any longer term “request,” rather than any longer term “reservation.” *Order 890*, par. 1431.

BPA understands from this language that only reservations have the right of first refusal. However, the same section of the OATT (section 13.2(iii)) also provides that when a longer duration “request” preempts multiple shorter duration requests, the shorter duration requests have simultaneous opportunities to exercise a right of first refusal. This language suggests that a request also has a right of first refusal. Therefore, BPA asks the Commission to clarify whether this is the case.

In addition, the first sentence of section 13.2(iii) provides that “requests” for longer term service may preempt “requests for shorter term service” up to specified deadlines. This language suggests that a longer duration request simply preempts a

shorter duration request, which is not offered a right of first refusal. This principle would appear to violate the first-come, first-served rule. On the other hand, if the longer duration request is offered a right of first refusal, that also appears to contradict the language cited above, under which only longer duration “reservations” have a right of first refusal. BPA asks the Commission to clarify the rules that apply in these cases.

2) Tie-Breaker for Multiple Shorter Duration Requests

BPA seeks clarification regarding the exercise of the right of first refusal when a longer-term request seeks capacity allocated to multiple shorter-term requests. The Commission said that in such case the shorter-term customers should have simultaneous opportunities to exercise the right of first refusal, and that duration, pre-confirmation status, price, and time of response would be used to determine the order in which the shorter-term requests may exercise this right. *Order 890*, par. 1430 & OATT § 13.2(iii).

The Commission appears to be presenting the above factors as tie-breakers in the event that there is insufficient capacity for all of the shorter-duration requests to exercise their rights of first refusal. BPA believes this will never be the case, and therefore seeks clarification as to the purpose and meaning of the above factors and the circumstances under which the transmission provider is expected to create an order in which multiple shorter-term requests may exercise the right of first refusal.

Two examples will illustrate BPA’s confusion. Assume there are 100 MW of ATC on path X to Y. Customers A and B each request 50 MW of capacity on the path. The requests are identical in all respects except that Customer A has requested service for one month and Customer B for two months. Customer C then requests 100 MW of capacity for three months. Customers A and B will be offered a right of first refusal to

match Customer C's three-month term. However, since there is enough capacity for both Customers A and B, it does not matter which customer exercises its right of first refusal first.

In a second example, assume that there are only 50 MW of capacity on path X to Y. Customer A requests 50 MW of capacity for one month, and Customer B then requests 50 MW of capacity for two months. Finally, Customer C then requests 50 MW of capacity for three months.

In this example, the transmission provider would not offer a right of first refusal to both customers A and B, based on Customer C's request. Instead, before Customer C is involved at all the transmission provider would have offered a right of first refusal to Customer A to match Customer B's term. (If Customer B had asked for the shorter duration, the transmission provider would have refused Customer B's request. Therefore, in this circumstance as well the transmission provider would not be offering simultaneous rights of first refusal to Customers A and B.) Once it is determined which customer retains the capacity, Customer C enters the picture, and the winner of the prior competition now must match Customer C's three-month term. Again in this example, therefore, there is no "order" to offering rights of first refusal to multiple shorter-term requests and no need for a tie-breaker. By definition, a right of first refusal will be offered to a request only if there is enough capacity to satisfy that request. BPA cannot envision a circumstance in which a right of first refusal is offered to a request when the transmission provider does not have capacity to satisfy that request.

It is of course possible to change the first example (which assumed that there were 100 MW of capacity available all three months) so that there is sufficient ATC for the

first two months but insufficient ATC for the third month. In this case the customer that wins the tie-breaker and gets to exercise its right of first refusal first will get first shot at the third month's capacity. But neither Customer A nor Customer B requested that capacity in the first place, and if either customer exercises its right of first refusal and extends its term it will be doing so only because it must do so in order to retain the capacity it *did* request. BPA assumes that this is not the scenario the Commission envisioned, since in this scenario the customer that wins the tie-breaker — meaning the customer that made a better offer to the transmission provider in the first place by requesting a longer duration or by pre-confirming — effectively loses by having to take capacity for a longer term than it wanted, while the other customer does not have to do so because there is insufficient capacity for it to extend its term. Therefore, BPA asks that the Commission either delete the two sentences in section 13.2(iii) concerning this issue or clarify how the transmission provider is expected to apply them.

D. Qualification as a Network Resource

In comments filed on the NOPR, the Northwest Parties, a group that included BPA, asked the Commission to clarify that system sales may be designated as network resources even if the network customer does not specify the unit-specific information otherwise required by section 29.2(v) of the OATT. Comments of Northwest Parties in Response to Commission's Notice of Proposed Rulemaking at 4. The Northwest Parties explained that this information is typically not available to a purchaser under a system sale, particularly when the sale is made from hydroelectric resources. *Id.* at 4-5.

In Order 890 the Commission concluded that system sales made from off-system resources may be designated as network resources without specifying unit-specific

information. However, the Commission added that system sales made from generating units internal to the transmission provider's control area do not qualify as network resources because evaluating the effect on ATC would be problematic. *Order 890*, par. 1483. BPA asks the Commission to reconsider this conclusion, at least with respect to hydroelectric systems.

Because of the interconnected nature of a hydroelectric power system, BPA cannot make power sales from particular generating units. All of its sales are system sales. The Federal hydroelectric projects in the Pacific Northwest are multi-purpose projects. Consequently, the hydroelectric operators (the United States Corps of Engineers and Bureau of Reclamation, which own the dams) cannot dedicate a given hydroelectric project to generate a given amount of power every hour to serve a given contract, or for any other purpose. In addition, variation in the availability of water, the effect that generation of power at one hydroelectric unit has on generation at downstream projects, and non-power constraints, such as the need to spill water to protect fish, all mean that BPA must constantly adjust the dispatch of its 31 Federal dams to optimize water usage and hydroelectric operation.

Therefore, BPA makes only system sales, and BPA's customers separately purchase transmission under BPA's Open Access Transmission Tariff. Almost 100 of BPA's customers take Network Integration Transmission Service and have included their BPA power purchase as a Network Resource. Under Order 890, however, BPA's power sales customers would be barred from designating their power purchase agreements from BPA as network resources. This would have a devastating impact on BPA and its customers.

BPA does not sell power from individual resources. Under the Northwest Power Act, whenever requested BPA must sell to each Northwest utility, both preference customers and investor-owned utilities, electric power “to meet the firm power load” of the requesting utility to the extent that the utility’s firm power load exceeds its resources. 16 U.S.C. § 839c(b)(1). The sales to BPA’s requirements customers are made primarily from “Federal base system resources,” which the Act defines as “the Federal Columbia River Power System hydroelectric projects” and certain resources acquired by the BPA Administrator. 16 U.S.C. § 839a(10). Accordingly, the Act directs that rates for sales of power to BPA’s requirements customers must be based on “the costs of that portion of the Federal base system resources needed to supply such loads.” *Id.* § 839e(b)(1).

Nothing in the Northwest Power Act contemplates sales out of, or rates based on, individual resources. All of Congress’s directives treat Federal generation as a whole and make no distinction based on the individual resource. Congress was aware that a hydroelectric system operates essentially as one interconnected resource, and wrote the Northwest Power Act in terms of hydroelectric resources in the aggregate. BPA meets its statutory objectives through system sales to its customers.

Moreover, BPA has addressed the ATC issue the Commission identified. Under BPA’s Available Flowgate Capacity (AFC) methodology BPA is able to calculate AFC for each of its internal flowgates. Although BPA does not know the exact amount of MW that each hydroelectric project will generate in any hour, the AFC methodology allows BPA to calculate, on a monthly basis, the aggregate amount of generation that crosses each internal flowgate on BPA’s system. Based on historical data from a representative five-year period, BPA has calculated for each project a level of generation

(say, 1,000 MW) that the project will be at or below 90 percent of the time. BPA uses this figure to determine the percentage of network customers' load that is served from that generator. By performing similar calculations for each project on its system, BPA determines, on a monthly basis, the amount of network load that is served by each generator.

Next, BPA uses power flow studies to determine which paths the generation from each project takes to serve network loads. These studies may demonstrate, for example, that, of every 1,000 MW generated by Grand Coulee Dam, 488 MW cross flowgate A; 344 MW cross flowgate B; and 125 MW cross flowgate C (in addition small amounts cross other flowgates. Note also that the figures may not add up to 1,000 because some of the generation may travel in the opposite direction of the constraint or will not cross a constrained flowgate). Although this flow pattern, or the amount of generation at Coulee, will not be identical in every hour, BPA's methodology gives BPA a snapshot of the Federal system that it updates every month. By adding the power flows from each project, BPA obtains, in the aggregate, an accurate picture of the flows across each internal path on its system.

In rejecting the right to designate system sales from internal resources as network resources, the Commission said that, if a customer wishes to have a choice of resources from which to dispatch power, it must designate each of the resources as a network resource. *Order 890*, par. 1483. In BPA's case it is not a matter of the customer's choice: even if BPA were able to list given generation units as network resources, the customer would not have the choice of which generator to dispatch. BPA would still determine the dispatch of the system based on all of the factors mentioned above,

including its environmental obligations. In BPA's case the designation of a system sale as a network resource is a matter of necessity, not choice.

BPA expresses no opinion regarding the viability of the Commission's rule with respect to thermal energy systems. If, therefore, the Commission declines to change its rule or to adopt a rule specific to hydroelectric systems, BPA will request a deviation from the OATT when BPA makes its reciprocity filing.

E. Queue Priority for Undesignation of Network Resources and Modification of Receipt or Delivery Points

In response to arguments by several commenters, the Commission determined that a network customer should not be "first in line" to use the ATC freed up by the undesignation of a network resource, even if the customer uses the ATC to designate an alternate resource. The Commission said that placing the network customer first in line would put point-to-point customers at a disadvantage. *Order 890*, par. 1587. Elsewhere in *Order 890* the Commission said that a right to redirect does not grant a point-to-point customer a queue position different from that of customers requesting new service. Rather, transmission providers must evaluate a redirect request using the same assumptions that apply to any new request, including determining whether sufficient ATC exists to grant the request. *Id.* par. 1285.

BPA agrees that neither network customers designating new resources nor point-to-point customers requesting a redirect should attain special queue position. In reaching the above determination regarding redirects, however, the Commission was responding to the Edison Electric Institute's comment that requests for redirects should not have priority "regardless of whether the redirected service creates system impacts different from the old service." *Id.* par. 12. BPA agrees that a redirect should not have priority if

the impacts of the redirect are different from the impacts of the parent reservation. BPA believes, however, that requests to redirect should be analyzed based on the net impact of the redirect, which includes the release of capacity on the original path and the granting of capacity on the redirect path. Similarly, simultaneous requests to undesignate one network resource and designate a new network resource should also be based on the combined effect of the two actions. Under this proposal, if the only ATC on a path is the ATC freed up by the redirect or the undesignation, the customer requesting the redirect or the new network resource will be granted the ATC.

This rule would not adversely affect any customers. If the customer that is redirecting or undesignating a resource is not placed first in line for the capacity made available by the redirect or the undesignation, that customer will not redirect or undesignate (since it will continue to need the capacity on its existing path), no capacity will be freed up, and no other customer will be offered the capacity. Therefore, placing the customer that redirects or undesignates first in line for the freed-up ATC will not disadvantage any other customer. Refusing to place that customer first in line for the freed-up ATC will harm that customer while advantaging no one.

The following example illustrates this point. Assume that Customer A, which has transmission service on path A to B, wishes to redirect its service to path C to D (or that Customer A wishes to undesignate a network resource that utilizes path A to B and designate a new network resource that utilizes path C to D). There is no existing ATC on path C to D, but Customer B is in the queue for capacity on that path. The capacity that is freed up by the release of the ATC on path A to B can satisfy either Customer A's

request to redirect (or designate a new network resource) or Customer B's request for new service (on the assumption that path A to B and path C to D utilize the same ATC).

As BPA reads the Commission's ruling, at least with respect to undesignations, the transmission provider must offer the freed-up capacity to Customer B. The result of this requirement is that the transmission provider must turn down Customer A's request for a new designation (or for a redirect if the same rule applies). The result of *that* action is that there will be no freed-up capacity and the transmission provider will not grant Customer B's request. No one gains and Customer A loses. If, however, the transmission provider grants Customer A's request, no one is placed at an advantage or disadvantage. Granting Customer A the redirect or new designation does not deprive Customer B of the capacity.

The upshot is that, if the only available capacity is the capacity freed up by the redirect or undesignation, Customer B cannot be harmed by placing Customer A first in line for the freed-up capacity. Given the substantial transmission constraints in the Northwest and around the country, adopting this suggestion would substantially benefit the power markets by encouraging additional power supply transactions while not harming any customers.

Adopting this policy would be particularly helpful for intermittent resources such as wind, which would especially benefit from the increased flexibility the policy would provide. Many transmission customers, many of whom have state-mandated renewable resource requirements, may wish to redirect or undesignate for a short-term period to import wind energy. These customers may be unable to do so on a constrained path if

they are unable to utilize the capacity they are freeing up by the request to redirect or undesignate.

DATED this 22nd day of March, 2007.

Respectfully submitted,

/s/ Barry Bennett

Barry Bennett
Attorney
Bonneville Power Administration
Office of General Counsel - LC-7
P.O. Box 3621
Portland, OR 98208-3621
Telephone: 503-230-4053
Facsimile: 503-230-7405
Email: bbennett@bpa.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of March, 2007, I served copies of BONNEVILLE POWER ADMINISTRATION'S AMENDED REQUEST FOR REHEARING AND CLARIFICATION upon the parties named in the official service list in Federal Energy Regulatory Commission Docket Nos. RM05-17 and RM05-25, via electronic mail and where requested by United States first class mail, properly addressed with postage prepaid.

Dated the 22nd day of March, 2007.

/s/ Barry Bennett
Barry Bennett, Attorney
Bonneville Power Administration
P.O. Box 3621 LC-7
Portland, Oregon 97208-3621
Telephone (503) 230-3560
Facsimile (503) 230-7405
bbennett@bpa.gov

Submission Contents

BONNEVILLE POWER ADMINISTRATION'S AMENDED REQUEST FOR REHEARING AND CLARIFICATION	
BPA_Rehearing_Request_2.doc.....	1-18