

August 28, 2018

Via Email (techforum@bpa.gov)

U.S. Department of Energy
Bonneville Power Administration
Transmission Services

Re: TC-20 - Comments of Avangrid Renewables, LLC, Avista Corporation, Idaho Power Company, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. on the August 21 Tariff Proceeding Presentation

Avangrid Renewables, LLC, Avista Corporation, Idaho Power Company, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. (“Commenting Parties”)¹ hereby respectfully submit the following in response to the August 21 Tariff Proceeding Presentation.² It is the understanding of the Commenting Parties that Bonneville Power Administration (“BPA”) has indicated that it will take into account comments previously submitted on topics addressed in the August 21 Tariff Proceeding Presentation and that earlier comments need not be reiterated in these comments. The Commenting Parties appreciate the opportunity to submit comments to BPA and look forward to working with BPA on these matters.

A. Section 9 of the Draft August 2018 Draft Tariff is Fundamentally Flawed and Fails to Respond to Comments Previously Received by BPA

Section 9 of the August 2018 Draft Tariff³ states as follows:

9 Regulatory Filings

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the right of the Transmission Provider to unilaterally

¹ The Commenting Parties represent approximately 40 percent of BPA transmission sales. Moody’s Investor Service Credit Opinion, *Bonneville Power Administration* at 3 (Feb. 8, 2018), available at <https://www.bpa.gov/Finance/FinancialInformation/Debt/RatingAgencyReportsArticles/Moody's%20Credit%20Opinion%20Report%20Final%202.9.18.pdf>.

² Bonneville Power Admin., *Tariff Proceeding Customer Workshop Presentation* (Aug. 21, 2018), available at <https://www.bpa.gov/Finance/RateCases/BP-20/Meetings/Tariff-Proceeding/August%2021.%202018/Updated%20TC-20%20Customer%20Workshop%20Presentation%20for%20August%2021%202018.pdf> (the “August 21 Tariff Proceeding Presentation”).

³ Bonneville Power Admin., *BPA’s New Proposed Tariff* (Aug. 14, 2018) (the “August 2018 Draft Tariff”), available at <https://www.bpa.gov/Finance/RateCases/BP-20/Meetings/Tariff->

make changes in terms and conditions, classification of service, or Service Agreement after the Transmission Provider conducts a hearing under Section 212(i)(2)(A) of the Federal Power Act. The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the rates that apply to transmission service pursuant to applicable law.

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.⁴

This draft section 9 language is identical to the draft section 9 language that BPA presented at the workshop of April 23, 2018. This appears to ignore the fact that at the heart of many customers' concerns with the various TC-20 issues is BPA's proposal to fundamentally change Section 9 from its Tariff—and with it, eliminate the requirement of FERC approval of BPA's Tariff changes.

BPA's customers have been clear on this point. For example, in the May 30 Comments⁵ on such draft section 9 language, the following fundamental flaws were pointed out:

1. BPA proposed section 9 is overbroad and would, for example, purport to allow BPA to (i) ignore Section 212 hearing determinations in making tariff changes and (ii) unilaterally change a service agreement; and
2. BPA proposed section 9 fails to expressly require a determination by the Administrator that changes to the new BPA tariff to be adopted are (i) consistent with the statutory standards in Federal Power Act Sections 211 and 211A, and (ii) consistent with applicable law.⁶

It appears that BPA has not revised its draft section 9 language to address these comments and has not discussed in any way the fundamental shortcomings identified in item 1 above. As pointed out in the May 30 Comments, BPA's draft section 9 language (i) arguably permits BPA—so long as it conducts a Section 212 hearing—to adopt *any* revision to the new BPA tariff, even if the determination in the Section 212 hearing was to do something different and

[Proceeding/August%202018/BPA's%20Proposed%202018%20-%202012%20New%20Tariff%20-%20Revised%2008.14.18.pdf](#).

⁴ August 2018 Draft Tariff at 36.

⁵ TC-20 Comments of Avangrid Renewables, LLC, Avista Corporation, Idaho Power Company, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. on BPA Proposed Section 9 Tariff Language (May 30, 2018), available at <https://www.bpa.gov/Finance/RateCases/BP-20/Meetings/TC-20%20Comments/Avangrid.%20Avista.%20Idaho%20Power.%20PacifiCorp.%20Portland%20General.%20and%20PSE%20Comments%20on%20BPA%20Proposed%20Section%209.pdf> (the “May 30 Comments”).

⁶ May 30 Comments at 2-4.

(ii) arguably permits BPA to change not only tariff language but also the service agreement (e.g., transmission demand, term, Point(s) of Receipt, Point(s) of Delivery).

With respect to item 2 above, BPA has raised concerns that referencing certain statutory standards would give preference to some standards over others or possibly even create a potential breach of contract claim against BPA. This is not the case. The May 30 Comments did not suggest a “substantive standard” that would give rise to breach of contract claims so much as a procedural protection against changes in fundamental terms of service without adequate consideration by the Administrator of applicable statutory standards. These determinations should help ensure BPA and its customers of a deliberative and considered process that would meet BPA’s goal of “[d]evelop[ing] a full and complete record” while better insulating BPA from challenges that its determinations are arbitrary and capricious. In any event, BPA must revise its draft section 9 language to address the fundamental shortcomings identified in item 1 above.

B. BPA Transmission Business Practices Should be Limited to Implementation Details and Should Not Address Issues that Significantly Affect Terms and Conditions of Service

Part and parcel of “adopting the pro forma tariff”⁷ (even if only “to the extent possible”⁸) and meeting BPA’s goal of being a “dependable and responsive business partner”⁹ is a need for BPA to place the fundamental terms and conditions of transmission service in its tariff. BPA’s proposal, based on characterizing fundamental terms and conditions of transmission service as “operational details,” would result in placement of such fundamental terms and conditions ranging from loss factors¹⁰ to the planning standard for BPA’s Balancing Reserve Capacity¹¹ in business practices rather than in the tariff, where they belong. Anything that impacts a customer’s invoice or defines a BPA product should be in BPA’s tariff or the GRSPs and should not be put in a business practice.

1. Loss Factors

The August 21 Tariff Proceeding Presentation states that BPA “is continuing to propose to identify the transmission loss factors in the Real Power Loss Return business practice.”¹² BPA presents three arguments in support of this approach:

- Loss factors are an operational occurrence on the transmission system.

⁷ 2018-2022 Strategic Plan at 50 (“we believe there is value in adopting the pro forma tariff to the extent possible”).

⁸ *Id.*

⁹ August 21 Tariff Proceeding Presentation at 3.

¹⁰ *Id.* at 65.

¹¹ Bonneville Power Admin., Draft Balancing Reserve Capacity Business Practice (posted Aug. 15, 2018), available at <https://www.bpa.gov/Finance/RateCases/BP-20/Meetings/Tariff-Proceeding/August%2015.%202018/Balancing%20Reserves%20BP%2081518%20V9.pdf>.

¹² August 21 Tariff Proceeding Presentation at 65.

- Use of BPA’s transmission system will continue to evolve, possibly necessitating the need for more frequent loss factor updates.
 - Lowers the region-wide time, personnel, and costs a formal 212 process requires.
 - Still provides customers with the ability to request information supporting a business practice change as well as the ability to submit comments for or against to which BPA will provide a response.
- The loss factors are not a rate. Additionally, BPA’s business practice offers multiple return methods which provides customers with choice in how they will return their obligation and make BPA whole.¹³

Each of these arguments is flawed. Loss factors are not merely an “operational occurrence.” Rather, loss factors represent the amount to be charged customers (whether in money or power) for losses. As such, loss factors are fundamental terms and conditions of service and should be included in the tariff.¹⁴

The argument that BPA’s transmission system may evolve and “possibly” necessitate more frequent loss factor updates is speculative and premature. BPA has rate cases every two years. A term and condition proceeding in conjunction with a rate case should not be unduly burdensome to BPA and the parties. Further, BPA’s loss factors have remained unchanged for a long period of time, and the argument that BPA may need “more frequent loss factor updates” does not demonstrate that loss factor updates every two years would be insufficient.

The argument that “loss factors are not a rate” in no way demonstrates that loss factors should not be included in the tariff. As noted above, loss factors represent the amount to be charged customers (whether in money or power) for losses and, as such, loss factors are fundamental terms and conditions of service and should be included in the tariff.¹⁵

Finally, the argument that “BPA’s business practice offers multiple return methods” ignores the fundamental fact that BPA could change the business practice and remove the multiple return methods.

¹³ Id. at 66.

¹⁴ See TC-20—Comments of Avangrid Renewables, LLC, Avista Corporation, Idaho Power Company, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. on the TC-20 Procedural Schedule, Losses, and Long Term ATC Methodology at 2-4 (June 22, 2018) (the “June 22 Comments”), available at <https://www.bpa.gov/Finance/RateCases/BP-20/Meetings/TC-20%20Comments/062218%20Comments/2018.06.22%20Comments%20re%20TC-20%20Schedule%20Losses%20and%20ATC%20Methodology.pdf>; see also December 8 PFGA Comments.

¹⁵ See June 22 Comments at 2-4; see also December 8 PFGA Comments.

In short, BPA should include the loss factors in sections 15.7 and 28.5 of its tariff, consistent with the *pro forma* OATT.¹⁶

2. Quality of Service in Schedule 9

The August 21 Tariff Proceeding Presentation states that

BPA continues to believe that the level of service [i.e., the quality of service as represented by the level of balancing reserve capacity held on a planning basis] is an operational determination made to ensure reliability of the transmission system, and should be defined in the business practice.¹⁷

In sum, BPA argues that the quality of service should be defined in the business practice because it is “an operational determination.” However, the level of balancing reserve capacity held on a planning basis is an example of a term and condition of transmission service that affects not only the amount paid by a BPA customer but also the quality of service received by the BPA customer. In other words, the level of balancing reserve capacity held on a planning basis is a fundamental term and condition of transmission service and should not be established in a BPA business practice.¹⁸

3. Discretionary and Emergency Redispatch Under Attachment M

Discretionary and emergency redispatch from the Federal system is an element of BPA transmission service and should not be removed from Attachment M of the BPA tariff. The August 21 Tariff Proceeding Presentation states as follows with respect to Attachment M of the BPA tariff:

Because discretionary and emergency Redispatch are implementation tools and because Attachment M simply reflects an arrangement between Transmission Services and Power Services, it is appropriate for a business practice.¹⁹

However, because forecasted costs of Discretionary and Emergency Redispatch from the federal system are included in the revenue requirement for the Network, such redispatch is not “simply . . . an arrangement between Transmission Services and Power Services.” Such

¹⁶ See August 21 Tariff Proceeding Presentation at 60.

¹⁷ *Id.* at 63.

¹⁸ See, e.g., TC-20 - Comments of Avangrid Renewables, LLC, Avista Corporation, Idaho Power Company, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. on the Terms and Conditions TC-20 Tariff Workshop Presentation, dated July 23, 2018 (Aug. 6, 2018), available at <https://www.bpa.gov/Finance/RateCases/BP-20/Comments/2018.08.06/Avangrid,%20Idaho%20Power,%20PacifiCorp,%20Portland%20General,%20and%20PSE%20on%20July%2023%20TC-20.pdf>; ACS Practices—Comments of Avangrid Renewables LLC, Idaho Power Company, PacifiCorp, and Puget Sound Energy, Inc. on the BP-20 Balancing Reserve Capacity Planning Standard Proposal (June 28, 2018); July 18 Comments.

¹⁹ August 21 Tariff Proceeding Presentation at 26.

discretionary and emergency redispach from the Federal system is an element of the service provided and should not be moved from the tariff to a business practice.²⁰

4. BPA’s Proposed Transmission Services Business Practice Review Process is Inadequate in Determining the Quality of Service or Other Terms and Conditions of BPA Transmission Service

At the workshop on August 21, 2018, BPA presented a proposed BPA Transmission Services Business Practice Review Process.²¹ This proposed BPA Transmission Services Business Practice Review Process is an abbreviated, informal notice and comment process that emphasizes the importance of BPA’s reserving for business practices issues that are truly “implementation details” and not issues that significantly affect terms and conditions of transmission service. For example, the business practice review process lacks adequate discovery and fails to afford the same due process that is afforded in a section 7(i)-type proceeding and that is needed in determining the terms and conditions of transmission service.

The BPA tariff and transmission rate schedules are adopted by final decision by BPA Administrator documented in a Record of Decision. Such Records of Decision are developed in section 7(i)-type proceedings. These proceedings provide important procedural protections for BPA customers²² in the process to define the quality of service and other terms and condition of service, particularly because BPA transmission customers rely heavily on BPA transmission service. A proceeding under section 212(i) of the Federal Power Act to adopt terms and conditions constitutes such a section 7(i)-type proceeding.²³

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Commenting Parties appreciate the opportunity to submit these comments. By return e-mail, please confirm BPA’s receipt of these comments.

²⁰ See July 18 Comments at 8-9.

²¹ Bonneville Power Admin., BPA Transmission Services Business Practice Review Process (Aug. 21, 2018), available at <https://www.bpa.gov/Finance/RateCases/BP-20/Meetings/Tariff-Proceeding/August%2021,%202018/Draft%20Business%20Practice%20-%20081418.pdf>.

²² In such proceedings, for example, customers are to have an opportunity to refute or rebut any material submitted by any other person or BPA, and a full and complete record is to be developed. See Northwest Power Act § 7(i).

²³ See Federal Power Act § 212(i)(2)(A).