

UNITED STATES OF AMERICA  
U.S. DEPARTMENT OF ENERGY  
BEFORE THE  
BONNEVILLE POWER ADMINISTRATION

2020 TERMS AND CONDITIONS TARIFF )  
PROCEEDING ) Docket Number TC-20  
)

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**HEARING OFFICER’S RECOMMENDED DECISION**

**SUMMARY**

Under Section 212(i)(2)(A)(II) of the Federal Power Act,<sup>1</sup> if the Administrator<sup>2</sup> proposes to establish terms and conditions of general applicability for transmission service on the Federal Columbia River Transmission System (the “Federal System”), the Hearing Officer must make a recommended decision to the Administrator, stating the Hearing Officer’s findings and conclusions, and the reasons or basis thereof, on all material issues of fact, law, or discretion presented on the Record.

Through settlement discussions related to this proceeding, Bonneville and all but two of its long-term transmission customers entered into a settlement agreement (the “TC-20 Settlement Agreement”) that includes, among other things, an agreed-upon tariff setting forth terms and conditions of general applicability for transmission service on the Federal System (the “Settlement Tariff”). The two long-term transmission customers that did not sign the TC-20 Settlement Agreement agreed by letter with Bonneville (1) not to contest any issue in this proceeding and (2) that they would enter into new or amended transmission service agreements with Bonneville that would be subject to the Settlement Tariff if the operative terms were substantially similar to those reflected in the TC-20 Settlement Agreement.

For the reasons explained below, I recommend that the Administrator adopt the TC-20 Settlement Agreement, which results also in adoption of the Settlement Tariff.

**PROCEDURAL BACKGROUND**

This proceeding began when Bonneville issued a [Federal Register Notice](#) on December 6, 2018 (Vol. 83, No. 234), which was followed by a pre-hearing conference convened in Portland, Oregon on December 7, 2018.

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<sup>1</sup> 16 U.S.C. § 824k(i)(2)(A)(II).

<sup>2</sup> Capitalized terms not otherwise defined in this recommended decision have the meanings given to them in Bonneville’s Rules of Procedure.

On December 7, 2018, Bonneville filed the TC-20 Settlement Agreement (at [TC-20-E-BPA-01](#)); supporting testimony of Bonneville witnesses Rachel Dibble, Rebecca E. Fredrickson, and Richard Gillman (at [TC-20-E-BPA-02](#)); and qualification statements for its witnesses (at [TC-20-Q-BPA-01](#), [TC-20-Q-BPA-02](#), and [TC-20-Q-BPA-03](#)).

The Federal Register Notice set December 11, 2018 as the deadline for petitions to intervene in this proceeding. Twenty-seven organizations (including the two customers that did not sign the TC-20 Settlement Agreement) filed timely petitions to intervene, which were granted (at [TC-20-HOO-05](#)) on December 14, 2018.<sup>3</sup>

On December 13, 2018, Bonneville filed a motion (at [TC-20-M-BPA-01](#)) for an order amending the procedural schedule and admitting the TC-20 Settlement Agreement and supporting testimony into the Record to complete the process called for in the TC-20 Settlement Agreement. Bonneville also filed on December 13, 2018 a declaration of its witnesses Rachel Dibble, Rebecca E. Fredrickson, and Richard Gillman (at [TC-20-E-BPA-03](#)).

On December 14, 2018, I issued an order (at [TC-20-HOO-04](#)) granting the portion of Bonneville's motion requesting amendment of the procedural schedule. Among other things, the amended schedule provided until 4:30 p.m., Pacific Time, on December 19, 2018 for any long-term transmission customer that had signed the TC-20 Settlement Agreement to notify Bonneville that it had withdrawn its support. None of the signatory customers withdrew their support.

Accordingly, on December 20, 2018 I issued an order (at [TC-20-HOO-07](#)) granting the portion of Bonneville's motion requesting that I enter into the Record the Prefiled Testimony and Exhibits and qualification statements sponsored by Bonneville's witnesses Rachel Dibble, Rebecca E. Fredrickson, and Richard Gillman. No Party has submitted any further Evidence in this proceeding.

## PROCEDURAL REQUIREMENTS

Section 212(i)(2)(A) of the Federal Power Act (16 U.S.C. § 824k(i)(2)(A), or "Section 212," for short) provides that, if the Administrator conducts a hearing to establish terms and conditions of general applicability for transmission service on the Federal System, the Administrator must:

- give notice in the Federal Register and state in such notice the written explanation of the reasons why the specific terms and conditions for transmission services . . . are being proposed;
- adhere to the procedural requirements of paragraphs (1) through (3) of [16 U.S.C. § 839e(i)], except that the hearing officer shall, unless the hearing officer becomes unavailable to the agency, make a recommended decision

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<sup>3</sup> The Western Public Agencies Group petition states that each of its 21 member utilities individually filed its petition to intervene. See Order Granting Interventions at TC-20-HOO-05.

to the Administrator that states the hearing officer’s findings and conclusions, and the reasons or basis thereof, on all material issues of fact, law, or discretion presented on the record; and

- make a determination, setting forth the reasons for reaching any findings and conclusions which may differ from those of the hearing officer, based on the hearing record, consideration of the hearing officer’s recommended decision, [16 U.S.C. § 824j] and this section, as amended by the Energy Policy Act of 1992, and the provisions of law as preserved in this section.

16 U.S.C. § 839e(i) is the United States Code cite for Section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (the “Northwest Power Act”), which governs Bonneville ratemaking. The relevant provisions state:

In establishing rates under this section, the Administrator shall use the following procedures:

- (1) Notice of the proposed rates shall be published in the Federal Register with a statement of the justification and reasons supporting such rates. Such notice shall include a date for a hearing in accordance with paragraph (2) of this subsection.
- (2) One or more hearings shall be conducted as expeditiously as practicable by a hearing officer to develop a full and complete record and to receive public comment in the form of written and oral presentation of views, data, questions, and argument related to such proposed rates. In any such hearing—
  - (A) any person shall be provided an adequate opportunity by the hearing officer to offer refutation or rebuttal of any material submitted by any other person or the Administrator, and
  - (B) the hearing officer, in his discretion, shall allow a reasonable opportunity for cross examination, which, as determined by the hearing officer, is not dilatory, in order to develop information and material relevant to any such proposed rate.
- (3) In addition to the opportunity to submit oral and written material at the hearings, any written views, data, questions, and arguments submitted by persons prior to, or before the close of, hearings shall be made a part of the administrative record.<sup>4</sup>

### STATUTORY GUIDANCE

Under Section 212, if the Administrator adopts the Settlement Tariff, he must “make a determination, setting forth the reasons for reaching any findings and conclusions which may differ from those of the hearing officer, based on the hearing record, consideration of the hearing officer’s recommended decision, [16 U.S.C. § 824j]

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<sup>4</sup> 16 U.S.C. § 839e(i)(1)-(3).

and this section, as amended by the Energy Policy Act of 1992, and the provisions of law as preserved in this section.”<sup>5</sup> Accordingly, the Administrator must, among other things, consider the standards that would apply if the Federal Energy Regulatory Commission (the “Commission”) were to issue an order under sections 211 and 212 of the Federal Power Act requiring Bonneville to provide transmission service.

Section 9 of the Settlement Tariff echoes the language in section 212(i)(2)(A)(III), providing that the Administrator’s final determination to adopt transmission service terms and conditions must set forth the reasons for any findings and conclusions, based on:

- i. The hearing record,
- ii. Consideration of the hearing officer’s recommendation,
- iii. Bonneville’s organic statutes and other laws that apply to Bonneville, and
- iv. Consideration of the standards that apply to Commission-ordered Bonneville transmission service under Sections 211 and 212 of the Federal Power Act.<sup>6</sup>

Briefly summarized, Section 211 of the Federal Power Act<sup>7</sup> empowers the Commission to issue an order requiring a transmitting utility to provide transmission service if the Commission finds the order:

- meets the requirements of section 212,<sup>8</sup>
- would otherwise be in the public interest,<sup>9</sup> and

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<sup>5</sup> 16 U.S.C. § 824k(i)(2)(A)(III).

<sup>6</sup> TC-20-E-BPA-01 at 9, 57.

<sup>7</sup> 16 U.S.C. § 824j.

<sup>8</sup> Section 211(a) of the Federal Power Act provides: “Any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale, may apply to the Commission for an order under this subsection requiring a transmitting utility to provide transmission services (including any enlargement of transmission capacity necessary to provide such services) to the applicant. Upon receipt of such application, after public notice and notice to each affected State regulatory authority, each affected electric utility, and each affected Federal power marketing agency, and after affording an opportunity for an evidentiary hearing, the Commission may issue such order if it finds that such order meets the requirements of section 824k of this title, and would otherwise be in the public interest. No order may be issued under this subsection unless the applicant has made a request for transmission services to the transmitting utility that would be the subject of such order at least 60 days prior to its filing of an application for such order.” 16 U.S.C. § 824j(a).

<sup>9</sup> *Id.*

- does not unreasonably impair the continued reliability of electric systems affected by the order.<sup>10</sup>

Section 212(a) of the Federal Power Act<sup>11</sup> lays out the general requirements for transmission service required by the Commission invoking its authority under Section 211, but, for service on the Federal System, must be read in conjunction with Section 212(i).<sup>12</sup> To comply with sections 212(i)(1) and 212(i)(5), the Commission would need to determine that the ordered service would not:

- impair other provisions of federal law applicable to Bonneville,<sup>13</sup>
- override the separate provisions of law that govern Bonneville’s rates for transmission service, except that rates for Commission-ordered service cannot be unjust, unreasonable, or unduly discriminatory or preferential,<sup>14</sup> or

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<sup>10</sup> Section 211(b) of the Federal Power Act provides: “No order may be issued under this section or section 824i of this title if, after giving consideration to consistently applied regional or national reliability standards, guidelines, or criteria, the Commission finds that such order would unreasonably impair the continued reliability of electric systems affected by the order.” 16 U.S.C. § 824j(b). Section 211(c) prohibits the Commission from issuing an order that would, in effect, circumvent the terms governing energy deliveries under an existing contract subject to a rate schedule on file with the Commission. 16 U.S.C. § 824j(c).

<sup>11</sup> Section 212(a) of the Federal Power Act provides: “An order under section 824j of this title shall require the transmitting utility subject to the order to provide wholesale transmission services at rates, charges, terms, and conditions which permit the recovery by such utility of all the costs incurred in connection with the transmission services and necessary associated services, including, but not limited to, an appropriate share, if any, of legitimate, verifiable and economic costs, including taking into account any benefits to the transmission system of providing the transmission service, and the costs of any enlargement of transmission facilities. Such rates, charges, terms, and conditions shall promote the economically efficient transmission and generation of electricity and shall be just and reasonable, and not unduly discriminatory or preferential. Rates, charges, terms, and conditions for transmission services provided pursuant to an order under section 824j of this title shall ensure that, to the extent practicable, costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, are recovered from the applicant for such order and not from a transmitting utility’s existing wholesale, retail, and transmission customers.” 16 U.S.C. § 824k(a).

<sup>12</sup> 16 U.S.C. § 824k(i).

<sup>13</sup> Section 212(i)(1)(i) of the Federal Power Act states that, in applying the provisions of Sections 210, 211, 212, and 213 of the Federal Power Act to the Federal System, the Commission must assure, among other things that “the provisions of otherwise applicable Federal laws shall continue in full force and effect and shall continue to be applicable to the system.” 16 U.S.C. § 824k(i)(1)(i).

<sup>14</sup> Section 212(i)(1)(ii) of the Federal Power Act further states that in applying the provisions of Sections 210, 211, 212, and 213 of the Federal Power Act to the Federal System, the Commission must assure that Bonneville’s “rates for the transmission of electric power on the system shall be governed only by such otherwise applicable provisions of law and not by any provision of section 824i of this title, section 824j of this title, this section, or section 824l of this title, except that no rate for the transmission of power on the system shall be unjust, unreasonable, or unduly discriminatory or preferential, as determined by the Commission.” 16 U.S.C. § 824k(i)(1)(ii). Because Bonneville is not establishing rates for transmission service in this proceeding, the final clause of section 212(i)(1)(ii) is not relevant to the Administrator’s consideration of whether to adopt the Settlement Tariff.

- impair the Administrator’s ability to provide the transmission service necessary to assure adequate and reliable service to loads in the Pacific Northwest.<sup>15</sup>

### RELEVANT EVIDENCE IN THE RECORD

The Evidence in the Record relevant to this recommended decision are the TC-20 Settlement Agreement (of which the Settlement Tariff is a part), the testimony submitted by Bonneville’s witnesses (which includes a list of signatories to the TC-20 Settlement Agreement and their associated signature pages, as well as the letter agreement between Bonneville and the two Parties that elected not to sign the TC-20 Settlement Agreement), the qualification statements of Bonneville’s witnesses, and the 27 petitions to intervene filed by organizations seeking to become Parties to this proceeding.

### RECOMMENDED DECISION

Under section 212(i)(2)(A)(II) of the Federal Power Act, I am required to make a recommended decision to the Administrator based on my “findings and conclusions, and the reasons or basis thereof, on all material issues of fact, law, or discretion presented on the record.”<sup>16</sup>

The central question presented by the Evidence on the Record in this proceeding is whether the Administrator should adopt the TC-20 Settlement Agreement. Because the Administrator must make his determination based on the factors specified in section 212(i)(2)(A)(III) of the Federal Power Act, this presents the subsidiary question of whether the Settlement Tariff embedded in the TC-20 Settlement Agreement would comply with Section 212 if the Administrator were to adopt it.

Based on review of the Evidence in the Record and review of relevant statutory text, I conclude that the answer to both questions is yes, for the reasons discussed below.

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<sup>15</sup> Section 212(i)(5) of the Federal Power Act provides: “The Commission shall not issue any order under section 824i of this title, section 824j of this title, this section, or section 824l of this title requiring the Administrator of the Bonneville Power Administration to provide transmission service if such an order would impair the Administrator’s ability to provide such transmission service to the Administrator’s power and transmission customers in the Pacific Northwest, as that region is defined in section 839a(14) of this title, as is needed to assure adequate and reliable service to loads in that region.” 16 U.S.C. § 824k(i)(5).

<sup>16</sup> 16 U.S.C. § 824k(i)(2)(A)(II).

## Findings of Fact

Based on the uncontested Evidence in the Record for this proceeding, my findings of fact are as follows:

- The TC-20 Settlement Agreement was signed by all but two of Bonneville's long-term transmission customers.<sup>17</sup>
- The customers that elected not to sign the TC-20 Settlement Agreement are Parties to this proceeding and had the opportunity to object on the Record to the TC-20 Settlement Agreement, but they did not do so.<sup>18</sup>
- None of the customers that signed the TC-20 Settlement Agreement notified Bonneville that they withdrew their support after the non-signing Parties stated their objections in the BP-20 Power and Transmission Rate Adjustment proceeding.
- One hundred sixty long-term transmission customers either support or do not oppose the TC-20 Settlement Agreement. These are all of Bonneville's long-term transmission customers (apart from Bonneville itself).<sup>19</sup>
- The Settlement Tariff will apply to transmission service for all of Bonneville's customers (including Bonneville Power Services). This encompasses regional and extra-regional customers with long-term point-to-point and network integration transmission service contracts, including public power customers, investor-owned utilities, power marketers, and independent power producers using the Federal System to deliver federal and non-federal power.<sup>20</sup>
- Section 9 of the Settlement Tariff specifies the requirements for the Administrator to modify the Settlement Tariff. It is apparent from the testimony of Bonneville's witnesses that they sought to demonstrate that initial adoption of the Settlement Tariff also conformed to these requirements.<sup>21</sup>
- Bonneville has conducted a proceeding to adopt the Settlement Tariff that included notice in the Federal Register, development of a full and complete Record, and opportunities for interested persons to intervene, enter Evidence into the Record, and refute or rebut Evidence entered into the Record by other Litigants.<sup>22</sup>

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<sup>17</sup> TC-20-E-BPA-02 at 15-287.

<sup>18</sup> TC-20-HOO-04 and TC-20-HOO-05.

<sup>19</sup> TC-20-E-BPA-02 at 5, 290-291.

<sup>20</sup> *Id.* at 10.

<sup>21</sup> TC-20-E-BPA-01 at 9, 57; TC-20-E-BPA-02 at 9.

<sup>22</sup> TC-20-HOO-04.

- Twenty-seven organizations filed petitions to intervene in this proceeding, including the two long-term transmission customers that elected not to sign the TC-20 Settlement Agreement.<sup>23</sup>
- No Parties submitted Prefiled Testimony or Exhibits; apart from petitions to intervene and hearing officer orders, the Record contains no materials other than the TC-20 Settlement Agreement, testimony, and qualification statements entered into the Record by Bonneville.
- In this proceeding, Bonneville has proposed only terms and conditions for transmission service on the Federal System, not rates.<sup>24</sup>

### Conclusions of Law

- The Administrator has complied with the procedural requirements of Section 212 in proposing to adopt the Settlement Tariff.

This proceeding followed the procedures specified in section 7(i) of the Northwest Power Act. Even though the signatories to the TC-20 Settlement Agreement agreed not to contest the TC-20 Settlement Agreement, other persons with relevant interests had the opportunity to intervene (which the two non-signing Parties did), offer Evidence into the Record concerning their views, data, questions, and argument, as well as offering refutation or rebuttal of any material submitted by any other person or the Administrator, and could have requested reasonable opportunity for cross examination.

- The Settlement Tariff complies with the substantive requirements of Section 212.

Bonneville testified that the TC-20 Settlement Agreement “resolves all issues related to the generally applicable Tariff terms and conditions for transmission service that Bonneville proposes to offer in this proceeding,” and that “Bonneville would not have been able to obtain agreement of such a large group of customers with such diverse interests unless the proposed Tariff was just and reasonable and not unduly discriminatory or preferential.”<sup>25</sup> All parties to the settlement negotiations knew the standards that would apply to terms and conditions of general applicability adopted under Section 212. Indeed, they elected to paraphrase the requirements of Section 212 in Section 9 of the Settlement Tariff.<sup>26</sup> Bonneville, as the expert in the requirements of its own organic statutes, and all signatories to the TC-20 Settlement Agreement, anticipating the need for the Settlement Tariff to comply with Section 212, would have had to satisfy themselves that the Settlement Tariff would accomplish these objectives. There is no Evidence in the Record to support a contrary conclusion.

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<sup>23</sup> TC-20-HOO-05.

<sup>24</sup> TC-20-E-BPA-01.

<sup>25</sup> TC-20-E-BPA-02 at 10-11.

<sup>26</sup> TC-20-E-BPA-01 at 9, 57.



### Findings Related to the Administrator’s Discretion

As explained in Bonneville’s testimony, “Bonneville met with its transmission customers and interested parties to negotiate potential settlement of the proposed tariff 22 times between September 10 and November 13, 2018.”<sup>27</sup> The Settlement Tariff “is the product of a regional settlement”<sup>28</sup> and it, together with the other elements of the settlement package, “reflects substantial compromise and numerous trade-offs between the parties.”<sup>29</sup>

Bonneville’s witnesses also explained that it is their general understanding that “Bonneville’s organic statutes provide the Administrator with broad authority to enter into contracts for transmission service upon terms and conditions and in such manner as the Administrator determines is appropriate, necessary and consistent with applicable law.”<sup>30</sup> Section 212 clearly preserves the Administrator’s discretion to specify particular terms and conditions of general applicability for transmission service on the Federal System, subject to the sideboards established (and the provisions of law preserved) by Section 212.

- I find that the Administrator would properly exercise his discretion in establishing terms and conditions for transmission service on the Federal System as provided in the Settlement Tariff.

### CONCLUSION

For the reasons discussed above, I recommend that the Administrator adopt the TC-20 Settlement Agreement, which, for purposes of Section 212, will also constitute adoption of terms and conditions for transmission service on the Federal System as set forth in the Settlement Tariff.

January 30, 2019

/s/ Sarah Dennison-Leonard  
Sarah Dennison-Leonard  
TC-20 Hearing Officer

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<sup>27</sup> TC-20-E-BPA-02 at 2.

<sup>28</sup> *Id.* at 10.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 9.