

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Remedying Undue Discrimination)
through Open Access Transmission Service) Docket No. RM01-12-000
and Standard Electricity Market Design)

Comments of the Bonneville Power Administration

On July 31, 2002, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) proposing to amend its regulations under the Federal Power Act (FPA) to modify the *pro forma* open access transmission tariff (OATT) established under the Commission's Order No. 888¹, and to require all public utilities with open access transmission tariffs to file modifications to their tariffs to reflect non-discriminatory, standardized transmission service and standardized wholesale power market design. Standard Market Design (SMD) NOPR, 67 Fed. Reg. 55,452 (Aug. 29, 2002) (hereinafter "SMD NOPR"). On October 2, 2002, the Commission issued a Notice of Conferences and Revisions to Public Comment Schedule, 67 Fed. Reg. 67,157 (Nov. 4, 2002). In that notice, the Commission set January 10, 2003, as the date for comments on (1) market design for the Western Interconnection; (2) transmission planning and pricing, including participant funding; (3) Regional State Advisory Committees and state participation; (4) resource adequacy; and (5) Congestion Revenue

¹ Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998).

Rights (CRRs) and transition issues. The Commission set November 15, 2002, as the date for filing comments on all other issues in the above-captioned proceeding. On November 15, 2002, Bonneville Power Administration (Bonneville) and certain of the other RTO West Filing Utilities² filed the "Pacific Northwest Utilities Joint Comments" on certain matters³. On November 22, 2002, the RTO West Filing Utilities filed a motion for an extension of time within which to file comments and reply comments in the above-captioned proceeding. On December 20, 2002, the Commission issued a "*Notice on Requests for Additional Time*" in this docket, stating that it would retain the due dates for filing initial and reply comments, but would accept late-filed comments through February 28, 2003, for any party needing additional time.

Pursuant to the August 29, 2002, Notice of Filing in the above-captioned proceeding, Bonneville submits these comments in Docket No. RM01-12-000 in response to the Commission's proposed SMD NOPR.⁴ Bonneville is also filing joint comments with a number of the RTO West Filing Utilities⁵ on the subjects of resource adequacy, transmission expansion participant funding and merchant transmission.

All communications in the above-referenced docket should be sent to:

² The RTO West Filing Utilities included on the November 15, 2002, joint comment filing include Avista Corporation; Bonneville; Idaho Power Company; NorthWestern Energy, L.C.C.; PacifiCorp; Puget Sound Energy, Inc.; and British Columbia Hydro and Power Authority. Other RTO West Filing Utilities include Portland General Electric Company and Sierra Pacific Power Company.

³ The Pacific Northwest Utilities' Joint Comments filed November 15, 2002, addressed the following matters: Regional Differences, Non-Jurisdictional Participation, Market Power Mitigation and Bid Caps, SMD Tariff -- New Transmission Service, Facilities, Liability Limitation, Governance, Security Provisions, Credit/Default/Termination of Service, and Common Payment Arrangement.

⁴ As noted, the comment schedule was subsequently revised to permit late-filed comments through February 28, 2003, for any party needing additional time.

⁵ The parties included on the February joint comment filing in this docket include Avista Corporation; Bonneville; Idaho Power Company; NorthWestern Energy, L.C.C.; PacifiCorp; Portland General Electric Company; Puget Sound Energy, Inc.; and Sierra Pacific Power Company.

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I. Executive Summary.

Over the past three years, Bonneville has devoted considerable time and resources toward the development of RTO West. The RTO West Stage 1 and Stage 2 filings are the result of extensive efforts within the region to craft an RTO that works for the complicated and unique hydroelectric-based Northwest system. Bonneville believes RTO West is the vehicle that has the best chance of achieving the Commission's primary goals of achieving lowest-cost service, building sufficient infrastructure, establishing clear market rules, protecting against market manipulation, and establishing clear pricing and planning for grid expansions, while also meeting the unique needs of the Northwest region.

Bonneville appreciates the Commission's support of RTO West in its recent Orders, and its approval of many of the concepts that are critical to formation of a Northwest RTO. *Declaratory Order in Regional Transmission Organization Proposal* (September 2002 Order), 100 FERC ¶ 61,274 (September 18, 2002); *Order Granting in*

Part and Denying in Part Rehearing, (December 2002 Order), 101 FERC ¶ 61, 346 (December 20, 2002). Bonneville also appreciates the Commission's assurances that it has no intention of "undoing" solutions developed by RTO West and approved by the Commission, in order to replace them with alternative solutions developed in a generic SMD rulemaking. December 20 Order, 101 FERC ¶ 61,546 at ¶ 57. However, it is important to reiterate in the SMD docket some unique issues related to Bonneville and the Northwest.

A. Bonneville's Statutory, Treaty and Other Obligations.

The Commission's SMD NOPR proposes to require public utilities to achieve complete independence between generation and transmission. SMD NOPR ¶ 125. While Bonneville recognizes that the SMD NOPR applies only to public utilities under the FPA, the Commission has acknowledged that non-jurisdictional utility participation is important if the Commission is to achieve its objectives. An independence requirement such as that proposed in the SMD NOPR may make it problematic, if not impossible, for certain non-jurisdictional utilities, such as Bonneville, to voluntarily participate in the Commission's SMD because such entities are generally required to retain ultimate decision making authority.

Solutions to issues related to non-jurisdictional utility participation are best achieved through regional negotiations. Bonneville urges the Commission to continue its support for regional efforts to facilitate voluntary non-jurisdictional participation, and to allow flexibility with regard to Regional Transmission Organization (RTO) or Independent Transmission Provider (ITP) independence requirements in order to accommodate such participation.

B. Liability and Creditworthiness.

Bonneville continues to evaluate its financial risk related to RTO participation, and to address its risk tolerance concerns, as noted in footnote 8 of the Pacific Northwest Utilities Joint Comments filed with the Commission on November 15, 2002. Issues of liability and risk allocation should be determined in subsequent RTO West proceedings and the Commission should defer to regional solutions, because of the financial costs and impacts to RTO West, the Filing Utilities, and Filing Utility Customers.

C. Demand Response Measures.

Bonneville supports the development of demand-side response as an important component of a robust congestion management system. A number of Bonneville customers, however, are prohibited from reselling power, and would therefore be unable to directly participate in a third party demand response program. Bonneville requests that the Commission clarify that the demand response programs proposed in the SMD NOPR are intended to provide direct access to customers whose supply arrangements allow the resale of power, and are not intended to circumvent those that do not.

D. Bonneville's Congressionally Mandated Missions and Environmental Responsibilities.

Bonneville is a federal agency with unique statutory and congressionally mandated missions that typically do not apply to jurisdictional utilities. These responsibilities include, without limitation, environmental responsibilities, flood control, navigation, water delivery, recreation, and fish and wildlife mitigation.

The Commission has suggested in the SMD NOPR that the needs of hydro-system operators regarding environmental and other responsibilities can be addressed through certain scheduling practices that allow seasonal or monthly variation. SMD NOPR ¶ 423.

Bonneville is concerned, however, that such scheduling does not allow sufficient flexibility in operating the region's hydro-system to meet Bonneville's environmental and other non-power obligations. In order for Bonneville to voluntarily participate in SMD, the Commission must allow sufficient flexibility to enable Bonneville to continue to meet all of these responsibilities.

E. Ratemaking.

Bonneville's statutes set forth the process Bonneville must follow, and the standards Bonneville must satisfy, in establishing its rates. Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839e(a)(1) and (2)(2000) (Northwest Power Act). The Commission's jurisdiction over Bonneville's ratemaking is limited to confirmation and approval of such rates.

In order for non-jurisdictional utilities such as Bonneville to voluntarily participate in SMD, the Commission must ensure that the ratemaking requirements for RTOs or ITPs under section 205 of the FPA can be reconciled with any participating non-jurisdictional utility's ratemaking requirements, both substantively and procedurally.

F. NonFederal Control Over Federal Generation.

The federal generation assets of the Federal Columbia River Transmission System (FCRPS) are those hydroelectric projects constructed and operated by the Corps of Engineers (Corps) and the Bureau of Reclamation (Reclamation). Both the Corps and Reclamation have expressed concerns that implementation of the SMD NOPR could potentially result in nonfederal control of federal assets. In part to address these concerns, Bonneville has supported the concept of Scheduling Coordinators in RTO West. Bonneville urges the Commission to allow this type of flexibility in the SMD final

rule to ensure that Bonneville and its federal partners can continue to perform their statutory responsibilities.

G. The Columbia River Treaty, Pacific Northwest Coordination Agreement, and the Mid-Columbia Hourly Coordination Agreement.

In order for Bonneville to voluntarily participate in any SMD scenario, Bonneville must be assured that it can continue to meet all of its obligations under the Columbia River Treaty (Treaty), Pacific Northwest Coordination Agreement (PNCA) and the Mid-Columbia Hourly Coordination Agreement (Hourly Coordination). Further, Bonneville must be assured that the cost associated with meeting these obligations would not be so cost prohibitive that it could place Bonneville in danger of violating either the Treaty or its other statutory obligations. Bonneville requests assurance from the Commission that these obligations can be treated as pre-Order No. 888 transmission contracts if Bonneville voluntarily elects to participate in SMD.

H. Limitations on the Commission's Authority Over Non-Jurisdictional Entities.

The SMD NOPR requires ITPs to assert authority over customers' generators through resource adequacy requirements,⁶ must-offer requirements,⁷ and imposition of market mitigation measures such as penalties and refunds.⁸ The Commission has no authority under the FPA to regulate decisions by governmental entities related to generation operation, or to impose penalties and refunds associated with market behavior. Rather than adopting a final rule that seeks to impose the Commission's SMD requirements directly or indirectly on non-jurisdictional utilities, the Commission should

⁶ SMD NOPR ¶ 474 *et seq.*

⁷ SMD NOPR ¶ 408.

⁸ SMD NOPR ¶ 454.

assure that sufficient benefits flow from its final rule such that non-jurisdictional entities will be persuaded to voluntarily negotiate their participation in those requirements.

The Commission proposes to continue its approach to reciprocity set forth in Order No. 888, and to grandfather all reciprocity tariffs previously found to meet the comparability standards of Order No. 888. SMD NOPR ¶ 384. Bonneville supports this proposal. The Commission cannot use its jurisdiction over public utilities to reach out and, as a practical matter, assert jurisdiction over the activities of non-jurisdictional entities. Consequently, the Commission should not attempt to require non-jurisdictional transmission owners, that elect not to participate in an ITP, to agree to additional rate restrictions or to implement generation, market design and resource adequacy components on their systems as a condition for obtaining access over an ITP's facilities.

I. Embedded Cost Pricing and Cost Shifts.

In the RTO West filing, specific provisions were included in the Transmission Operating Agreement to preserve Bonneville's statutory ratemaking obligations. In implementing SMD, the Commission should ensure that the ratemaking requirements of non-jurisdictional utility's can be reconciled, both substantively and procedurally, with ITP rate making requirements.

Bonneville had concerns that the SMD NOPR proposals for recovery of the embedded costs of the transmission system could have resulted in cost shifts. These concerns were addressed by the Commission in its approval of the RTO West Stage 2 pricing methodology. Bonneville appreciates the Commission's acceptance of these regional solutions, and urges the Commission to continue to allow for regional flexibility in these areas to minimize cost shifts, consistent with the RTO West Order.

J. Transmission Facilities That Must Be Under the Control of an ITP.

Bonneville, the other Filing Utilities, and some regional stakeholders have been working on a settlement plan to resolve issues surrounding which transmission facilities must be under the control of RTO West. Bonneville supports this settlement plan effort and believes that a satisfactory resolution can be obtained. Bonneville urges the Commission to support a regional solution to these issues.

In the event the parties are unable to complete the settlement plan, and/or the Commission determines that the SMD proposal for facilities inclusion should apply in the Northwest, Bonneville submits comments in support of the Commission's approach to the facilities inclusion issue, including the Commission's efforts to have ITPs control most of the facilities necessary for wholesale transactions. Bonneville supports the bright line test as a minimum requirement, and Bonneville does not support the use of the seven factor test.

K. Preexisting Contract Rights.

The preservation of preexisting contract rights is a fundamental tenet of the RTO West Stage 2 proposal. Customer conversion to RTO or ITP service must be voluntary. Bonneville appreciates the Commission's approval of these concepts in the September 2002 Order, and requests that any SMD final rule permit this regional solution.

L. Congestion Management and Hydro Operations.

The RTO West Filing Utilities have been concerned with assuring that the application of congestion management principles to achieve greater transmission efficiency does not frustrate or preclude the value that hydro-thermal coordination and hydro efficiency have historically provided. A voluntary increment (inc)/decrement (dec)

congestion management approach is one of the features the RTO West Filing Utilities arrived at to further this goal by allowing decentralized unit commitment and dispatch. Bonneville appreciates the Commission's approval of this portion of the RTO West Stage 2 filing⁹ and believes these are important regional differences that the Commission should continue to allow under SMD.

Bonneville also appreciates the Commission's willingness to work with regions to develop CRRs that recognize contingent supplies. The scheduling flexibility of existing contract rights is highly valued in the Northwest because of the operational uncertainties inherent in the operation of hydro resources. In the RTO West Stage 2 proposal the Filing Utilities proposed, and the Commission approved, the protection of these rights in the form of Cataloged Transmission Rights.¹⁰ A single feasible dispatch of rights as proposed in the SMD NOPR¹¹ would not preserve this contingent availability. Bonneville appreciates the Commission's recognition and approval of this regional difference and requests that the Commission clarify that the SMD final rule would allow for such differences.

M. Market Monitoring and Mitigation.

The RTO West Filing Utilities have been working to develop a market monitoring and mitigation program for RTO West, including opportunity cost Automatic Mitigation Procedure (AMP)-type bid caps to allow participation by hydroelectric generation. Bonneville is hopeful that these efforts will be successful.

Bonneville is concerned that the Commission's proposal for market monitoring and mitigation does not adequately take into account the complexities and uncertainties

⁹ September 2002 Order, 100 FERC ¶ 61,274, ¶ 167-72.

¹⁰ September 2002 Order, 100 FERC ¶ 61,274, ¶ 103-106.

¹¹ SMD NOPR ¶ 377.

associated with hydro system operations. Bonneville requests that the Commission clarify that any market monitoring and mitigation program under SMD would not hinder or penalize market participants for carrying out their legitimate non-power responsibilities, as determined by the responsible government agency.

II. Comments.

A. Bonneville's Statutory, Treaty and Other Obligations.

1. The Commission's Proposal for Independent Transmission Providers May Make It Problematic for Non-jurisdictional Entities to Voluntarily Implement Standard Market Design.

The Commission's SMD NOPR proposes to require public utilities that own, control or operate facilities used for the transmission of electric energy in interstate commerce to: (1) meet the definition of ITP¹², (2) turn over the operation of its transmission facilities to an RTO that meets the definition of ITP, or (3) contract with an entity that meets the definition of ITP to operate its transmission facilities. SMD NOPR ¶ 125. The Commission states that complete independence between generation and transmission within public utilities is necessary to remedy undue discrimination. SMD NOPR ¶ 125. An independence requirement such as this may make it problematic, if not impossible, for certain non-jurisdictional utilities, such as Bonneville, to voluntarily participate in the Commission's SMD since the courts generally require public bodies to retain ultimate decision making authority.

¹² An ITP is defined as "any public utility that owns, controls or operates facilities used for the transmission of electric energy in interstate commerce, that administers the day-ahead and real-time energy markets in connection with its provision of transmission services pursuant to the SMD tariff, and that is independent (*i.e.*, has no financial interest, either directly or through an affiliate, in any market participant in the region in which it provides transmission services or in neighboring regions)." SMD NOPR ¶ 125-126.

Bonneville has voluntarily complied, to the extent consistent with Bonneville's existing laws and policies, with the Commission's Order Nos. 888 and 2000¹³.

Bonneville has also voluntarily participated in the development of RTO West. Docket No. RT01-35-000. As a federal agency, Bonneville's ability to subdelegate its authority over the control and operation of the federal transmission system is subject to certain limitations.

The Federal Columbia River Transmission System Act (Transmission System Act) provides:

the Secretary of Energy, acting by and through the [Bonneville] Administrator, shall operate and maintain the Federal transmission system within the Pacific Northwest and shall construct improvements, betterments, and additions to and replacements of such system within the Pacific Northwest as he determines are appropriate and required to:

- (a) integrate and transmit the electric power from existing or additional Federal or non-Federal generating units;
- (b) provide service to the Administrator's customers;
- (c) provide interregional transmission facilities; or
- (d) maintain electrical stability and electrical reliability of the Federal system

16 U.S.C. § 838b (2000). Thus, the Transmission System Act specifically vests the Secretary of Energy, acting by and through the Administrator, with the statutory responsibility to operate, maintain and construct additions to the Federal transmission system. The Administrator also has additional statutory, contractual and treaty obligations which must be satisfied.

¹³ Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. and Regs., Regulations Preambles July 1996-December 2000 ¶ 31,089 (2000) (Order No. 2000), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. and Regs., Regulations Preambles July 1996-December 2000 ¶ 31,092 (2000) (Order No. 2000-A), aff'd, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

In the Commission's Declaratory Order on Regional Transmission Organization Proposal, Docket Nos. RT01-35-005 and RT01-35-007, issued September 18, 2002, in response to comments regarding the lawfulness of Bonneville's turning over control of its facilities to an RTO, the Commission reiterated its earlier findings that

Bonneville's participation in RTO West is voluntary, and concerns as to whether Bonneville is adequately protected are more appropriately addressed in proceedings that Bonneville will initiate pursuant to the Pacific Northwest Electric Power Planning and Conservation Act. We further recognized that Bonneville is subject to limited Commission jurisdiction as a federal power marketing agency.

September 2002 Order, 100 FERC ¶61,274, ¶ 59.

Bonneville appreciates the Commission's acknowledgement of Bonneville's statutory responsibilities and other obligations, and the limited nature of the Commission's jurisdiction over Bonneville. Bonneville cannot subdelegate operation of the federal transmission system to an RTO or ITP if the arrangement does not include performance standards, oversight and withdrawal rights that allow Bonneville to retain ultimate control over the federal transmission system. The same may be true of non-Federal publicly-owned transmission systems.

Bonneville recognizes that the SMD NOPR applies only to public utilities under the FPA, however, the Commission has recognized that the participation of non-jurisdictional utilities is important if the Commission is to achieve its objectives. Non-jurisdictional utility participation is best achieved through regional negotiations. Bonneville urges the Commission to continue its support for such regional negotiations. Bonneville also urges the Commission to allow flexibility with regard to RTO or ITP independence requirements in order to enable the voluntary participation of non-

jurisdictional utilities that may have limitations on their authority to subdelegate operation of their systems.

2. Liability and Creditworthiness.

Analysis of Bonneville's financial risk exposure under the SMD NOPR can be broken into three areas – liability to generators, liability to third-parties, and ITP and vendor creditworthiness. Under the SMD NOPR, where there is an increase in the role of the ITP, there is most likely an increase in exposure to liability and an increase in costs.

a. Liability to Generators.

Bonneville participated in the Pacific Northwest Utilities' Joint Comments filed with the Commission on November 15, 2002. Included in the November 15 joint comments is a draft RTO West tariff proposal on liability. Bonneville wishes to emphasize that this tariff is a draft proposal, and Bonneville is continuing to assess its financial risk evaluation and to address its risk tolerance concerns, as noted in footnote 8 in the November 15 joint comments.

Generation liability of Federal hydroelectric projects includes property damage and business interruption expenses, which together could be significant. A portion of these generation liability costs to the Federal hydroelectric projects could be paid for by the ITP through insurance, reserves or other financial vehicles. However, these costs would be passed back to Bonneville in part through uplift charge allocations or assessments. Any amount of these generation liability costs not provided by the ITP would be paid for directly by Bonneville, which would be reflected in our rate base through the absorption of the costs or the purchase of potentially expensive insurance, if available.

Issues of liability and allocation of risk should be determined in subsequent RTO West proceedings and the Commission should defer to regional solutions, because of the financial costs and impacts to RTO West, the Filing Utilities and Filing Utility customers.

b. Liability to Third Parties.

Third-party liability of major end-use consumers in the Pacific Northwest, California or elsewhere could amount to millions of dollars or, in some cases, hundreds of millions of dollars. An ITP would not have the protection that a Federal agency such as Bonneville would have through the Federal Tort Claims Act or the Doctrine of Sovereign Immunity. Nor would an ITP have the protection an Investor Owned Utility would have through state laws and tariffs or the creation of the asset shield of subsidiaries. Consequently, Bonneville urges the Commission in its final rule to allow the Northwest to replicate, as nearly as possible, the liability scheme that currently exists in the region.

c. ITP and Vendor Creditworthiness.

Bonneville would likely require the ITP, as a counter party, to provide credit support (*e.g.*, letter of credit, reserves, prepayment). Such credit support is important because the ITP would be a corporate entity with no inherent credit (since it would have no assets and no ability to raise funds except through an uplift charge or assessment on its participants).

Similarly, Bonneville urges the Commission to require ITPs to impose stringent creditworthiness standards on all vendors. For example, the default of a major hardware or software vendor could be costly to Bonneville and other ITP participants in an environment where there are significant new and untried configurations that interconnect

the entire Pacific Northwest -- and to some extent the entire Western Interconnection. Stringent creditworthiness requirements would help protect Bonneville and other Northwest parties from exposure to liability in such an instance.

3. Demand Response Measures.

The Commission seeks comment on proposed Demand Response measures¹⁴ where an end-use load could bid directly to an RTO/ITP to reduce demand in real time in exchange for a market-clearing price. Bonneville supports the development of demand-side response as an important component of a robust congestion management system. However, a number of Bonneville customers are prohibited from reselling power and would currently be unable to participate directly¹⁵ in a third party demand response program.

This resale prohibition is common among federal power marketing agencies and is not dissimilar to the restrictions on customers of Investor Owned Utilities in states that have not elected retail access. Bonneville requests that the Commission clarify that the demand response programs proposed in the SMD NOPR are intended to provide direct access to customers whose supply arrangements allow the resale of power, and are not intended to circumvent those that do not.

4. Bonneville's Congressionally Mandated Missions and Environmental Responsibilities.

As a federal agency, Bonneville has both congressionally mandated missions and environmental responsibilities pursuant to statutes that typically do not apply to jurisdictional utilities. Bonneville believes that the Commission must allow sufficient

¹⁴ SMD NOPR ¶ 276.

¹⁵ Bonneville has historically worked with these customers to make demand response available and fully expects to encourage this indirect participation in the future.

flexibility under SMD in order to enable non-jurisdictional federal agencies involved in hydro-system operations, such as Bonneville, to continue to meet these responsibilities if they choose to implement SMD. The Commission envisions that hydro-system operators could submit seasonal or monthly schedules for time periods when their projects would not be operating, which the Commission believes would allow the operators to specify periods when they would need to preserve or release water to satisfy environmental conditions. SMD NOPR ¶ 423. Bonneville is concerned, however, that such scheduling does not allow sufficient flexibility in operating the Pacific Northwest region's hydro-system – the FCRPS – to meet the unique environmental responsibilities placed on the region by Congress and regulatory agencies. Bonneville is also concerned that such scheduling would not allow sufficient flexibility for Bonneville to meet its other mandated responsibilities, such as flood control, navigation, water delivery, recreation, and fish and wildlife mitigation. For example, seasonal or monthly schedules cannot take into account the multiple purposes of the FCRPS, which must be balanced and scheduled daily for each day's scheduling periods and updated throughout the day in real-time to accommodate any changed conditions.¹⁶

One of Bonneville's primary environmental responsibilities is mandatory compliance with the Endangered Species Act (ESA) of 1973, as amended. 16 U.S.C. § 1531 et seq (2000). The ESA requires federal agencies such as Bonneville to protect and conserve listed threatened and endangered species. Due to its status as an action agency for the FCRPS, Bonneville, along with the Corps and Reclamation, is also responsible for ensuring compliance with Biological Opinions (BiOps) issued under the ESA for

¹⁶ See discussion below relating to non-federal control over federal generation and the Columbia River Treaty, Pacific Northwest Coordination Agreement and Mid-Columbia Hourly Coordination Agreement.

hydrosystem operations of the FCRPS. These BiOps require, among other things, that the FCRPS be operated to accommodate fish flows at proscribed times of the year, which the action agencies must balance with the other varied purposes of the FCRPS, including power generation, flood control, navigation, irrigation, and recreation.

In addition to the ESA, the Northwest Power Act requires Bonneville to protect, mitigate, and enhance fish and wildlife affected by the development and operation of the federal hydroelectric projects in the Columbia River Basin. 16 U.S.C. § 839b(h)(10)(A). To meet this obligation, Bonneville provides substantial funding for fish and wildlife recovery projects and programs throughout the region. The Northwest Power Act also requires Bonneville, along with the Corps and Reclamation, to operate the FCRPS to adequately protect fish species affected by the hydrosystem in a manner that provides “equitable treatment” for fish with the other purposes for which the system is operated. 16 U.S.C. § 839b(h)(11)(A)(i).

As a result of the need to comply with ESA and Northwest Power Act provisions, the FCRPS is operated during certain times of the year to spill or store water that would otherwise be run through turbines to generate electricity. At other times, water must be put through the turbines to avoid levels of spill that cause nitrogen supersaturation, a condition that is harmful to ESA listed migrating salmon. During these periods, otherwise unneeded electricity is often generated, and this electricity must be transmitted. In addition, there is an inherent level of uncertainty in advance planning for these operations due to variability in water flows and the timing of fish passage. Real-time variations and deviations in initial scheduling of the FCRPS thus must often occur to

accommodate these operations, particularly given the need to make sure that the other purposes of the FCRPS can be simultaneously met.

Because of these unique operational requirements, Bonneville requests that the Commission's final rule clarify several points raised in its SMD NOPR regarding how Bonneville might be affected if it elects to voluntarily implement SMD. First, Bonneville requests that the SMD final rule provide that federal agencies such as Bonneville would not be financially penalized or operationally constrained if hydro-system operations, necessary to comply with environmental responsibilities or other Congressional mandates, contribute to or result in transmission congestion.

Second, to ensure that federal agencies maintain full operational flexibility to meet both their environmental and other Congressional mandates, Bonneville requests that the SMD final rule provide that ITPs would not require federal agencies to ensure that hydro-system outages would occur only "when they are least disruptive to the markets." SMD NOPR ¶ 423. The FCRPS often must be operated in ways that can be disruptive to the market to accommodate fish flows or other required river operations, and federal agencies, not ITPs, must retain discretion to make decisions regarding when it is appropriate to schedule outages for these obligations.

Third, Bonneville requests that the SMD final rule provide that the FCRPS would not be subject to mandatory participation in RTO/ITP markets. Bonneville is concerned that, if a "must-offer" requirement were imposed upon the FCRPS (rather than bilateral negotiation for services), conditions could occur where the RTO/ITP would require projects to generate (and thus reduce water storage or spill) during times when the non-power requirements of the FCRPS dictate storage or spill. The interrelationships between

these non-power requirements are complex and driven by non-economic factors that will likely be outside the expertise of the ITP or a market monitor. Because mandatory participation could substantially interfere with the ability of Bonneville and the federal agency operators of the FCRPS to comply with non-power obligations, the Commission should clarify that the commercial needs of the ITP market would not supersede Bonneville's legitimate non-power requirements.

5. Ratemaking.

Bonneville's statutes provide that the Administrator shall establish, and periodically review and revise, rates for the sale of electric energy and capacity and for the transmission of electric power. Such rates shall be established and revised to recover, in accordance with sound business practice, the cost associated with the acquisition, conservation, and transmission of electric power, including the amortization of the federal investment over a reasonable period of time (generally 35 years for transmission), and other costs and expenses incurred by the Administrator. Bonneville's rates are to be set at levels that encourage the widest possible diversified use of electric power at the lowest possible rates. Bonneville's transmission rates must also equitably allocate the costs of the federal transmission system between federal and non-federal power using the system. Northwest Power Act, 16 U.S.C. § 839e(a)(1) and (2); Transmission System Act, 16 U.S.C. § 838g and 838h. The Commission's jurisdiction over Bonneville's ratemaking is limited to confirmation and approval of such rates. *Order Granting, With Modification, RTO West Petition For A Declaratory Order and Granting Transconnect Petition for Declaratory Order* (April 2001 Order), 95 FERC ¶61,114, at 61,344. *See also*, September 2002 Order, 100 FERC ¶61,274, ¶59.

Bonneville's delegation of the control and operation of the federal transmission system to any RTO or ITP that it might voluntarily participate in would not include the ability of the RTO or ITP to set Bonneville's rates. Rates for use of the federal transmission system must be established in accordance with Bonneville's statutory requirements. In implementing SMD, the Commission must therefore ensure that the ratemaking requirements for RTOs or ITPs under section 205 of the FPA can be reconciled with any participating non-public utility's ratemaking requirements, both substantively and procedurally.

6. NonFederal Control Over Federal Generation.

The federal generation assets of the FCRPS are those hydroelectric projects constructed and operated by the Corps and Reclamation. The Corps and Reclamation have both voiced concerns about nonfederal control of federal assets under the SMD NOPR. This could occur if a nonfederal RTO or ITP attempted to impose mandatory adjustments to generation levels at a federal hydro project to manage transmission line congestion. It could also occur if an RTO or ITP attempted to directly order action at a federal generating project to protect the reliability of the power system without preserving the federal entity's ability to meet its statutory or other obligations or protect its system from damage. However, if these functions are transacted through a sale of power from the federal facility through Bonneville as the Power Marketing Administration and accompanied by contractual agreements to provide such services, the constitutional concerns of both Bonneville and its federal partners may be met.

Bonneville supports the concept of Scheduling Coordinators in RTO West based on the needs of its federal partners (Corps and Reclamation) and in response to requests

from public agency customers to act as an intermediary between them and RTO West. We urge the Commission to allow this type of flexibility in the SMD final rule so that Bonneville and its federal partners can continue to perform their statutory missions. Bonneville will then be able to market federal power and provide Interconnected Operations Services (IOS) to an RTO or ITP for Bonneville-served load and facilities included in the RTO or ITP, and to market additional IOS to other purchasers as a part of its power marketing strategy for the FCRPS.

7. The Columbia River Treaty, Pacific Northwest Coordination Agreement, and Mid-Columbia Hourly Coordination Agreement.

The Commission states that it sees no reason why its proposal would interfere with the “special features” of hydroelectric facility operations. SMD NOPR ¶ 217. One of these special features is coordination of the Columbia River System hydroelectric facility operations between the United States (U.S.) and Canada pursuant to international treaty arrangements. SMD NOPR ¶ 212.

Bonneville appreciates the Commission’s acknowledgment that international treaties are a special feature of hydroelectric facility operations for the FCRPS. Certain FCRPS operations are subject to the Treaty, which was signed by Canada and the U.S. in 1961 to coordinate flood control and electrical energy production in the Columbia River Basin and its Protocol dated January 22, 1964. *Columbia River Basin: Cooperative Development of Water Resources Treaty*, Jan. 17, 1961, U.S.-Can., 15 U.S.T. 1555 (entered into force Sept. 16, 1964). Among other things, the U.S. Entity¹⁷ is obligated under the Treaty to return to Canada one-half of the firm downstream power benefits

¹⁷ The Bonneville Administrator and the Division Engineer of the Corps were appointed by the President as the U.S. Entity to carry out U.S. obligations under the Treaty. *See* Exec. Order No. 11,177 Providing for Certain Arrangements Under the Columbia River Treaty (1964).

derived in the U.S. (referred to as the “Canadian Entitlement”) created by the operation of the three storage dams – Duncan, Hugh Keenleyside, and Mica – built by Canada under the Treaty. *Treaty*, art. V, para. 1.

Since 1998, Canada, through the Province of British Columbia, has taken delivery of the Canadian Entitlement at the U.S.-Canadian border. While the transmission path used to transmit the Entitlement (the Puget Sound region and the Northern Intertie) is often operated at or near its rated capacity, the U.S. Entity has been able to successfully deliver the full Entitlement amount to Canada. Effective March 31, 2003, the Canadian Entitlement delivery will increase to approximately 535 aMW (4.7 TWh). At that time, the U.S. Entity may be obligated under the Treaty to deliver this energy and a capacity component with a peak of 1170 MW to the U.S.-Canadian border. In future years it is expected that this capacity amount will vary between 1100 and 1500 MW.

Bonneville is concerned that maintaining sufficient transmission rights to fully return the Entitlement could result in unacceptable cost and risk exposure for Bonneville if SMD alters the nature of the transmission rights that support the Entitlement (for example, by treating transmission rights as obligations or making pro rata reductions in rights to facilitate standardization).

If Bonneville were to voluntarily participate in an SMD scenario, Bonneville would need to be assured that all U.S. Government Treaty obligations could be met, and that the cost associated with meeting these obligations under SMD would not be so prohibitive that it could place Bonneville in jeopardy of violating either the Treaty or its other statutory obligations. To give this assurance, Bonneville requests that the SMD final rule provide that Bonneville’s obligation to return the Canadian Entitlement will be

treated as a pre-Order No. 888 transmission contract if Bonneville elects to participate in SMD. The Commission stated in the SMD NOPR that it would not abrogate existing pre-Order No. 888 transmission contracts, and that existing transmission service under existing provisions of these contracts could be continued. SMD NOPR ¶ 218. Thus, clarifying that the transmission rights necessary to return the Canadian Entitlement will be treated as a grandfathered contract, as provided for in RTO West, would go a long way in assuring Bonneville that SMD will not interfere with its U.S. Government Treaty obligations or result in increased cost to fulfill these obligations. If Bonneville elects to voluntarily participate in SMD, Bonneville further requests that the Commission engage in discussions with Bonneville and the U.S. Entity about how the U.S. Entity's Treaty obligations might get translated into appropriate transmission rights, given the unique nature of these obligations and the flexibility required to satisfy these obligations.

In addition to the Treaty, there are two companion agreements in the U.S. that enable the U.S. Entity to carry out its function. The two agreements are the PNCA and Hourly Coordination. The former enables the coordinated operation of hydroelectric resources in the U.S., so that the Canadian Entity can be assured that the anticipated downstream benefits are indeed produced, while the latter agreement assures that operation of Reclamation's Grand Coulee project and the Corps' Chief Joseph project are hydraulically coordinated with the five downstream projects owned by the Chelan, Douglas and Grant County Public Utility Districts. Similar to the Treaty, if Bonneville were to participate in an SMD scenario, Bonneville would need to be assured that these agreements would be treated as pre-Order No. 888 contracts with grandfathered

transmission rights, so that Bonneville could continue to meet all of its obligations under the PNCA and Hourly Coordination Agreement.

B. Limitations on The Commission's Authority Over Non-Jurisdictional Entities.

1. The Commission's Authority Over Non-Jurisdictional Entities Is Restricted.

The SMD NOPR indicates that the Commission would require ITPs to (1) assert authority over customers' generators, such as through resource adequacy requirements;¹⁸ (2) impose must offer requirements upon generators;¹⁹ and (3) impose penalties and refund requirements upon participants for improper behavior in ITP markets.²⁰ The Commission has no authority under the FPA to regulate decisions by governmental entities regarding operation of their generation or when to offer output from their generation nor does it have the authority to impose penalties or refunds with respect to governmental entities' commercial behavior. 16 U.S.C. §824e(a)(2000); *Nebraska Power Co.*, 5 FPC 8, 19 (1946) ("We think [Section 201(f) of the FPA] obviously discloses a Congressional intent to subject private enterprise alone to regulation by the Federal Power Commission, and not to extend that regulation to government and its instrumentalities.").

In addition, the Commission's authority to impose any of these requirements as a condition for obtaining transmission access from an ITP or for participating in ITP-run markets is questionable. *Richmond Power & Light v. FERC*, 574 F.2d 610, 620 (D.C. Cir. 1978) ("the Commission does have authority to impose requirements and conditions

¹⁸ SMD NOPR ¶ 474 *et seq.*

¹⁹ SMD NOPR ¶ 408.

²⁰ SMD NOPR ¶ 454.

‘necessary or appropriate to promote the policies’ of the Act [quoting *Elizabethtown Gas Co. v. FERC*, 575 F.2d 885, 888 (D.C. Cir. 1978)]. But such conditions may not contravene the Act . . . What the Commission is prohibited from doing directly it may not achieve by indirection.”) Conditioning governmental entities’ access to essential transmission facilities or critical markets upon their submission to Commission authority over their non-jurisdictional activities “has all the characteristics of regulation except the name . . . [H]owever beneficent the regulation, it is regulation nonetheless.” *Office of Consumers’ Counsel v. FERC*, 655 F.2d 1132, 1144 (1980). Rather than adopting a final rule that seeks to impose the Commission’s standard market design requirements upon the activities of non-jurisdictional entities, the Commission should assure that sufficient benefits flow from its final rule that non-jurisdictional entities will be persuaded to voluntarily negotiate their participation in those requirements.

2. The Commission’s Authority Is Limited Over Non-Jurisdictional Transmission Owners That Elect Not To Participate.

The Commission proposed in the SMD NOPR to continue the approach to reciprocity set forth in Order No. 888. SMD NOPR ¶ 384. The Commission also proposed to grandfather all reciprocity tariffs previously found to meet the comparability standards of Order No. 888. *Id.* The Commission requests comments on this proposal. *Id.*

Bonneville supports the Commission's proposal to continue allowing non-jurisdictional utilities to make voluntary safe-harbor filings in order to ensure that public utilities will not deny such non-jurisdictional utilities access on the basis of reciprocity. Bonneville also supports the Commission's proposal to grandfather existing reciprocity

tariffs. Bonneville seeks clarification, however, that no additional filing will be required for non-jurisdictional utilities with grandfathered tariffs to maintain their reciprocity status, and that the Commission's proposal to find in the SMD final rule that "rates, terms and conditions of transmission service and wholesale electric sales that do not comport with the regulations adopted by the final rule are unjust, unreasonable or unduly discriminatory"²¹ will not serve as a basis for public utilities to deny future requests for open access service from non-jurisdictional utilities with grandfathered reciprocity tariffs.

Section 201(f) of the FPA, 16 U.S.C. § 824b(2)(f), clearly enunciates that "no provision" of the FPA shall apply to or be deemed to include listed non-jurisdictional entities unless the FPA provision makes specific reference to them. The Commission cannot use its jurisdiction over jurisdictional entities to reach out and, as a practical matter, assert jurisdiction over the activities of non-jurisdictional entities. Consequently, the Commission should not attempt to require non-jurisdictional transmission owners that elect not to participate in an ITP to agree to additional rate restrictions or to implement generation, market design and resource adequacy components on their systems as a condition for obtaining access over an ITP's facilities. Rather, the Commission should pursue an approach that assures that sufficient benefits flow from its final rule so that non-jurisdictional entities will be persuaded to voluntarily implement those components.

Because of the multitude (Federal, State, municipal) of different statutory, regulatory, and other requirements that apply to different non-jurisdictional entities, the Commission should assure that its final rule affords ITPs and non-jurisdictional entities wide latitude to negotiate terms and conditions of participation that allow each non-jurisdictional to participate consistent with all requirements applicable to it. In addition,

²¹ SMD NOPR ¶ 580.

operating agreements between an ITP and interconnected non-jurisdictional transmission owners should not be used as a mechanism to impose operational requirements that either duplicate or exceed the reliability standards of the applicable reliability council.

C. Embedded Cost Pricing and Cost Shifts.

The Bonneville Administrator is required by statute to set rates for the transmission of electric power that recover the cost and expenses for providing the service, and at levels that are sufficient to assure repayment of the federal investment over a reasonable period. Bonneville is to establish such rates at levels that encourage the widest possible use of electric power at the lowest possible rates. Bonneville's transmission rates must also equitably allocate the costs of the federal transmission system between federal and non-federal power using the system. Northwest Power Act, 16 U.S.C. § 839e(a)(1) and (2). *See also*, Transmission System Act, 16 U.S.C. § 838g and 838h.

In the April 2001 Order reviewing the RTO West Stage 1 proposal, the Commission acknowledged that its jurisdiction over Bonneville ratemaking is limited. Unlike its authority to set the rates of public utilities under the FPA, the Commission explained that it does not have the power to modify Bonneville's rates. The Commission stated that the responsibility for developing rates in the first instance lies with Bonneville's Administrator in a public process to hear concerns about a Bonneville proposal. Once rates are approved by the Administrator, the rates are submitted to the Commission for approval or disapproval. April 2001 Order, 95 FERC ¶61,114, at 61,344.

The Commission found that concerns regarding whether Bonneville would be adequately protected if it participated in an RTO are concerns that are appropriately addressed in a proceeding that Bonneville initiates pursuant to its statutory requirements under the Northwest Power Act. *Id.* The Commission's September 2002 Order on the RTO West Stage 2 filing reiterated these findings. September 2002 Order, 100 FERC at ¶59. Thus, in any RTO or ITP scenario that Bonneville may voluntarily participate in, Bonneville expects that it would continue to set rates for transmission uses on the federal transmission system consistent with its statutory ratemaking standards.

In the RTO West filing, specific provisions were included in the Transmission Operating Agreement to preserve Bonneville's statutory ratemaking obligations. In implementing SMD, the Commission should therefore ensure that the ratemaking requirements for RTOs or ITPs under section 205 of the FPA can be reconciled with any participating non-jurisdictional utility's ratemaking requirements, both substantively and procedurally.

Bonneville had concerns that the proposals in the SMD NOPR for recovery of the embedded costs of the transmission system could have resulted in cost shifts. These concerns about cost shifts were addressed by the Commission in its approval of the RTO West Stage 2 pricing methodology. Specifically, that Order approved the company rate license plate rate design, including the company rate period of eight years as an acceptable transitional period;²² a transfer charge mechanism to continue to recover embedded costs from both LSE and non-LSE customers converting pre-existing contracts

²² September 2002 Order, 100 FERC ¶61,274 at ¶ 133.

to RTO West tariff service;²³; and the External Interface Access Fee and average cost charge for through-and-out service as a transitional pricing mechanism.²⁴ Bonneville appreciates the Commission's acceptance of these regional solutions, and urges the Commission to continue to allow for regional flexibility in these areas to minimize cost shifts, consistent with the RTO West Order.

D. Transmission Facilities That Must Be Under the Control of an ITP.

Facilities inclusion has been a contentious issue in the RTO West process. In the Stage 2 filing, the Filing Utilities proposed a facilities inclusion method, which placed facilities in certain classes, with some facilities in for all purposes, some in exclusively for pricing, some in for only control and not pricing, and others not in for any purpose. At the time of the filing, Bonneville requested that the Filing Utilities continue to work with regional stakeholders on alternative solutions that would provide regional transmission customers with assurance that they would be able to access the RTO and not be subject to additional costs.²⁵ These efforts were unsuccessful at that time and several regional stakeholders filed protests to the Stage 2 filing requesting that all facilities used for wholesale transaction be included in the RTO.²⁶ The other Filing Utilities are unable to commit to including all their facilities, because many of these facilities are dual function facilities that also serve retail load, and the various State Commissions will not support these Filing Utilities' participation in RTO West if these facilities are included.

²³ *Id.*

²⁴ September 2002 Order, 100 FERC ¶61,274 at ¶ 136.

²⁵ RTO West Stage 2 filing letter at 35.

²⁶ 100 FERC ¶ 61,274 at ¶56-70.

In the Stage 2 Order, the Commission asked the Filing Utilities to justify the classification of each facility necessary for wholesale transactions.²⁷

Since the issuance of the Commission's September 18 Order, Bonneville, the other Filing Utilities, and a group representing some of the regional stakeholders have been working on a settlement plan for facilities. These settlement discussions have made significant progress and Bonneville believes that a satisfactory resolution can be obtained. Bonneville is supporting this settlement plan effort and encourages the Commission to allow for a regional solution to the facilities inclusion issue. The parties to this settlement plan hope to file the plan with the Commission in the RTO West docket in the near future.

However, if the RTO West settlement plan is not completed and/or the Commission determines that the SMD facility inclusion rules should apply to the Northwest, Bonneville submits the following comment on the facilities inclusion rules proposed in the SMD NOPR.

Bonneville supports the Commission's approach to the facilities inclusion issue and supports the Commission's efforts to have ITPs control most of the facilities necessary for wholesale transactions. Bonneville and many of its customers have previously expressed concern that if transmission owners are not required to include transmission facilities necessary for wholesale transmission, wholesale customers will be exposed to pancaked rates. In such event, one of the primary benefits of an RTO or ITP will be lost.

Many of Bonneville's wholesale customers are public utility districts, municipalities, and other public customer load-serving entities (LSEs), located entirely

²⁷ *Id.* at ¶69-70.

within other Filing Utility control areas. If the facilities needed to reach these LSEs are not included in the RTO/ITP, for both purposes of control and pricing, these customers will be exposed to additional costs, because they will have to purchase additional transmission service to access the RTO/ITP network. For this reason Bonneville feels that the requirements for facilities inclusion must mandate that these facilities be included for operational control and pricing purposes.

In the SMD NOPR, the Commission noted, “the determination of which facilities are under the operational control of the Independent Transmission Provider does not dictate transmission pricing.” SMD NOPR ¶ 368. It is unclear whether the Commission intends to allow facilities to be included for purposes of operation and not transmission pricing, or whether the Commission’s intention is that all facilities under RTO/ITP control and other facilities necessary for wholesale transactions should be included in the RTO/ITP pricing. Bonneville requests clarification on this issue. Bonneville suggests that in order to achieve the benefit of eliminating pancake pricing, the Commission should require that all facilities under the operational control of the RTO/ITP be subject to RTO/ITP pricing as it relates to pricing for wholesale transmission use. It is essential that wholesale transmission customers not be exposed to multiple charges for the use of RTO/ITP facilities. If possible, the RTO/ITP pricing should extend to low voltage facilities, similar to the 34.5 kV threshold that Bonneville utilizes for its facilities, which are necessary to complete wholesale transactions, but are not under the control of the RTO/ITP.

The Commission proposes to use the seven-factor test established in Order No. 888 to determine if facilities should be in the RTO/ITP. Bonneville does not support the

use of the seven-factor test. The seven-factor test is unclear and the Commission has never stated how many of the factors must be met or to what degree the factors need to be satisfied. Under the seven-factor test, facilities inclusion would be ever-changeable by the transmission owners. In addition, affected parties would face uncertainty over the future status of facilities that are essential to ensure that they receive wholesale transmission service at the same prices, terms and conditions regardless of where they take service within the RTO/ITP area.

The Commission has requested comment on whether a bright line test, based on the facilities rating, should be used in lieu of the seven-factor test. Bonneville supports a bright line test, because it would provide all affected parties with certainty and it will be much easier for the ITP/RTO and the Commission to administer. Bonneville believes the bright line should state that all facilities rated 34.5 kV or higher are automatically included as transmission facilities for purposes of RTO/ITP operations and pricing for wholesale transmission service. For purposes of RTO West, Bonneville has indicated its intention to include all facilities rated 34.5 kV or higher, because Bonneville believes that leaving out any of these facilities could impact Available Transmission Capability (ATC) calculations and disadvantage wholesale customers. Due to the importance of ensuring that the RTO/ITP has operational control and pricing authority over facilities necessary for wholesale transactions, it is better to risk erring on the side of inclusiveness with a 34.5 kV bright line, than to set the bright line higher and subject some wholesale customers to a discriminatory situation.

The bright line test must be treated as a minimum requirement. If a transmission owner wants to include facilities rated lower than the bright line, there should be no

restriction on additional inclusions. Also, if the RTO/ITP determines that some facilities rated lower than the bright line are functionally essential for the transmission grid, the RTO/ITP must be able to include these facilities.

Bonneville supports the Commission's proposal to have all these facilities included and to allow the RTO/ITP to seek to exclude facilities that are not necessary for wholesale transactions. There may be some higher voltage facilities used exclusively for distribution purposes, which have no influence on grid operations or transfer capability. No exclusions should be permitted until the RTO/ITP is operational, because prior to RTO/ITP operations it will not be clear which lines are necessary to support RTO/ITP transactions. If exclusions are permitted, the burden of proving that facilities above the bright line are exclusively retail distribution facilities should fall on the RTO/ITP requesting the exclusion and the Commission should make the final determination. In order to avoid situations where third parties seek to have facilities excluded, an exclusion action should only take place if the transmission owner requests the RTO/ITP to exclude facilities owned by the transmission owner and the RTO/ITP concludes that the facility is not used for wholesale transactions and does not affect ATC.

The Commission also asks if regional variation for the bright line test is necessary. Bonneville believes that regional variation is necessary, because different voltages are used for varying purposes in different regions of the country. However, the bright line must be applied equally to all transmission owners that join the same RTO/ITP. Any variations allowed within an RTO/ITP would be unreasonable.

The Commission also seeks comment on how facilities not under RTO/ITP control should be treated for open access and rates. Bonneville believes that these

facilities should be available for wholesale transactions and the transmission customers that use these facilities should receive service comparable to the transmission owner's retail load. The transmission customer using these facilities should be able to access these facilities with the same schedule that is used for accessing RTO/ITP controlled facilities. This is the one stop shopping concept that was suggested in the RTO West Stage 2 filing. If necessary, the transmission customer should pay an additional low voltage charge, approved by the Commission, for use of these facilities. If the quality of service over these facilities is not comparable to the service provided to the transmission owners retail customers, the wholesale transmission customer should have a right to appeal to the RTO/ITP and to the Commission for relief.

Finally, Bonneville requests that the Commission clearly distinguish between transmission facilities that are part of the grid and high-voltage generation integration facilities, which are used to connect generation to the network. We believe this recommendation is consistent with the Commission's recommendation that the cost of these facilities should be directly assigned to the generators.²⁸ This issue is a concern, because in some cases these facilities exceed the bright line test for voltage, and when these facilities are connected to federal generation Bonneville has statutory concerns with non-federal control over federal generation if the facilities are under the operational control of the RTO/ITP (*See* section 6 above).

²⁸ SMD NOPR ¶ 194, "Likewise, interconnection facilities are non-controversial; there is general agreement that these facilities should be directly assigned to the interconnecting generator." *See also*, *Kentucky Utilities Company*, 85 FERC ¶61,274 at 62,111-13 (1998).

E. Preexisting Contract Rights.

Bonneville, in conjunction with the other RTO West Filing Utilities, has placed a considerable amount of reliance in developing the RTO West Stage 2 filing on the premise that pre-existing contracts (both pre-Order No. 888 and those under Bonneville's OATT) would be preserved, if the transmission customer so desired, and that conversion to RTO West service would be voluntary. This understanding was fundamental to the development of the RTO West Stage 2 filing. Bonneville appreciates that the Commission, in its September 2002 Order, found this concept satisfactory.²⁹

The Commission, in the SMD NOPR, proposes to fundamentally alter the existing Order No. 888 OATT to a new tariff consisting of a single type of service called "Network Access Service." The proposal would require all OATT service to be provided under the Network Access Tariff, after a four-year transition period. Further, the Commission proposes to continue its grandfathered treatment of pre-Order No. 888 contracts, and requires only post-Order No. 888 OATT contracts to convert to Network Access Service.

Bonneville wishes to emphasize the importance of the voluntary conversion concept contained in the RTO West Stage 2 filing, and requests that any SMD final rule expressly permit this regional solution.³⁰

²⁹ September 2002 Order, 100 FERC ¶ 61274 at ¶103-06 .

³⁰ Voluntary conversion to the Network Access Tariff is of special importance to Bonneville at this time. Bonneville is currently engaging the Pacific Northwest utility community in region-wide discussions regarding future long-term federal power sales (*e.g.*, post-2006). A natural outgrowth of these discussions pertains to transmission services necessary to support the power sales transactions. Many utilities, primarily publicly-owned and/or cooperatives, are seeking long-term certainty with regard to transmission service terms and conditions that will run coextensively with prospective power sales agreements. Most, if not all, of these utilities are currently provided transmission service under Bonneville's OATT. Bonneville is therefore committing to examine the possibility of providing long-term certainty to all OATT-served customers through a modification to existing service agreements, (including certainty with respect to

The Commission requests comment on whether scheduling priority should be provided to CRR holders. SMD NOPR ¶ 159. There are a number of important regional characteristics that may make scheduling priority more or less appropriate for a given RTO/ITP. To the extent transmission providers must continue to meet pre-existing transmission contracts that provided for scheduling priority, a region might find it critical that the RTO/ITP honor those rights by allowing scheduling priority on the related CRRs. Different regions of the country may also face greater or lesser frequency of conditions that require curtailment – those with more frequent curtailments may need to provide greater certainty to CRR holders to facilitate commerce and may wish to offer scheduling priority. Conversely, CRR holders in regions where the injection resources fluctuate frequently behind a common constraint may have difficulty exactly matching the scheduled injection point with the CRR injection point and may prefer to treat all schedules equally. Because these issues and others may have greater or lesser relevance in different parts of the country Bonneville requests that the Commission allow regional deference on this issue.

F. Congestion Management and Hydro Operations.

The Commission requests comment on whether different market designs can be in place in the Northwest and the rest of the West, and comment on whether the entire West must have a common set of market rules to eliminate seams and prevent manipulation. SMD NOPR ¶ 219. One of the major concerns of the RTO West Filing Utilities has been to assure that the application of congestion management principles to achieve greater

comparability). Adoption of any proposed service agreement modifications will be contingent on such modifications meeting the Commission's current reciprocity standards.

transmission efficiency does not frustrate or preclude the value that hydro-thermal coordination and hydro efficiency have historically provided.

A voluntary inc/dec congestion management approach is one of the features the RTO West Filing Utilities arrived at to further this goal by allowing decentralized unit commitment and dispatch. Bonneville appreciates the Commission's approval of this portion of the RTO West Stage 2 filing³¹ and believes these are important regional differences that the Commission should continue to allow under SMD. Bonneville and the other RTO West Filing Utilities are working within the Seams Steering Group structure to assure that any seams issues created by these regional differences are either eliminated or sufficiently manageable.

Bonneville also appreciates the Commission's willingness to work with regions to develop CRRs that recognize contingent supplies. SMD NOPR ¶ 220. With receipt point-to-delivery point CRRs, customers using Network Access Service with otherwise sufficient CRRs would lose congestion protection to the extent they change otherwise protected schedules to adjust to hydro conditions. CRRs that recognize these contingent conditions may be highly desirable in the Northwest.

A similar concern with regard to existing transmission rights was addressed in the RTO West Stage 2 filing. As Bonneville and the other RTO Filing Utilities noted to the Commission at the Boise, Idaho technical conference on August 22, 2002, the scheduling flexibility of existing contract rights is highly valued in the Northwest because of the operational uncertainties inherent in the operation of hydro resources. In the RTO West Stage 2 proposal the Filing Utilities proposed, and the Commission approved, the

³¹ September 2002 Order, 100 FERC ¶ 61274 at ¶167-72.

protection of these rights in the form of Cataloged Transmission Rights.³² A single feasible dispatch of rights as proposed in the SMD NOPR³³ would not preserve this contingent availability. Bonneville appreciates the Commission's recognition and approval of this regional difference and requests that the Commission clarify that the SMD final rule would allow for such differences.

G. Market Monitoring and Mitigation.

The RTO West Filing Utilities have been exploring how opportunity cost can be fully incorporated into AMP-type bid caps to allow participation by hydroelectric generation. Since hydro generation represents such a large portion of the Northwest's electric supply, Bonneville is hopeful that these efforts will be successful. As the market design for RTO West is further developed, we hope to be able to update the Commission on our progress.

The Commission requests comment on approaches to establishing bid caps for energy bids. SMD NOPR ¶ 422. With regard to hydropower, the Commission states that hydro units have a natural incentive to use limited energy supplies during periods of high prices. *Id.* The Commission goes on to state "[a]t all other times, hydropower units, in particular, should be offering all available capacity as operating reserves . . ." and that "it appears unnecessary to cap energy bids from such resources so long as their bids to provide operating reserves are always in-merit" *Id.*

The complex and dynamic nature of non-power constraints on the FCRPS makes the determination of "available capacity" problematic. In addition to the typical measures that constrain thermal projects and less regulated hydropower, such as ramp

³² September 2002 Order, 100 FERC ¶ 61274 at ¶103-06.

³³ SMD NOPR ¶ 377.

rate and minimum and maximum reservoir elevation, the FCRPS must serve a number of non-power purposes. The available capacity at a project can be greatly influenced by non-power obligations not only in that hour, but also by the implications of generation on obligations in future hours, on obligations at upstream projects (*e.g.*, changes in forebay levels impact upstream tailwater constraints) and on obligations at downstream projects (*e.g.*, exceeding mandatory flow levels in a future hour).

Managing these constraints requires Bonneville to forecast these effects, along with the other variables inherent in operating a hydro system, and to make an ongoing assessment of available capacity based on the agency's risk tolerance toward violating those constraints. This risk tolerance is not an economic measure, but an assessment of the tradeoffs involved in meeting multiple public policy objectives.

Bonneville requests that the Commission clarify that under SMD neither the market monitor nor the ITP would be empowered to either hinder or penalize entities for carrying out legitimate non-power responsibilities as determined by the responsible governmental agencies. Even in cases of system emergencies, Bonneville's current agreements preserve these rights. Bonneville has historically been able to maintain these rights while meeting the reliability needs of the grid.

Bonneville appreciates the Commission's suggestion of a "safe harbor" for hydro operators who coordinate outages with the ITP and share information with regard to system operations. SMD NOPR ¶ 423. While the above complexities and uncertainty with regard to available capacity apply to monthly or seasonal planning, Bonneville fully intends to share information about how system constraints affect the calculation and determination of available capacity.

The Commission requests comments on the determination of an appropriate value for a damage control price cap. SMD NOPR ¶ 414. While the Commission proposes to exempt certain suppliers with high costs from the damage control cap³⁴, Bonneville suggests that the damage control cap be set and periodically evaluated to ensure that the cap encompasses all generation and demand response that the ITP reasonably expects may be required for the upcoming period. This is particularly important in regions with significant levels of fuel-limited resources, such as the Pacific Northwest, where the cost of replacement power drives the opportunity cost of production. If a fuel-limited supplier expects that replacement cost will exceed the damage control cap, that supplier will be incentivized to withhold fuel rather than offer it into the market to protect itself from exposure to the over-cap resource.

III. CONCLUSION AND RESERVATION OF RIGHTS.

As discussed above, Bonneville encourages the Commission to allow flexibility with regard to provisions that interfere with a non-jurisdictional utility's statutory obligations in its final rule on SMD. Bonneville appreciates the Commission's statements regarding regional differences, and urges the Commission to continue to acknowledge the need for and propriety of regional variation in its final rule on SMD. Bonneville is also appreciative of the Commission's efforts to accommodate its unique requirements within the RTO West orders. Bonneville remains committed to working with the Commission and others to develop RTO West so that it can provide a better future for Northwest consumers and achieve the Commission's overarching goals of assuring sufficient infrastructure, protecting against market manipulation and abuse, and achieving reliable

³⁴ SMD NOPR ¶ 413.

and low cost service to consumers. Bonneville reserves the right to address and comment on all issues related to western market design in this proceeding.

Dated this 28th day of February 2003.

Respectfully Submitted,

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Submission Contents

SMDcomments2_28_03.doc	
SMDcomments2_28_03.doc.....	1-42