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February 21, 2012

VIA BPA WEBSITE
Mr. Elliot Mainzer
Executive Vice-President, Corporate Strategy
Mr. Steve Oliver
Vice-President, Generation Asset Management
Bonneville Power Administration
915 N.E. 11th Avenue
Portland, Oregon 97232
http://www.bpa.gov/applications/publiccomments/OpenCommentListing.aspx

Re: BPA's Proposed Oversupply Management Protocol

Dear Mr. Mainzer and Mr. Oliver:

On February 6, 2012, BPA published its proposed, draft Attachment P to its Open-Access Transmission Tariff (OATT). Proposed Attachment P would be a new schedule in the OATT and would set out the "Oversupply Management Protocol" through which BPA proposes to displace non-federal generation in its Balancing Authority Area (BA) in oversupply conditions. Oversupply conditions occur when the combined power output from the federal hydroelectric dams on the Columbia and Snake Rivers and from non-federal variable generation exceeds the available load *and* when federal generation must be increased or maintained to comply with legal and environmental standards. In oversupply conditions, federal generation cannot be reduced, and may have to increase, when water cannot be spilled at federal dams on the Columbia and Snake Rivers without violating total dissolved gas (TDG) standards. To avoid spilling water that cannot be impounded behind a dam, water must be run through the turbines to avoid gas entrainment, which causes TDG levels to rise. Water that is run through turbines necessarily results in electric generation. The TDG standards are mandated pursuant to the Clean Water Act to protect threatened and endangered fish species listed under the Endangered Species Act.

BPA must balance load and generation to maintain reliability in a power system containing two dominant sets of resources. One set of resources is required to generate by court-ordered limitations on spill to protect endangered fish species, and the other is motivated to generate by the desire to collect payments for federal production-based tax incentives and the value of renewable energy credits created by state statutes and regulations. In oversupply conditions BPA must order non-federal generators within the BPA balancing authority (BA) to reduce their generation and replace their generation output with federal hydropower. Most generation will purchase very low-cost federal hydropower and reduce their generation or shut off their generators before BPA has to issue such orders. The problem that BPA must address is that, when it faces lack-of-market spill conditions and must increase generation at the federal dams to avoid violations of TDG limits, non-federal renewable generators will not voluntarily

reduce generation in advance because to do so will cause them to forego payments for federal and state incentives tied to plant output.

Legal Considerations

BPA's stated purpose in making its proposal is to comply with the order the Federal Energy Regulatory Commission (FERC or the Commission) issued on December 7, 2011 in *Iberdrola Renewables, Inc. v. Bonneville Power Admin*., 137 FERC ¶ 61,185 (2011) (the order or December 7 order). BPA has filed a request for clarification and, in the alternative, a request for rehearing of that order. But while those requests are pending, BPA intends to comply with the order by FERC's deadline of March 6, 2012. BPA has requested public comment on the proposed Attachment P in advance of filing it with FERC and PPC is providing these comments solely in response to BPA's request. Additionally, PPC understands based on BPA's proposal that Attachment P is a short-term proposal and is not intended to be a long-term solution. PPC submits these comments on the basis of that understanding.

Out of serious concern regarding possible impacts to its members and their ratepayers, PPC has also filed a request for rehearing of FERC's December 7 order, and specifically, of the Commission's findings that support the exercise of its authority under section 211A of the Federal Power Act. The Commission did not develop a record that was necessary for it to exercise its jurisdiction under section 211A and failed to reconcile its exercise of authority under section 211A with BPA's other obligations including those under the Endangered Species Act. It erred in the application of section 211A and in concluding that BPA's 2011 Interim Environmental Redispatch and Negative Pricing Policies ("Interim ER") mandated transmission service that was non-comparable and unduly discriminatory and preferential. The record of the proceeding demonstrated that the Commission failed to properly evaluate whether the transmission service BPA provided to the Complainants was or was not comparable to the transmission service BPA provided to itself. Had the Commission engaged in the proper analysis, it would have concluded that the evidence in the record failed to establish that the Interim ER was unduly discriminatory and preferential and denied the Complaint. Instead, the Commission ignored legally grounded and factually supported explanations of BPA's actions, exercised its jurisdiction where it should not have and ordered a remedy that has no rational connection to the issue before it. In doing so, the Commission acted in a manner that was arbitrary and capricious and issued an order that was not warranted and was not supported by substantial evidence. For those reasons, PPC sought rehearing of the Commission's December 7 order and is prepared to take the legal actions necessary to continue to protect its members from this and other illegitimate and unwarranted assertions of authority by FERC.

PPC hereby preserves all the arguments and objections it made on the record in *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, FERC Docket No. EL11-44. Nothing contained in these comments shall be construed as a waiver or an intention to waive those arguments and objections.

In addition, PPC has intervened in all the cases challenging the Interim ER in the Ninth Circuit Court of Appeals[1] and intends to brief its position in accordance with the briefing schedule established by the court. PPC reserves the right to make any and all arguments it deems necessary to support its position before the Ninth Circuit Court of Appeals and nothing contained in these comments shall be construed as a waiver or an intention to waive any of those arguments. Finally, it is PPC's understanding based on BPA's representations that BPA is continuing to develop and refine its proposed Attachment P and many important details may not emerge and be fully understood until BPA conducts a formal rate case. Therefore, PPC also reserves the right to make any and all arguments it deems necessary to support its position in the BPA rate case, and nothing contained in these comments shall constrain its future ability to raise any arguments or objections, including those not specifically expressed here.

PPC's Understanding of BPA's Proposal and General Comments

The spring run-off season may begin as early as next month. During run-off, snowmelt and additional rain will cause river and flow levels to rise significantly and drive increased generation. BPA must have an operational plan in place that will permit it to manage generation and balance the system. After months of discussions, the group of industry representatives gathered by BPA was not able to achieve a settlement of the issues. Nevertheless, BPA was faced with the impetus to develop and forward a proposal for submission to FERC.

The proposal that BPA has made as set out in Attachment P, and in very broad outline, is that BPA would –

- require generators in its BA to provide their cost of displacement,
- use that data to implement a "least-cost" displacement of generators in its BA under oversupply conditions, providing those generators with free federal hydropower,
- compensate generators in accordance with their cost information, subject to audit,
- and pay compensation using BPA's financial reserves to those generators for costs incurred during 2012.

At some point in the near future, BPA proposes to have a rate case pursuant to section 7(i) of the Northwest Power Act. At this time, BPA expects that the initial proposal for that case will be to establish rates that replenish financial reserves used to pay costs in 2012. Those rates, BPA suggests, would also recover future costs of compensation incurred pursuant to Attachment P in FY 2013-15. BPA states that it expects to propose dividing the costs of oversupply management between users of the federal power system and producers variable generation in a ratio of roughly 50 percent each.

PPC recognizes that BPA is in a difficult situation, and is required to operate the power system in compliance with reliability requirements and with court-ordered environmental limitations on TDG levels. We appreciate the time and effort that BPA staff has put into

[1] The consolidated docket in *Cannon Power Group, LLC, et. al. v. Bonneville Power Admin.*, Case No. 11-72059 (also includes 11-72167, 11-72305, 11-72310, 11-72311, 11-72312, 11-72315, 11-72319, 11-72328, and 11-72331).

searching for reasonable solutions. Given the time constraints, PPC acknowledges that BPA needs a stop-gap proposal for the 2012 run-off period. The comments below address various aspects of BPA's proposal with the intention of improving the operation of the proposal in CY 2012 and preventing fraud if the proposal is implemented. We understand that compensation, if any is paid in 2012, would be paid out of transmission financial reserves.

Specific Comments

A. *Definitions of "Generator" and "Displacement Hour"*

Attachment P sets out requirements applicable to "Generators" without defining the term. The provisions imply that Generator includes any generating facility in the BPA BA. Attachment P must contain an express definition of the term. The definition should specify that Generator means plant-level generation. It should not mean individual turbines, or strings of turbines, in a wind plant or, at the other end of the spectrum, a corporate entity that owns multiple plants. A definition for Generator that clarifies this point is important for purposes of implementing the audit provisions, determining the costs for which compensation might be owned, and determining scheduled amounts. For example, netting or otherwise combining individual wind plant costs or schedules should not be permitted.

The hours for which compensation may be provided should be also defined in order to prevent disputes over the hours for which displacement was made. In past oversupply events, generators asserted that they were curtailed in hours in which displacement was not instructed. "Displacement Hour" must be defined and should mean those hours in which, pursuant to the terms and conditions of the OATT section referencing Attachment P[2] and Attachment P, BPA is providing free federal power and the Generator has reduced its generation in a commensurate amount to the level of generation ordered by BPA, exclusive of hours in which the plant is ramping to the instructed output level or back to its scheduled output. That term should be used to set the basis for compensation.

B. *Required Generator Information*

In regard to the information required in sections 3 and 6, BPA needs to better define its requirements and the options open to Generators.

In section 3, Generators are required to provide their cost of displacement once a year. In 2012, the information would be submitted by April 1, 2012. That information in 2012 is subject to audit after the run-off season for purposes of ease of administration. In subsequent years, were Attachment P to remain in effect, this information must be submitted by February 1st and audits would occur prior to the run-off season. Some have suggested that Generators be permitted to change the cost of displacement submitted to BPA as marketing conditions change

[2] BPA staff stated that it intends to insert a new provision into its OATT with the proposed, language set out in the opening paragraph of the proposed Attachment P, published on February 6th. BPA has not assigned that section a number but the suggested language is intended to reference that provision.

throughout the year. This is problematic. Generators could circumvent the protections provided by the audit process and change costs without any prospect of oversight. If BPA is going to permit changes, those changes should be subject to audit outside of any fixed cap on audits, if one is adopted, and outside of the random selection process. BPA should be able to have any changed information audited at any time after it is submitted.

In section 6, BPA should better define the limits that Generators may place on their displacement and the reasons for the limits. Generators should be exempted from displacement due to their providing balancing capacity for the BPA or any other BA. Also, Generators should be able to specify their minimum displacement time if they are needed to meet peak the following day or have operating restrictions. Generators that have operating requirements that must be completed prior to start-up also need to be accommodated.

C. *Costs and Compensation*

BPA proposes to award costs to Generators based on the date of their interconnection to the BPA BA. Generators interconnected on or before March 6, 2012, would receive compensation equal to 100% of their submitted (or audited) costs multiplied by the number of MWhs of displacement. Generators interconnected after March 6, 2012, would receive less compensation for each hour of displacement under the BPA proposal.

As an initial matter, BPA appears to intend that only the costs described in section 3(a)(i)-(iii) would be components of the cost of displacement on which compensation will be based. In order to achieve this, the language needs to signal a closed set of costs; by using "shall include" to introduce the list, the list is potentially an open list to which other types of costs may be added. We strongly suggest that BPA replace "shall include" with "shall be limited to."

In addition, the provision of Production Tax Credits (PTCs) to wind generators represents national policy. Currently, PTCs are paid to Generators by the Treasury and that should continue to be the case. If BPA chooses to make payments to wind generators in lieu of PTC payments, BPA should negotiate an agreement with Treasury where BPA would receive credits from Treasury equal to the amount of the in-lieu payments, which could be applied to BPA's repayment obligation to Treasury.

1. *Existing Generators Interconnected to the BPA BA On or Before March 6*

Section 3 needs to distinguish between the cost information that a renewable Generator must provide and those that a non-renewable, thermal Generator must provide. BPA needs to be clear about and to refine its estimation the value of Renewable Energy Credits (RECs). BPA seems to intend that non-renewable thermal and small hydro generation would have zero costs of displacement. It seems likely that this is the case, but BPA should include language that spells out that any Generator that has no cost in any of the three categories set out in section 3(a)(i)-(iii) of Attachment P should indicate that its cost of displacement is zero.[3]

[3] For Generators that are delivered on NT transmission service as a Designated Network Resource, Generators should be allowed to note in their cost of displacement submission that a

With regard to the calculation of the value of RECs in section 3(a)(ii)(B), BPA does not outline which states' requirements for RECs will be considered, whether it will determine a REC value for each type of REC eligible in each state and, if so, how those values are weighted to create an average. This should be clarified in Attachment P. Also, in section 3(a)(ii)(B)(iii) BPA proposes to calculate REC values using brokers' REC quotes that are for facilities with the same or later commercial operation date as the Generator. We believe that, as stated, this proposal is administratively difficult and may lead to REC price data that are not accurate. The shortage of comparable quotes for later projects could result in higher prices being quoted for those later projects. Moreover, REC prices for a wind project built in 2007 compared to 2010 should not differ if they are selling into the same market. The provision should recognize that some older Generators are ineligible if they were built prior to a date set out in state statutes or regulations but should not make the date an issue in REC value in other respects.

2. *Generators Interconnecting to the BPA BA After March 6*

BPA's proposed treatment of these Generators is probably the single-most important aspect of the BPA proposal, and it comes up very short of the mark. BPA's ability to meet its environmental requirements and to manage the generation at the federal dams will be increasingly challenged by a growing fleet of variable generation in its BA. BPA's ability to displace that generation in oversupply conditions while minimizing the incremental costs that this generation places on the federal power system is critical.

To reach the goal of placing the incremental costs of managing oversupply on the new generation that chooses to locate in the BPA BA, BPA must use Attachment P to send the market the correct incentives. Purchasers and Generators of new renewable energy sales agreements for projects interconnected after March 6 should receive an unambiguous incentive to include provisions permitting without penalty the substitution of plant output with free federal hydropower under oversupply conditions. BPA has proposed to limit the compensation owed generation interconnecting after March 6, 2012, to between zero and 50% of the value of the RECs and Production Tax Credits (PTCs) that were not created due to displacement. BPA seeks comments on the percentage of REC and PTC values that should be reimbursed. That percentage for these Generators choosing to interconnect with the BPA system should be zero.

New Generators that have not interconnected have a greater ability to allocate their costs either to themselves or their power customers and to account for this in the energy price. New Generators still in the planning stage have even greater latitude in the selection of tax incentives and other investment decisions. In addition, there is currently a lull in the development of new variable generation in the Northwest due to the poor economy and depressed load levels. During this lull, fewer planned generators are moving forward to interconnect with the BPA BA than might have otherwise been expected. This is an opportune moment for BPA to set a rule that new Generators will not be compensated for displacement.

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specified amount of plant output is a Designated Network Resource and BPA should agree in Attachment P that Generators providing that information, and the holder of the NT contract, are not required to replace that resource for the hours of displacement by federal hydropower.

These Generators should take affirmative action to avoid future economic losses, without disrupting significant amounts of new investment, tax incentives, or power sales agreements.

Spreading these incremental costs to the power system at large causes parties not responsible for creating those incremental costs to bear them. Allocating the incremental costs of oversupply management and displacement directly to each Generator, which can control their incurrence to a large degree, is not just more equitable, it also makes the costs visible to purchasers and makes the costs and benefits of the transaction more transparent. This is a desirable outcome both from a social and regulatory perspective.

BPA's proposal does not create a fully adequate price signal to planned generation that the new generation will not be able to spread its costs to the power system in the future and that it should take steps now to allocate those costs in its commercial arrangements, tax subsidy choices and investments. Attachment P would treat incremental generation the same, whether it is added next month or two years from now. By proposing a level of compensation to incremental generation going forward, BPA would create the expectation that compensation should be paid by the power system at large in some amount, which once set is unlikely to diminish and may increase.

BPA should establish clear and definitive expectations among planned Generators that they must allocate the risk of loss of RECs and PTCs in their power contracts, select tax incentives not predicated on plant output, and ensure that their power sales agreements permit the delivery of federal hydropower under conditions of oversupply without the levy of a contractual penalty on the generator. To that end, BPA should "stop digging the hole deeper" and establish that Generators interconnecting after March 6, 2012 will not be compensated for RECs or PTCs, nor will they be asked to share the costs of oversupply management.

D. *Audits*

BPA proposes to compensate displaced Generators for the value of their PTCs, RECs and revenue lost due to the substitution of federal hydropower, including penalties for failure to generate. BPA would calculate the compensation by multiplying the Generators cost of displacement by the number of megawatt-hours displaced. BPA proposes to audit the costs submitted by Generators but not the scheduled amounts of plant output, on which calculation of the megawatt-hour component is based. We believe that BPA's audit procedures are inadequate and must be altered in several regards in order to be effective at deterring fraud.

First, the audit procedures in section 3(c) should specify that only those Generators seeking compensation (*i.e.*, those submitting a non-zero displacement cost) should be subject to audit. Section 3(c) does not state this and should do so expressly in the first paragraph of the subsection.

Second, BPA should reserve the right to audit up to 100% of Generators seeking compensation if it so chooses. This will give BPA the flexibility to audit more generators, should the need arise, along with the flexibility to audit only a few. In addition, any Generator that has been audited and found to have misstated its cost of displacement in its favor should be

automatically audited for the subsequent three years, and BPA should have the option to audit any previously submitted cost of displacement, and those audits should not be included as audits under a fixed cap, if one is adopted.

Third, the auditor will need Generators to provide certain information and to cooperate in the audit. To that end, Attachment P should provide that Generators selected for audits are required to provide, at a minimum – all contracts for sale of power from the Generator; all relevant IRS information about the nature and status of any tax incentives for the plant; all relevant information about RECs sold separately from, or bundled with, the power generated by the Generator; and any other information that the auditor requests that is reasonably relevant and desirable. Also, section 3(c) should require Generators to cooperate fully with the auditor and respond promptly to all requests for information or assistance. The section should provide that a Generator will forfeit an amount of compensation equal to up to 50% of the compensation that might have been correctly provided pursuant to Attachment P as recommended by the auditor and on a clear demonstration that the Generator unreasonably refused to provide properly requested information or to cooperate or assist with the auditor.

Fourth, the auditor should be empowered to modify the submitted cost of displacement if the auditor determines in its best judgment and based on contracts and pricing information that a cost of displacement submitted by a Generator is too high or too low. This is clearly implied by the language in section 3(c), but where section 3(c)(i) and (ii) state that compensation will be based on audited costs, no express authority of the auditor to determine the correct cost of displacement is provided. For clarity and to reduce disputes, we suggest that this authority be added.

Most importantly, Generators' scheduled amounts of power during Displacement Hours should be separately subject to audit. The amount of scheduled power from the plant is a key component in the calculation of both compensation and penalties. Yet, the Generator is allowed to schedule whatever amount it sees fit without oversight or the opportunity for correction. To discourage inflation or fraud in the submission of schedules during Displacement Hours, BPA should –

- Require that each Generator, which is seeking compensation, submit the power curve(s) for its plant when it submits its cost of displacement. Each Generator should also be given the opportunity to submit its plant (or turbine) level meteorological data for Displacement Hours promptly after the oversupply event.
- The auditor or BPA Transmission Services' Technical Operations staff would then calculate the expected actual plant output for each hour based on the Generator's power curve(s) and available meteorological data.
- Compensation for a Generator for each hour will be calculated by multiplying the Generator's cost of displacement times the difference between the calculated expected actual plant output and the instructed generation level for that plant for the hour.

The provision should also provide that the auditor may review the results of the calculation of the megawatt-hours of expected plant output to determine whether either the power curve(s) or meteorological data was reasonable or may have been materially misstated. If the auditor

finds that the data was materially misstated, the auditor should be given express authority to reduce the expected plant output number to the calculated expected amount. We recognize that this applies a different metric to audited Generators than to other Generators, which would be compensated based on their scheduled output. Perhaps it would be better to base all compensation on a calculated expected plant output to make the process transparent, but we understand that this may require automation that may not be available for the 2012 run-off period.

E. *Penalty for Misstating Costs or Power Curve or Meteorological Information*

Section 3(c)(iii) states that "[i]f the costs of displacement a Generator submits exceed the audited costs by more than $5/MWH, Generator shall pay Transmission Provider a penalty of the difference between the costs Generator submitted and audited costs, multiplied by 1,000." This results in a penalty that is wholly insufficient to discourage fraud. For example, if a Generator were to submit a cost of displacement of $35/MWh and the auditor were to find a cost of displacement of $25/MWh it would pay a penalty of $10,000. If the Generators were to receive compensation for 2,000 MWh of displacement, it would be entitled to a payment of $70,000 if the$35/MWh cost were used and $50,000 if it were caught and the $25/MWh were applied. Given that audits may be performed only for a small fraction of the Generators in any year under the proposed Attachment P, this is a woefully inadequate penalty to make up for the small risk of audit and the large reward of misstating the cost.

BPA should impose a penalty that both causes disgorgement of profits and penalizes the Generator in the event that the submitted price exceeds the audited price. We suggest that BPA impose a penalty calculated as follows: [(submitted price in $/MWh - audited price in $/MWh) x number of MWh of displacement] + ($500 x number of MWh of displacement).

F. *Cost Allocation and Rate Issues*

As they relate to the proposal itself for Attachment P, the issues of cost causation, cost allocation and recovery of costs through rates are outside the scope of this proposal and the filing at FERC. FERC will have the opportunity to review the rates when they are filed subsequent to a rate case conducted pursuant to the Northwest Power Act. Because cost causation, allocation and recovery are outside the purview of this proposal, we will not provide comments on them at this time beyond what we have already noted in the above comments.

G. *Oversupply Management Protocol Provision in the Body of the OATT*

The opening paragraph of the proposed Attachment P document, published on February 6th, contains language referring to Attachment P and establishing the application of the proposed schedule to all non-federal transmission service customers with generation in the BPA BA. The paragraph reads as follows –

This Oversupply Management Protocol will apply when Transmission Provider

> must displace non-federal generation in its Control Area with generation from the federal hydro system in order to mitigate total dissolved gas levels in the Columbia River. When the total dissolved gas levels measured by the U.S. Army Corps of Engineers exceed Oregon and Washington water quality standards at projects that are spilling past unloaded turbines, the Transmission Provider has the right to initiate the Oversupply Management Protocol in Attachment P. All non-Federal Transmission Customers with generation in Transmission Provider's Control Area and all non-Federal Generators in Transmission Provider's Control Area shall submit information to the Transmission Provider and follow Transmission Provider's directions to reduce generation in accordance with the Oversupply Management Protocol in Attachment P. Attachment P shall not apply to curtailments under sections 13.6, 14.7, or 33.

PPC understands that this paragraph is intended to be a new provision in the OATT that would be applicable to all transmission, interconnection and ancillary service agreements and services that BPA provides pursuant to the OATT. In that event we suggest the following revisions to the language –

- In the first sentence insert "determines that it" before "must displace".
- In the second sentence insert "at its sole discretion" before "to initiate the".
- In the third sentence insert "that own or operate" and strike "with" before "generation in the Transmission Provider's" (first occurrence).
- In the third sentence insert "that are parties to generation interconnection agreements with Transmission Provider and are interconnected with" and strike "in" before "Transmission Provider's Control Area" (second occurrence).
- In the last sentence insert "or under DSO 216, as amended from time to time or its successor(s)" after "33" and before the period.

We believe that these revisions will allow BPA to reach all Generators in its BA, clarify its rights to invoke the use of Attachment P and thus reduce disputes.

H. *Use of CGS Forward Displacement to Mitigate the Use of Attachment P*

The Columbia Generating Station (CGS) is a critical resource in BPA's resource portfolio in terms of its contribution to base load power and to meeting seasonal peak loads. As a result, we believe that it is necessary to comment on proposals that focus on reducing CGS's generation levels prior to invoking displacement pursuant to Attachment P. Energy Northwest, CGS's owner and operator, has the right and the expertise to determine what level of minimum generation it can operate to and the cycling it can implement without undertaking significant risk to the physical plant components in the near- and long-term. While we appreciate BPA's interest in investigating the opinions of the national nuclear energy industry in this regard, the decision in the end must remain with Energy Northwest management.

The suggestion some have made that CGS move to annual refueling in order to benefit non-federal generation is not on the table. Power customers pick up the costs of outages and O&M costs at CGS. Annual refueling outages would do more harm that good. These outages

would substantially increase the costs of running CGS, result in significantly increased radiation doses to workers, increase stresses on plant equipment, and make it more difficult to run the plant.

Conclusion

We appreciate the enormous amount of work invested in this issue over the past year by all parties involved. PPC and its members look forward to future discussions of these issues and the long-term solutions to oversupply. Thank you for the opportunity to comment.

Sincerely,

Nancy Baker
Senior Policy Analyst

cc: PPC Executive Committee Members and Alternates
PPC Members