

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

_____)	
Iberdrola Renewables, Inc., et al.)	
)	
Complainants,)	
)	
v.)	Docket No. EL11-44-000
)	
Bonneville Power Administration)	
)	
Respondent.)	
_____)	

**MOTION TO INTERVENE OF
PUBLIC POWER COUNCIL
and
PROTEST TO COMPLAINANTS' REQUEST
FOR FAST TRACK PROCESSING**

I. MOTION TO INTERVENE

Pursuant to Rules 211 and 214¹ of the Federal Energy Regulatory Commission (Commission) Rules of Practice and Procedure, the Public Power Council (PPC) respectfully moves to intervene to become a party in the above-captioned proceeding. PPC reserves the right to file substantive comments in response to the issues raised in the Complaint in accordance with the deadline established by the Commission in the Notice of Complaint issued on June 15, 2011.

II. DESCRIPTION OF INTERVENOR

PPC is a non-profit trade organization that represents the common interests of approximately 100 consumer-owned electric utilities in the Pacific Northwest that are preference

¹ 18 C.F.R. §§385.211, 214.

customers of the Bonneville Power Administration (BPA). PPC's members will be directly affected by the outcome of this proceeding because they purchase power and transmission from BPA at the rates set by BPA. Many of PPC's members also purchase wind and other renewable energy from generators located in BPA's balancing authority area and deliver that energy to their loads across BPA's transmission system. Some PPC members also own wind and other renewable generation in the BPA's balancing authority area and elsewhere in the Northwest. If the Commission were to order BPA to pay the requested compensation to the Complainants, BPA would pass on those costs to its customers, including PPC's members, through future rate proceedings. Any order of compensation would also directly affect PPC's members who purchase or own renewable resources. Therefore, PPC has a direct and substantial interest in this proceeding that cannot be adequately represented by any other party.

III. COMMUNICATIONS

All pleadings, materials and other communications regarding this motion and this proceeding in general should be served on the following individuals:

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IV. PROTEST TO FAST TRACK PROCESSING

A. BACKGROUND FACTS

BPA has multiple, competing statutory obligations that bear on the issues raised in the Complaint. These include, among others, BPA's obligations to market federal power, repay Treasury loans, and comply with reliability requirements pertaining to the federal transmission system. BPA must balance these statutory obligations in making decisions about cost incurrence, power marketing and the operation of the federal power and transmission systems. Additional complications are presented by the fact that BPA does not completely control when it must generate power and when it may store energy on the federal hydro system. Power is generated at the federal hydro stations with river flows available after the Corps of Engineers and Bureau of Reclamation have ensured flood control, navigation, irrigation, recreation, fish operations and other purposes of the federal dams.² During the spring run-off period, there are often times when water cannot be held behind the dams due to superior needs to control flooding and protect endangered fish species. Even during the period when the Northwest experiences an oversupply of generation, water moving through the Columbia and Snake Rivers must continue to pass through generators to avoid excessive spill that can harm endangered fish and violate the Endangered Species Act and the Clean Water Act requirements.

² See e.g., Bonneville Project Act, 16 U.S.C. § 832 (2009); 43 U.S.C. § 485h(a)-(b) (2009); Federal Water Project Recreation Act, 16 U.S.C. §§ 4601-12, 4601-13, 4601-18 (2009); Flood Control Act of 1962, Pub. L. No. 87-874, § 203, 76 Stat. 1180 (1962); Flood Control Act of 1950, Pub. L. No. 81-516, § 204, 64 Stat. 170 (1950); Rivers and Harbors, Improvements Act, Pub. L. No. 79-14, 59 Stat. 10 (1945); Columbia Basin Project Act, 16 U.S.C. § 8351; H.R. Rep. No. 80-1507, at 2 (1948).

On May 13, 2011, BPA issued the Final Record of Decision (“ROD”) on Environmental Redispatch and Negative Pricing Policies.³ In it, BPA established a policy that when full use of federal generation is necessary to protect water quality pursuant to the Endangered Species Act and the Clean Water Act, and BPA has exhausted all reasonable means of disposing of excess federal power, it will dispatch federal hydropower at no cost to displace other generation within its Balancing Authority Area. Under these circumstances, BPA will not pay entities to take the federal hydropower. In response to the ROD, Complainants initiated this proceeding, alleging that BPA does not have the authority to curtail wind generators, that BPA’s Environmental Redispatch and Negative Pricing Policy is not comparable treatment of customers, unduly discriminates against wind generation and unduly prefers other customers by curtailing wind generation and replacing wind power with hydropower without compensating wind generation. Complainants seek various forms of relief and request that the Commission resolve the issues raised in the Complaint using the Fast Track process. On June 15, 2011, the Commission issued a Notice of Complaint setting a deadline for the answer and protests of July 5, 2011.

B. ARGUMENT

Complainants seek Fast Track processing of their Complaint pursuant to Rule 206(b)(11). The Notice of Complaint does not appear to address this request. The sole argument Complainants advance in support of their request is that “Bonneville has already begun curtailing wind under the Final ROD and Complainants are experiencing significant and continuing harm under Bonneville’s Environmental Redispatch Protocol.”⁴ No specifics are offered regarding the nature or scope of the alleged “significant and continuing harm.” Other than requesting that the

³ *Administrator’s Final Record of Decision, BPA’s Interim Environmental Redispatch and Negative Pricing Policy* (May 13, 2011), available at: http://www.bpa.gov/corporate/pubs/RODS/2011/ERandNegativePricing_FinalROD_web.pdf.

⁴ Complaint, §VI(K).

Commission immediately order BPA to behave as the Complainants would like it to, the Complainants offer no explanation as to what Fast Track processing should mean in this proceeding. They do not indicate how much time, if any, BPA and other stakeholders should be afforded to respond to their myriad of claims. Given their assertion that the Commission must act immediately, the implication appears to be that the time for filing answers, protests, interventions and comments should be shortened and the Commission issue an order without the benefit of a complete record.

Pursuant to Rule 206, the Complainants have the burden to “[e]xplain ... why the standard processes will not be adequate for expeditiously resolving the complaint.”⁵ The Commission has previously held that fast track processing is not appropriate for “complex issues” and especially in cases where the complaint seeks changes to tariff provisions by alleging they are unjust, unreasonable, unduly discriminatory or otherwise in violation of Commission regulations or policy.⁶ “[S]uch complex issues are likely to take some time to resolve” and complaints seeking such changes “should not be filed using the Fast Track process.”⁷

That is precisely the type of allegations the Complainants advance here. They claim that BPA’s Environmental Redispatch and Negative Pricing Policy violates BPA’s Open Access Transmission Tariff (“OATT”) in that it unduly discriminates against wind generation as a class and unduly prefers other customers by curtailing wind generation. The Complainants expressly request that, BPA be required to “remedy its unduly discriminatory and preferential practices by filing an OATT for Commission approval within 120 days, and to maintain a Commission-approved OATT on file.”⁸ Consistent with clear precedent, any complaint requesting that the

⁵ Rule 206(b)(11).

⁶ *Amoco Energy Trading Corp., et al.*, 89 FERC ¶61,165 (1999).

⁷ *Id.*

⁸ Complaint, §IV.

respondent change or re-interpret existing tariff provisions or file a tariff for approval with the Commission should not be fast-tracked.

Additionally, the Complaint raises issues that are complex and not suited for Fast Track processing. Laid out over some 68 pages, many of the issues raised in the Complaint are issues of first impression for the Commission. All involve interpretation of multifaceted and overlapping federal statutes and their application to complicated contracts. All issues are analyzed differently by the stakeholders and have been the subject of significant debate. Under these circumstances, the Commission should not act on the Complaint until it has the benefit of a thorough and complete record that includes responsive pleadings and comments.

Hasty action in this case is undesirable also because action without either time for thorough consideration or planning for alternative measures entails significant risk. Complainants request that the Commission overthrow BPA's Environmental Redispatch policy, which is in large part an operational protocol for disposing of excess federal generation in order to protect endangered fish species from the effects of excess spill. Without some other mechanism to ensure that power can be generated to reduce spill and therefore harmful gas entrainment, BPA cannot be certain that fish will be protected.

Additionally, Fast Track processing would impose a heavy burden on the parties and other stakeholders seeking to create an adequate record in a shortened period of time. The Commission has previously stated that:

Fast Track processing will be employed in only limited circumstances because of the extraordinarily compressed time schedule that would place a heavy burden on all parties to the proceeding. The Commission strongly encourages potential complainants to seek Fast Track processing sparingly and only in the most unusual cases that demand such accelerated treatment. A misuse of Fast Track processing could ultimately tax the Commission's limited resources and jeopardize the availability of the Fast Track procedures. Any continuing pattern

of misuse by a particular party would also ultimately undermine that party's credibility when future requests for Fast Track processing are requested.⁹

Finally, the Complainants, who previously led the stakeholders to believe that they were interested in resolving the issues without litigation, should not be afforded an unfair litigation advantage by shortening the time for answers, interventions, and comments while having ample time to prepare their own Complaint.

The Complainants have failed to carry their burden of demonstrating that “the standard processes will not be adequate for expeditiously resolving the complaint.”¹⁰ This is not a case where the Commission must act immediately because, for example, a widespread blackout is imminent or irreparable damage is being caused to the transmission system. In fact, wind generators are curtailed only as a measure of last resort and even then, they have and will continue to meet their customers' needs with clean, renewable electricity. Environmental Dispatch is a temporary event that may come to an end any day now since the runoffs appear to be stabilizing. Regardless, this event is not likely to last beyond a few more weeks and if it were to repeat itself, it would not likely do so for at least a year. The Complainants' implicit request is for money. That is not an emergency and is an issue that can and should be resolved using the Commission's standard processes without imposing a heavy burden on the stakeholders to create a complete record in a crunch. As the Complaint boils down to a request for compensation for an alleged economic injury that is not irreparable in any way, expedited procedures are unnecessary, as well as undesirable and risky.

V. CONCLUSION

PPC respectfully requests that the Commission grant its motion to intervene to become a party in this proceeding. PPC also requests that since the Complainants failed to make a

⁹ *Amoco Energy Trading Corp., et al.*, 89 FERC ¶61,165 (1999), quoting Order No. 602.

¹⁰ Rule 206(b)(11).

persuasive showing that standard processes are not be capable of expeditiously resolving their claims, the Commission deny their request for Fast Track processing.

Dated this 15th day of June, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 15th, 2011, I served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

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