

October 10, 2017

Via Email (techforum@bpa.gov)

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

Re: Comments of Avangrid Renewables on Proposed Revisions to Section 9 of BPA's Tariff

Avangrid Renewables, LLC ("Avangrid Renewables") submits these comments following Bonneville Power Administration's ("BPA's") July 26, 2017, Transmission Business Model – Pro Forma Gap Analysis Workshop concerning BPA's proposed revisions to Section 9 of its tariff, among other things. Avangrid Renewables reserves its right to further comment on BPA's Section 9 proposal, along with other proposals raised in this proceeding.

Section 9 of BPA's tariff currently requires BPA to submit proposed tariff changes to the Federal Energy Regulatory Commission ("FERC"), and only permits such changes to take effect after a determination by FERC that they satisfy either the Federal Power Act ("FPA") Section 212(i) standards, or the FERC reciprocity standard:

Nothing contained in the Tariff shall be construed as affecting in any way the right of the Transmission Provider to unilaterally propose a change in rates, terms and conditions, charges or classification of service. The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the rates that apply to transmission service under such Service Agreement pursuant to applicable law. *The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the terms and conditions of this Tariff upon, and only upon, a determination by the Commission that (i) such change is just and reasonable and not unduly discriminatory or preferential, or (ii) such change meets the non-public utility reciprocity requirements pursuant to a request for declaratory order under 18 CFR § 35.28(e).*

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.¹

This tariff language is the result of 1996 and 2001 settlement agreements entered into between BPA and its transmission customers, after extensive negotiations wherein BPA worked with its customers to develop mutually agreeable tariff terms and conditions. At the

¹ *Bonneville Power Admin. Transmission Servs.*, Open Access Transmission Tariff at § 9 (Feb. 2, 2016) (emphasis added), available at https://www.bpa.gov/transmission/Doing%20Business/Tariff/Documents/bpa_oatt.pdf (last accessed Oct. 3, 2016).

time, BPA was attempting to transition to the open access transmission tariff structure envisioned in FERC's Order No. 888,² and many customers were considering voluntarily trading-in existing long-term firm bilateral transmission contracts for service under the new BPA tariff. Customers understandably sought certainty regarding the conditions by which BPA would be able to modify the tariff going forward.

While BPA initially sought to maintain a tariff with reciprocity status, over the years BPA's tariff has moved away from the FERC open access transmission tariff terms in certain areas, and BPA has decided it will no longer seek reciprocity. Further, BPA wishes to be able to modify its tariff terms without a requirement that it seek a finding from FERC that proposed tariff modifications satisfy the Section 9 standards.

At the July 26 workshop, BPA proposed to revise Section 9 of its tariff to instead provide:

Section 9 Tariff Changes

The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the rates that apply to transmission service under such Service Agreement pursuant to applicable law. *The Transmission Provider may change the terms and conditions of this Tariff after conducting a public process in which Transmission Customers have an opportunity to review and comment on proposed changes.*

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.³ (Emphasis added.)

BPA also proposed to use the administrative process described in FPA Section 212(i) "as a vehicle for tariff change."⁴ FPA Section 212(i)(2) provides for a hearing process that BPA *may* use in the event BPA receives "a written request for specific transmission service terms and conditions [and] does not offer the requested terms and conditions," or in the event

² *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. ¶ 31048, *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), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

³ Bonneville Power Admin., "Proposed BPA OATT section 9 revision" (undated) (emphasis added), *available at* <https://www.bpa.gov/transmission/CustomerInvolvement/TransmissionBusinessModel/Documents/Sec9LangHandout-PFGASummerWorkshop0726-Tariff.pdf> (last accessed Oct. 3, 2017).

⁴ Bonneville Power Admin., "Transmission Business Model, Pro Forma/Industry Standard Gap Analysis: Tariff Engagement Design" at 3 (Jul. 26, 2017), *available at* <https://www.bpa.gov/transmission/CustomerInvolvement/TransmissionBusinessModel/Documents/PFGASummerWorkshop-0726-Tariff.pdf> (last accessed Oct. 3, 2017).

BPA “proposes to establish terms and conditions of general applicability for transmission service on the [FCRTS].”⁵ The FPA Section 212(i)(2) process is generally modeled on the BPA Northwest Power Act Section 7(i) rate process, but with certain differences, including, without limitation:

(1) a requirement to explain in the Federal Register notice why the specific terms and conditions requested are not being offered, or why the specific terms and conditions are being proposed;⁶

(2) a requirement that the hearing officer make a recommended decision to the Administrator that states the hearing officer’s findings and conclusions on all material issues of fact, law or discretion presented in the administrative record;⁷

(3) a requirement that the BPA Administrator make a determination, and set forth the reasons for reaching any findings and conclusions which may differ from the hearing officer’s recommended decision;⁸ and

(4) in the event a customer submits a FPA Section 211 petition to FERC requesting transmission service under different terms and conditions than those offered by BPA, or following BPA’s denial of a request for transmission service, FERC shall provide the customer additional opportunities for a hearing and supplementation of the administrative record, and establish the terms and conditions for, or deny, the requested transmission service.⁹

1. BPA’s Section 9 Proposal Shifts the Burden to Demonstrate that Tariff Changes Satisfy Minimum FPA Standards from BPA; Instead Section 9 Would Require Transmission Customers to Demonstrate that Tariff Changes Are Insufficient

FPA Sections 211A and 212 include minimum standards applicable to the terms and conditions of BPA transmission service. FPA Section 211A requires BPA’s transmission service terms and conditions to be comparable to the terms and conditions under which BPA provides transmission services to itself, and not unduly discriminatory or preferential.¹⁰ As discussed above, FPA Section 212 authorizes FERC to order BPA to provide transmission service that is just, reasonable, and not unduly discriminatory or preferential.¹¹

BPA’s current Section 9 language requires BPA to affirmatively seek a determination from FERC that proposed tariff changes satisfy the FPA Section 212 standard, or, alternatively,

⁵ 16 U.S.C. § 824k(i)(2)(A).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ 16 U.S.C. § 824k(i)(2)(B).

¹⁰ 16 U.S.C. § 824j-1.

¹¹ 16 U.S.C. § 824k.

FERC's reciprocity standard, before the changes can become effective. BPA's proposal shifts the burden currently on BPA to demonstrate that its tariff changes satisfy FPA standards, and places the burden on transmission customers to demonstrate that its tariff changes *do not* satisfy FPA standards.

When proposing tariff changes, BPA should necessarily be crafting its edits in a manner that ensures that the changes satisfy the standards of the FPA. Careful attention to ensure BPA's tariff is consistent with the standards set out in the FPA can protect BPA's transmission customers from unfair treatment, and can also protect BPA from subsequent litigation. Avangrid Renewables continues to believe it is appropriate for BPA to bear the burden to show its proposed tariff changes meet minimum standards, as it agreed to do in its 1996 and 2001 settlements.

2. BPA's Proposal to Use a Public Notice and Comment Process to Make Tariff Changes is Insufficient, and, BPA Should Commit to Utilize the FPA Section 212(i) Administrative Hearing Procedures Before Attempting to Implement Any Tariff Modifications

Avangrid Renewables does not support BPA's proposal to change Section 9 to allow tariff modifications after a public process and opportunity to submit customer comments. This approach is insufficient to ensure customers and stakeholders have an adequate opportunity to provide input into BPA's decision-making process, participate in development of an adequate administrative record, and ensure that BPA's tariff provisions will be "just, reasonable, and not unduly discriminatory or preferential."¹² While FPA Section 212(i) states that BPA "may" provide the opportunity for a hearing, BPA should commit in any revised Section 9 to conduct a hearing, develop an administrative record, and make findings and determinations in accordance with FPA Section 212(i) before attempting to implement any tariff modifications.

The stability of BPA's transmission service terms and conditions is fundamentally important for BPA's transmission customers. Many of BPA's customers have entered into long-term commitments to purchase transmission service from BPA, or have built or acquired resources located in areas where resource integration is dependent on BPA transmission service. Customers undertook these commitments based on the assumption that Section 9 requirements would continue to apply to BPA's transmission tariff terms and conditions. It would be unfair and imprudent for BPA to begin changing its tariff based on a mere public notice and comment process. Further, action to change the tariff without adequate consideration of customer positions and/or statutory standards will invariably lead to FPA Section 211A challenges—resulting in potentially lengthy disputes, and an associated lack of stability or certainty regarding tariff terms and conditions. BPA's commitment to follow the FPA Section 212(i) hearing process would facilitate a more robust regional discussion of issues, as well as an administrative record, and the opportunity for FERC review and supplementation of the record, if necessary.

¹² See *e.g.*, 16 U.S.C. §§ 824j-1, 824k(i)(1)(ii).

Avangrid Renewables appreciates the opportunity to comment on this workshop and to participate in BPA's ongoing Transmission Business Model – Pro Forma/Industry Standard Gap Analysis.