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VIA E-MAIL

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Re: Proposed Tariff Compliance Filing Concerning Large Generator
Interconnection Agreement and Procedures.

Dear Brian:

At yesterday's meeting BPA's proposed compliance tariff filing to implement FERC's Order 2003 regarding large generator interconnections, you indicated that BPA would take written comments on this matter. Because BPA has not issued its proposal, either orally or in writing, PPC's comments are necessarily limited to "high-level" issues.

Interconnection Pricing

The final rule requires jurisdictional transmission providers that are not RTOs or ISOs to implement the following pricing policy for a new generator interconnection: the new generator would pay up front all of the costs of network upgrades made on its behalf; the transmission provider would then give to the new generator transmission credits equivalent to the full amount of the costs paid; and the new generator would use these credits for the first five years of operations, after which time the transmission provider would be obligated to pay the interconnection customer the difference between the interconnection costs and the used credits. Thus, the transmission provider's network and native load customers pay for the entire cost of the network upgrades needed to interconnect the new generator.

PPC does not believe that BPA must adopt the pricing policy laid out in the final rule. The final order declares that a non-jurisdictional utility that has a "safe harbor" tariff may adopt interconnection agreement and procedures

that substantially conform to, or are superior to, the final rule. Final Rule, ¶ 842. The Commission does not require, however,

as Pinnacle West proposes, that a non-public utility also provide transmission credits for Network Upgrade costs, to satisfy the Commission's reciprocity condition. With respect to a tariff filed under the 'safe harbor' provision, our reciprocity policy requires that it contain rates comparable to the rates the non-public utility charges itself.

Final Rule, ¶ 843 (footnote omitted). We read this paragraph to permit non-jurisdictional utilities to adopt a different rate design and to forego the pricing policy so long as the same rates are applied to that utility's generation and to its affiliates.

There are important reasons why BPA should not adopt FERC's pricing policy. New generators requesting interconnections need not serve network or native load customers in the transmission provider's footprint. Yet those customers must fund the credits that repay all of the costs of the network upgrades. FERC's pricing policy would shift costs from generators to network and native load customers without conferring on them a benefit of equivalent value.

It is not sufficient simply to assume, as FERC, that the network will benefit from the upgrades. First, the network would not have needed these network upgrades but for the new generation. Second, if a reliability or capacity benefit is conferred on the network, it is wrong to assume that the benefit has value equal to the entire cost of the network upgrade. Some portion of the costs might be reasonably assigned to current network and native load customers, but that must be determined on a case-by-case basis. Third, there is no indication that the network upgrades must be made available for use by existing network and native load customers.

Not only is there a significant issue of equity, BPA must also consider the impact of this policy on its network transmission rates. If Network Resource Integration Service is requested, network upgrades may be required on the main grid due to the interconnection. If a generator were to request interconnection at Boardman, for example, and the required network upgrades included rebuilding the McNary-John Day line, BPA would be faced with the prospect of refunding the entire cost, with interest, within five years. The analysis of rate impacts that BPA staff provided to participants at the December 11, 2003, meeting on this subject did not consider the impact of such very expensive network upgrades.

Lastly, BPA is required to adhere to different rate standards than those FERC applies to jurisdictional utilities. While transmission rates must be “just and reasonable,” they must also conform to the other statutory rate directives and it is not clear that, were BPA to adopt FERC’s pricing policy, that those rate directives would be met.

PPC objects to the proposal to adopt the pricing policy in Order 2003 for network upgrades. While we agree that network customers should contribute to the costs of network upgrades to the extent that they receive a commensurate benefit, FERC’s policy does not achieve this result. Moreover, while credits may be appropriate in some circumstances to reimburse the new generator for network upgrades that benefit others, BPA should use the pricing method that has the least impact on its rates while treating new generation equitably. This may require BPA to adopt, for example, a longer period for credit reimbursement or to use its, or a third party’s, capital or to finance some upgrades.

Network Resource Interconnection Service (NRIS)

The final rule requires transmission providers to offer two new types of interconnection services: Network Resource Interconnection Service (NRIS) and Energy Resource Interconnection Service (ERIS). NRIS is the subject of concern here. NRIS does not provide wheeling on the transmission provider’s network but the LGIA declares that

[o]nce an Interconnection Customer satisfies the requirements for obtaining NRIS, any future transmission service request for delivery from the Large Generating Facility within the Transmission Provider’s Transmission of any amount of capacity and/or energy, up to the amount initially studied, will not require that any additional studies be performed or that any further upgrades associated with such Large Generating Facility be undertaken, regardless of whether or not such Large Generating Facility is ever designated by a Network Customer as a Network Resource.

Final LGIA, art. 4.1.2.2. Pursuant to the pricing policy, network and native load customers in the transmission provider’s footprint are required to pay for the network upgrades associated with the new generator. Because the new generator taking NRIS is not required to commit to serve, or indeed ever serve, the network and native load customers that pay for the upgrades, and because the new upgrades need not be made available to those customers for their use, the network and native load customers may never see a benefit from the upgrades they have funded.

This raises a number of problems. First, BPA's TBL and its transmission customers would be providing a subsidy to generators that interconnect with BPA's network. Second, it does not promote rational transmission system planning. The network upgrades are dictated by the interconnection requests in any 18-month period. Consumers, having an incentive to reduce costs and promote planning, are relegated to the role of payer and have no choice in the siting or in upgrades required. The incentives favor overbuilding and not a cohesive plan for a reliable, low-cost transmission system. Moreover, FERC appears to have designed NRIS to complement a bid-based, security-constrained market to manage congestion and the adoption of the Network Access Service described in the White Paper. There is no such market or service in the Northwest at the moment and it is unlikely that there would be one in the near future.¹

Reciprocity

We do not read the reciprocity provision of the BPA OATT to require a non-jurisdictional transmission customer either to provide credits or to conform to any other aspect of the final rule so long as it provides to others the service it provides to itself and its affiliates. BPA should clarify that this is the correct interpretation of the provision. It should also clarify that, if there is a conflict between law applicable to a non-jurisdictional transmission customer and BPA's tariff, the tariff will defer to the applicable law. It should also clarify that reciprocity will not be required of a 501(c)(12)² cooperative if providing reciprocal service could jeopardize that cooperative's tax-exempt status.

Process for Decision-Making

Pursuant to 16 U.S.C. § 824k(i)(2), BPA may hold a hearing on changes to terms and conditions for transmission service. BPA should exercise its discretion to do so in this case. First, a decision to comply substantially or partially with the final LGIA order would be a major policy decision. The implementation of all or portions of the final rule will appreciably shift costs, and amounts to a significant rate design issue. Second, if BPA wishes to deviate from the final rule, it would be better to develop the record in support of the Administrator's decision in a hearing in the region, rather than rely on a FERC proceeding to do so. A record may not be required for FERC's safe harbor review, but one would be needed were the decision to be tested in the Ninth Circuit.

¹ Although we do not believe that it is BPA's present intention to do so, please note that PPC will strenuously oppose the incremental implementation of Standard Market Design in the Northwest.

² Internal Revenue Service Code, 26 U.S.C. § 501(c)(12) (2002).

While BPA may not be required to hold a hearing under the Federal Power Act, it is still required by the Administrative Procedures Act to provide the public with an adequate opportunity to comment on the proposed action. At the December 11, 2003, meeting regarding the proposed compliance filing, BPA staff was unable to answer many questions about FERC's Order 2003. This is understandable. FERC's sometimes oracular pronouncements can be difficult to parse. BPA, however, proposes to adopt the content of the final rule as a policy of BPA. It is incumbent on BPA to understand its own proposal. Otherwise, the adoption of it would be arbitrary and capricious and an abuse of discretion. We understand from statements by BPA staff at December 11 meeting that BPA has not made a decision on what the public process should be. We suggest that, at a minimum, BPA publish its proposal, explain it fully, take comments on it and issue a written decision prior to implementation, either through a compliance filing or ad hoc, bilateral contracts.

We hope that these comments are helpful to you. PPC looks forward to discussing these issues more fully with you in the future.

Sincerely,

/s/

Nancy Baker
Senior Policy Analyst