

149 FERC ¶ 61,044
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Iberdrola Renewables, Inc.
PacifiCorp
NextEra Energy Resources, LLC
Invenergy Wind North America LLC
Horizon Wind Energy LLC

Docket Nos. EL11-44-006
EL11-44-007

v.

Bonneville Power Administration

ORDER ON COMPLIANCE AND REVISED OVERSUPPLY MANAGEMENT
PROTOCOL PROPOSAL

(Issued October 16, 2014)

1. In this order, we find that the cost allocation methodology proposed by Bonneville Power Administration (Bonneville) complies with the Commission's prior order in this proceeding, directing Bonneville to propose for its Oversupply Management Protocol (OMP) an equitable cost allocation methodology that results in comparability in the provision of transmission service by Bonneville.¹ The Commission also accepts Bonneville's revised OMP proposal (Revised OMP) to become effective March 31, 2013.

I. Background

2. On June 13, 2011, Iberdrola Renewables, Inc., PacifiCorp, NextEra Energy Resources, LLC, Invenergy Wind North America, LLC, and Horizon Wind Energy LLC (collectively, Complainants) filed a complaint alleging that Bonneville, under its Environmental Redispatch and Negative Pricing Policy (Environmental Redispatch

¹ See *Iberdrola Renewables, Inc. v. Bonneville Power Administration*, 141 FERC ¶ 61,234, at P 46 (2012) (Compliance Order).

Policy),² had acted in an unduly discriminatory manner by directing the displacement of wind generators' generating capacity and then using the wind generators' firm transmission rights to deliver federal hydropower to the wind generators' customers, resulting in transmission service that was non-comparable to what Bonneville provided itself. Complainants requested that the Commission invoke its authority under section 211A of the Federal Power Act (FPA)³ to direct Bonneville to change its curtailment practices and to file a revised open access transmission tariff (OATT) with the Commission. Complainants also requested that the Commission order Bonneville to act in accordance with the terms of its interconnection agreements with Complainants by ceasing its curtailment practices immediately.⁴

3. On December 7, 2011, the Commission issued an order finding that Bonneville's Environmental Redispatch Policy resulted in the non-comparable treatment of certain generating resources interconnected to Bonneville's transmission system. In accordance with FPA section 211A, the Commission directed Bonneville to submit OATT revisions that provided for transmission service under terms and conditions that were comparable to those under which Bonneville provides transmission to itself, and that are not unduly discriminatory or preferential.⁵

4. On March 6, 2012, Bonneville submitted its compliance filing to address the determinations in the December 2011 Order. Bonneville proposed to amend its OATT to include the OMP, which set forth the terms and conditions for displacing generation during periods of oversupply for the period between March 31, 2012 through March 31, 2013. Under the OMP, Bonneville proposed to continue the practice of displacing certain generation resources and substituting free hydropower energy to satisfy the displaced generation's load obligations. In addition, Bonneville proposed to displace generating units using a least cost displacement curve, which would be implemented by an independent evaluator, and to compensate generation curtailed under the OMP for displacement costs, including: (1) compensation for production tax credits that the wind generator would have received but for the displacement; (2) compensation for lost renewable energy credits unbundled from the sale of power; and (3) lost revenues or

² Under Bonneville's Environmental Redispatch Policy, Bonneville would address excess water supply by substituting free federal hydropower for wind or other generation.

³ 16 U.S.C. § 824j-1 (2012).

⁴ Complainants' June 13, 2011 Complaint.

⁵ *Iberdrola Renewables, Inc. v. Bonneville Power Administration*, 137 FERC ¶ 61,185 (2011) (December 2011 Order).

penalties for the failure to generate renewable energy, with respect to power sales contracts executed on or before March 6, 2012.⁶

5. Bonneville also proposed to fund the compensation to displaced generators through transmission reserves, and to seek to recover those funds once a cost allocation methodology was established in a formal rate case conducted pursuant to the Northwest Electric Power Planning and Conservation Act (Northwest Power Act). Bonneville stated that it intended to propose a methodology that allocates 50 percent of the costs of displacement under the OMP to generators who submit displacement costs, and 50 percent of the costs for displacement under the OMP to purchasers of power from the Federal Base System.⁷ Bonneville asserted that this allocation approach is reasonable and fair, and that it appropriately aligns costs and benefits, as both federal hydroelectric resources and wind resources contribute to the oversupply situation. Bonneville noted, however, that it is legally barred from establishing rates outside of a formal rate case under section 7(i) of the Northwest Power Act. Bonneville stated that it intended to convene a rate case in spring 2012 and would submit proposed rates to the Commission at the conclusion of the rate case (Northwest Power Act rate case).⁸

6. To implement the OMP, Bonneville proposed to amend Appendix C of existing large generator interconnection agreements to clarify that the terms and conditions of the OMP apply to all generators located in Bonneville's balancing authority area through existing interconnection agreements.⁹

7. On December 20, 2012, the Commission conditionally accepted the OMP as a balanced interim measure that addresses Bonneville's oversupply problems, subject to Bonneville submitting a further compliance filing. The Commission found that the OMP improved upon the Environmental Redispatch Policy in meaningful ways such as

⁶ Bonneville March 6, 2012 Compliance Filing at 12-18 (2012 OMP Filing).

⁷ The Federal Base System includes the Columbia River hydroelectric projects and certain other projects acquired by Bonneville.

⁸ 2012 OMP Filing at 21-26. Bonneville formally initiated its Northwest Power Act rate case on OMP cost recovery on November 8, 2012. Bonneville January 22, 2013 Rehearing Request at 7 (Bonneville Rehearing Request). The Commission directed Bonneville to submit its compliance filing within 30 days of the date it submits to the Commission its final OMP rate decision. *Iberdrola Renewables, Inc. v. Bonneville Power Administration*, 142 FERC ¶ 61,116, at PP 1, 5-6 (2013) (February 2013 Order).

⁹ *Id.* at 19-21.

offering compensation to involuntarily displaced wind generators using an independent evaluator to validate displacement costs. Further, the Commission noted its appreciation of the additional specificity Bonneville provided in the non-rate terms and conditions of the OMP, including the use of least cost displacement curves and the ability of wind generators seeking displacement costs to refine the operational parameters used by Bonneville.¹⁰

8. The Commission further explained, however, that while Bonneville's original Environmental Redispatch Policy involved only non-rate terms and conditions associated with the displacement of certain generation resources, Bonneville's proposed OMP involves both rates for, and non-rate terms and conditions of, transmission service. As a result, the Commission concluded that it must consider both the rate and non-rate aspects of the compliance proposal to determine whether the OMP as a whole complies with the Commission's directive under FPA section 211A to provide comparable and not unduly discriminatory transmission service to all generating resources connected to Bonneville's transmission system.¹¹ To that end, the Commission determined that Bonneville failed to demonstrate that its intended 50/50 cost sharing arrangement would place an appropriate and equitable cost burden upon all firm transmission customers. The Commission noted that wind generators' use of firm transmission service on Bonneville's system during oversupply periods represents a fraction of the total firm transmission usage during those periods, yet such entities would be allocated half of the displacement costs under Bonneville's intended methodology.¹²

9. The Commission directed Bonneville to submit a compliance filing under FPA section 211A within 90 days of the issuance of the Compliance Order that set forth a cost allocation methodology that equitably allocates displacement costs to all firm transmission customers. The Commission suggested a methodology based on generators' respective transmission usage during oversupply situations, but it did not require any specific methodology, noting that Bonneville could establish any methodology that ensures comparability in the provision of transmission service by Bonneville. The Commission stated that it would evaluate whether such methodology, coupled with the non-rate terms and conditions under the OMP, ensures comparable transmission service for all resources.¹³ The Commission also noted that, because the OMP was designed as a

¹⁰ Compliance Order, 141 FERC ¶ 61,243 at PP 43, 45, 46.

¹¹ *Id.* P 43.

¹² *Id.* PP 44-46.

¹³ *Id.* P 46.

short-term measure that would expire on March 31, 2013, Bonneville would be under a continuing obligation to file for Commission review proposals to manage oversupply conditions until such time as a long-term solution has been approved.¹⁴ The Commission directed Bonneville, in any future proposal to address oversupply conditions, to identify those specific actions it would take prior to displacing generation.¹⁵ The Commission also stated its expectation that Bonneville would consider displacement costs for thermal generators,¹⁶ and would make appropriate changes to e-Tags in those instances in which an oversupply event lasts longer than one hour.¹⁷

10. On January 22, 2013, Bonneville filed a motion requesting a stay of the requirement to file an alternative cost allocation methodology within 90 days of the date of the Compliance Order. Bonneville stated that the cost allocation methodology under the OMP must be developed through a Northwest Power Act rate case. Thus, Bonneville requested that the Commission defer Bonneville's compliance obligations.¹⁸ On February 19, 2013, the Commission issued an order granting an extension of time, until 30 days after the date Bonneville files the Northwest Power Act rate case decision with the Commission, for Bonneville to submit its cost allocation methodology.¹⁹

11. On March 1, 2013, in response to the Commission's statement in the Compliance Order that Bonneville would be under a continuing obligation to submit for Commission review any proposals to manage oversupply conditions, Bonneville filed the Revised OMP at issue here. The Revised OMP would replace the OMP that was set to expire March 30, 2013, with the Revised OMP to be effective March 31, 2013 through September 30, 2015.²⁰

¹⁴ *Id.* P 47.

¹⁵ *Id.* P 56.

¹⁶ *Id.* P 53.

¹⁷ *Id.* P 65.

¹⁸ Bonneville Rehearing Request at 12-13.

¹⁹ February 2013 Order, 142 FERC ¶ 61,116 at P 6.

²⁰ Bonneville also submitted the proposed tariff amendment as a revision to its OATT in Docket No. NJ12-7-000, which was addressed by the Commission in an order issued November 21, 2013. *Bonneville Power Admin.*, 145 FERC ¶ 61,150 (2013). In

12. On May 23, 2014, in response to the directive in the Compliance Order, Bonneville filed its proposed cost allocation methodology, which is also addressed here.

II. Cost Allocation Proposal

13. We first turn to the cost allocation proposal. To allocate oversupply costs, Bonneville states it has adopted the rate methodology previously suggested by the Commission; i.e., a cost allocation methodology based on scheduled transmission during oversupply situations. As an example, Bonneville states that if non-federal generation submits 4,000 MW of schedules and Bonneville submits 4,000 MW of schedules but must produce 4,500 MW of hydroelectric power, Bonneville would displace 500 MW of non-federal generation and compensate that generation for displacement. Bonneville states that displacement costs would be allocated to all generators, including Bonneville, based on the proportion of the scheduled 8,000 MW.²¹ Thus, if a generator was scheduled to use 400 MW of transmission at the time of the oversupply event, it would be allocated 5 percent of oversupply costs. Bonneville states that applying this methodology to the costs incurred in 2012, the only year when Bonneville incurred costs under the OMP would have resulted in Bonneville allocating 72 percent of costs to federal power generation, 14 percent to thermal generation, and 14 percent to wind generation.²²

14. Bonneville states that this cost allocation comports with cost causation principles because it is scheduled generation that causes the need for displacement. According to Bonneville, each scheduled use by a wind generator increases Bonneville's displacement obligation, and thus increases Bonneville's costs. Bonneville asserts that it is not proposing to apply the oversupply methodology to resources outside its balancing authority area, because it does not have operational control over those resources, and it cannot displace them. Accordingly, Bonneville asserts that resources outside its balancing authority area do not cause it to incur costs.²³

that order, the Commission noted that all issues related to the OMP would be addressed in this proceeding. *Id.* P 65.

²¹ Bonneville May 23, 2014 Cost Allocation Proposal at 6 (Cost Allocation Proposal).

²² Bonneville states that because it has proposed to exempt certain thermal generation for 2012 only, the actual cost allocation for that period would be 85 percent to federal power generation and 15 percent to wind generation for that year. *Id.*

²³ *Id.* at 6-7.

15. Bonneville notes that several parties have argued against this cost allocation methodology, asserting that displaced generation is being charged for transmission they do not use. However, Bonneville notes that it supplies displaced generation's load with free federal hydropower and compensates generation for displacement. Bonneville also emphasizes that scheduled generation, and not actual transmission use, causes Bonneville to incur costs.²⁴

16. Bonneville further argues that oversupply costs are transmission costs. Bonneville first notes that some parties have argued that Northwest Power Act Section 7(g)²⁵ requires oversupply costs to be treated as power costs. Bonneville argues, however, that the Commission's jurisdiction over Bonneville only extends to ensuring comparable transmission service under section 211A of the FPA and to ensuring that Bonneville's rates satisfy specific, limited requirements under section 7(a)(2) of the Northwest Power Act.²⁶

17. Nevertheless, Bonneville contends that, even if the Commission asserted authority to review Bonneville's rates under section 7(g) of the Northwest Power Act, it should approve the proposed rate, because the interconnection of wind generation to its transmission system has caused Bonneville to incur oversupply costs. Bonneville argues that interconnection is a transmission service; therefore, oversupply costs are

²⁴ *Id.* at 7-8.

²⁵ Northwest Power Act Section 7(g) states: "Except to the extent that the allocation of costs and benefits is governed by provisions of law in effect on December 5, 1980, or by other provisions of this section, the Administrator shall equitably allocate to power rates, in accordance with generally acceptable ratemaking principles and the provisions of this chapter, all costs and benefits not otherwise allocated under this section, including, but not limited to, conservation, fish and wildlife measures, uncontrollable events, reserves, the excess costs of experimental resources acquired under section 839d of this title, the cost of credits granted pursuant to section 839d of this title, operating services, and the sale of or inability to sell excess electric power." *Id.* at 8.

²⁶ Under Section 7(a)(2) of the Northwest Power Act the Commission must ensure that Bonneville's rates: (1) are sufficient to assure repayment of the federal investment in the federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs; (2) are based upon the Administrator's total system costs; and (3) insofar as transmission rates are concerned, equitably allocate the costs of the federal transmission system between federal and non-federal power utilizing such system. *Id.* at 10.

transmission costs. Bonneville explains that, previously, when Bonneville needed to displace generators to manage oversupply conditions, thermal generators accepted Bonneville's offers to displace in exchange for free hydropower. Bonneville asserts that, because wind generators receive production tax credits and renewable energy credits based on their generation, they have little incentive to accept such offers without compensation sufficient to cover their losses.²⁷ Bonneville also notes that the Commission already has recognized that the OMP concerns "Bonneville's management of the transmission system during oversupply events," and it suggested that Bonneville allocate oversupply costs "to all firm transmission customers based on their respective transmission usage during oversupply situations."²⁸

III. Revised OMP

18. Bonneville notes its commitment to reducing the need to use the OMP, but it states that, to date, it has found no solution that eliminates the need for it completely. Thus, Bonneville states that it plans to retain the Revised OMP as Attachment P to its tariff and to incorporate it into new and existing large generator interconnection agreements, as it did with the original OMP.²⁹ Bonneville explains that it will continue to seek additional mechanisms for managing seasonal electricity oversupply in order to reduce the need for the OMP, and it will also continue working with its stakeholders to seek a durable, long-term solution to the oversupply problem.³⁰

19. Bonneville explains that the Revised OMP is similar, in many respects to the protocol conditionally accepted by the Commission in the Compliance Order, but highlights a few differences. First, instead of a single-year term, Bonneville proposes a multi-year term for the Revised OMP, with an expiration date of September 30, 2015. Bonneville notes that the proposed expiration date coincides with the expiration of the rate developed in the Northwest Power Act rate case to allocate oversupply costs. Bonneville asserts that a multi-year approach avoids the need for annual filings with the Commission as Bonneville engages in regional discussions about longer-term oversupply solutions. In addition, Bonneville contends that a multi-year OMP will provide certainty

²⁷ *Id.* at 13.

²⁸ *Id.* at 13 (quoting Compliance Order, 141 FERC ¶ 61,234 at PP 45-46).

²⁹ Bonneville March 1, 2013 Filing at 12-13 (Revised OMP Filing).

³⁰ *Id.* at 23.

to its customers regarding the mechanism Bonneville will use to address oversupply issues until the region develops a long-term solution.³¹

20. In response to the Commission's directive in the Compliance Order to identify in any future proposal actions that Bonneville will take prior to displacing generation, the Revised OMP also includes a list of actions Bonneville commits to take if (1) those actions are available, and (2) Bonneville determines they will reduce or avoid the need for displacement.³² Bonneville asserts that it cannot commit without qualification to a list of actions it will take in each situation because the availability and effectiveness of various actions depend on system conditions.³³ Bonneville notes that the listing of actions is not intended to limit Bonneville from taking other actions that may be developed.³⁴

21. Also in the Revised OMP, Bonneville eliminated all references to allocation of oversupply costs. Bonneville states that cost allocation issues are being addressed in the Northwest Power Act rate case, and they will be considered by the Commission upon Bonneville's submission of the resulting rate, once a final decision is issued by Bonneville's Administrator in that proceeding.³⁵

22. In addition, Bonneville proposes a deadline of March 15, instead of March 31, for generators eligible for compensation to submit their cost data to the independent evaluator, which will give the evaluator sufficient time to verify the data and include it in the construction of the OMP cost curve. Bonneville asserts that the revised deadline

³¹ *Id.* at 16.

³² Bonneville lists 12 alternative actions that it will take, when appropriate, to avoid displacement, including actions such as selling power at zero cost, deferring generation or transmission maintenance, seeking additional load via spill exchange agreements, or transferring spill to another federal project consistent with the spill priority list. Bonneville OATT; Proposed Attachment P.

³³ For example, Bonneville notes that the availability of reservoir storage space for mitigating oversupply conditions depends on how much space is left after flood control needs are met. Revised OMP Filing at 17-18.

³⁴ *Id.* at 18.

³⁵ *Id.* Bonneville submitted its proposed Oversupply Rate on April 23, 2014 in Docket No. EF14-5-000 and that filing is being addressed in an order issued concurrently with this one. *Bonneville Power Administration*, 149 FERC 61,043 (2014).

better balances the burden on generators to provide data with the need to construct the cost curve. Bonneville also notes that generators may submit cost data at any time prior to the deadline and be included in the cost curve as of the first day of the second month after they submit the data.³⁶

23. Finally, Bonneville proposes that under the Revised OMP, generators will be compensated only if they submit the required cost data and documentation. Those who fail to submit the data or supporting documentation will be deemed to have displacement costs of \$0/MWh. Bonneville states that it added this provision because, in 2012, the independent evaluator reported having difficulty obtaining cost data from four of the ten generators from which it requested data. Bonneville notes that three of these generators were on the high end of the cost curve and, because Bonneville failed to specify consequences for not supplying the data, these generators were paid despite the lack of verified cost information. Bonneville asserts that the Revised OMP will ensure that the costs of the protocol will be supported by evidence.³⁷

24. Bonneville notes that, in response to the Commission's directive in the Compliance Order, it considered the issue of compensating thermal generators for any potential displacement costs. According to Bonneville, only one thermal generator identified any costs associated with displacement, and all of the costs identified could be avoided if the generator specifies a minimum generation level. Because, under both the prior and Revised OMP, thermal generators can set minimum generation levels to avoid penalties, Bonneville has not added any cost categories to the OMP for thermal generators.³⁸

25. Bonneville states that it has also not made any changes to e-Tags in the Revised OMP. Bonneville notes that in the Compliance Order, the Commission agreed with Bonneville that displacement transactions that occur during the operating hour do not necessitate a change in e-Tags.³⁹ Bonneville affirms that the OMP is implemented only for the operating hour, and it cannot be implemented for more than one hour at a time. Bonneville explains that it must make displacement determinations on an hour-by-hour basis in order to keep costs as low as possible and ensure that Bonneville's environmental

³⁶ *Id.* at 18-19.

³⁷ *Id.* at 19-20.

³⁸ *Id.* at 20.

³⁹ *Id.* at 21 (citing Compliance Order, 141 FERC ¶ 61,234 at P 65).

responsibilities are met. Thus, Bonneville asserts that it will not change e-Tags for displaced generation and does not need to establish such a process.⁴⁰

IV. Notice and Responsive Pleadings

26. Notice of the Revised OMP Filing was published in the *Federal Register*, 78 Fed. Reg. 15,718 (2013), with protests or interventions due on or before March 22, 2013. On March 5, 2013, the Commission published an errata notice setting a corrected comment date of March 26, 2013. Timely motions to intervene and/or comments were filed by (1) American Public Power Association; (2) Eurus Combine Hills II LLC; (3) the M-S-R Public Power Agency (M-S-R); (4) Puget Sound Energy, Inc. (Puget); (5) Caithness Shepherds Flat, LLC (Caithness); (6) Complainants, Northwest and Intermountain Power Producers Coalition, American Wind Energy Association (AWEA), Renewable Northwest Project (Renewable Northwest), and TransAlta Energy Marketing (U.S.) Inc. (Trans Alta) (collectively, Complainants); (7) E.ON Climate & Renewables North American, LLC (EON); Powerex Corp. (Powerex); and (8) Portland General Electric Company (Portland). Bonneville and EON filed answers.

27. Notice of the Cost Allocation Filing was published in the *Federal Register*, 79 Fed. Reg. 31,319 (2014), with protests or interventions due on or before June 13, 2014. Timely motions to intervene and/or comments were filed by (1) Transmission Agency of Northern California; (2) M-S-R; (3) AWEA and Renewable Northwest⁴¹ (collectively AWEA/Pacific Northwest); (4) Caithness; (5) Movants;⁴² and Portland and Puget jointly (Portland/Puget).

⁴⁰ *Id.* at 21-22.

⁴¹ Renewable Northwest notes that it has intervened in prior proceedings in the EL11-44 docket under the name “Pacific Northwest Project,” but has subsequently changed its name to “Pacific Northwest.”

⁴² For purposes of the Cost Allocation Proposal protest, Movants include only the Complainants and Trans Alta, as AWEA and Renewable Northwest filed their comments to the Cost Allocation Proposal separately.

V. Discussion**A. Procedural Matters**

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers filed by Bonneville and EON because they have provided information that assisted us in our decision-making process.

B. Cost Allocation Proposal**1. Comments and Protests**

30. M-S-R states its support for the proposed cost allocation methodology as an interim solution that will allow the region additional time to develop more permanent operational solutions to the oversupply problem. M-S-R asserts that the methodology satisfies the FPA section 211A comparability standard because all generators that submit transmission schedules during an oversupply event are allocated costs. Furthermore, M-S-R states that Bonneville's exclusion of generators outside its balancing authority area is reasonable because Bonneville is not obligated to curtail these generators before spilling water and, as such, schedules by external generators do not appear to affect Bonneville's oversupply obligations and costs.⁴³

31. Movants argue that the proposed cost allocation methodology constitutes a subsidy to Bonneville's power rates, and that this subsidy interferes with the operation of competitive wholesale markets.⁴⁴ Movants, Caithness, and Portland/Puget argue that Bonneville's proposal is contrary to section 7(g) of the Northwest Power Act, which requires that costs of fish and wildlife measures and the costs of the sale of, or inability to sell, excess power must be allocated solely to power rates.⁴⁵ Movants also contend that

⁴³ M-S-R June 13, 2014 Comments at 3-4.

⁴⁴ Movants June 13, 2014 Protest at 24-25 (Movants 2014 Protest).

⁴⁵ Movants 2014 Protest at 23; Caithness June 13, 2014 Comments at 17-18 (Caithness 2014 Comments); Portland/Puget June 13, 2014 Comments at 10 (Portland/Puget 2014 Comments).

FPA section 211A and Bonneville's transmission ratemaking rules are intended to ensure that power related costs are not included in transmission rates.⁴⁶ Movants and Caithness assert that, regardless of the extent of the Commission's authority to review the rate approved under the Northwest Power Act, it is appropriate for the Commission to consider, under its FPA section 211A authority, whether allocating oversupply costs to transmission customers results in comparable treatment, which would not be the case if such allocation constitutes improper subsidization of Bonneville's power rates.⁴⁷ Movants and Portland/Puget point out that the Commission did not require Bonneville to allocate oversupply costs to transmission customers and did not conclude that such an allocation was equitable or lawful.⁴⁸

32. Caithness claims that the OMP has nothing to do with transmission reliability or availability, but it is simply a market-control tool by which Bonneville can rid the market of energy suppliers whose load it wants to confiscate for use by its marketing function. Caithness asserts that the proposed cost allocation methodology compounds the underlying comparability problem by requiring wind generators to pay for being bumped off the Bonneville transmission system. Caithness disagrees with Bonneville's position that the sole reason Bonneville incurs oversupply costs is the existence of wind generators on its system, and it argues therefore that OMP costs are not properly allocated to transmission. Caithness claims that permitting this allocation would result in an anomaly by which Bonneville would credit positive revenues from secondary power sales against its power rates, but it would recover negative revenues from secondary sales to transmission customers. Caithness insists that all revenue from secondary power sales, both positive and negative, must be included in Bonneville's power rates.⁴⁹

33. AWEA/Renewable Northwest and Portland/Puget likewise argue that oversupply costs are power costs that are not properly allocable to transmission rates. They contend that oversupply events are not caused by constraints on or use of the transmission system; rather, they are caused by excess federal hydro generation on the system that Bonneville

⁴⁶ Movants 2014 Protest at 23-24 (citing *U.S. Dept. of Energy - Bonneville Power Admin.*, 25 FERC ¶ 61,140, at 61,375 (1983) (requiring that Bonneville provide data to prove that costs assigned to transmission are only transmission based, and not power based)).

⁴⁷ Movants 2014 Protest at 23; Caithness 2014 Comments at 15-18.

⁴⁸ Movants 2014 Protest at 25; Portland/Puget 2014 Comments at 19-22.

⁴⁹ Caithness 2014 Comments at 14-17.

is unable or unwilling to spill or sell at the prevailing market price.⁵⁰ AWEA/Renewable Northwest claim that, by arguing that the interconnection of wind to the transmission system and scheduled use of that system are the cause of oversupply costs, Bonneville conflates the causes of oversupply events with its preferred solution for managing those events.⁵¹ Portland/Puget also contend that Bonneville is confusing cause and effect and argue that, because oversupply is not caused by use of Bonneville's transmission system, allocating oversupply costs to transmission violates cost causation principles. Thus, Portland/Puget maintains that oversupply costs should be borne by power customers and not transmission customers.⁵²

34. Movants, AWEA/Renewable Northwest, and Caithness contend that, taken together, the Revised OMP and proposed cost allocation methodology result in transmission service that is non-comparable, unduly discriminatory and preferential. They repeat their prior arguments, as discussed in Section V.C.2 below, that the undue discrimination found by the Commission in prior orders will continue to exist irrespective of any rate proposed by Bonneville. This is because under the OMP, Bonneville unilaterally curtails non-federal generation, takes the firm transmission service reserved by those generators, and uses that reserved transmission to deliver federal hydropower to customers of the non-federal generators. Movants, AWEA/Renewable Northwest, and Caithness assert that the compensation offered by Bonneville, which would be subject to refund under the proposed costs allocation methodology, does not remedy this discrimination or render the treatment comparable.⁵³

35. In addition, Movants, AWEA/Renewable Northwest, Caithness and Portland/Puget claim that Bonneville's proposed cost allocation methodology does not satisfy the section 211A comparability requirement because non-federal generation will be allocated oversupply costs based on scheduled transmission rather than the actual usage of transmission. They claim that under this methodology non-federal generation is treated noncomparably, because it is charged oversupply costs based on transmission rights it does not use, while federal generation is able to use other customers' firm

⁵⁰ AWEA/Renewable Northwest June 13, 2014 Comments at 6-9 (AWEA/Renewable Northwest 2014 Comments); Portland/Puget 2014 Comments at 7-15.

⁵¹ AWEA/Renewable Northwest 2014 Comments at 6-9.

⁵² Portland/Puget 2014 Comments at 14-15.

⁵³ Movants 2014 Protest at 29-32; AWEA/Renewable Northwest 2014 Comments at 10-11; Caithness 2014 Comments at 13-15.

transmission rights while avoiding the costs associated with that usage. The result, according to the commenters, is that Bonneville is the only entity that gets to use the system without accounting for its usage during oversupply conditions, a practice that is plainly non-comparable.⁵⁴

36. Movants urge the Commission not to compromise its comparability and undue discrimination rules to allow a transmitting utility to treat competing generation less favorably than it treats itself. Movants and Caithness argue that doing so in this case has implications beyond Bonneville's OMP, potentially signaling that such behavior is permissible for all transmitting utilities.⁵⁵ Similarly, AWEA/Renewable Northwest assert that Bonneville has not justified a departure from the Commission's well-established open access and comparability policies, particularly in light of other options available to Bonneville for managing oversupply events in a non-discriminatory manner.⁵⁶

37. Movants and Caithness argue that the OMP came about as an overreaction to high water conditions in 2011, and that recent experience demonstrates that Bonneville can manage oversupply through improved advanced planning and at a relatively low cost.⁵⁷ Furthermore, Movants contend that the accommodations sought here by Bonneville are the result of its unwillingness to pay market prices in oversupply circumstances by selling its energy at negative prices. Thus, Movants request that the Commission direct Bonneville to negotiate bilateral arrangements with customers for curtailing during oversupply events or to sell excess energy at market prices and allocate the associated costs to power rates. Movants assert that either solution would eliminate the need for the OMP.⁵⁸ Caithness also contends that the OMP is unnecessary and counterproductive and suggests that if Bonneville needs additional tools for managing oversupply events, it should negotiate consensual curtailment agreements with thermal generators that continue to run during oversupply events. Caithness urges the Commission to

⁵⁴ Movants 2014 Protest at 21-22, 26-28; AWEA/Renewable Northwest 2014 Comments at 9-10; Caithness 2014 Comments at 13-15; Portland/Puget Comments at 15-19.

⁵⁵ Movants 2014 Protest at 33-34; Caithness 2014 Comments at 19-20.

⁵⁶ AWEA/Renewable Northwest 2014 Comments at 11-12.

⁵⁷ Movants 2014 Protest at 34-35; Caithness 2014 Comments at 9-11.

⁵⁸ Movants 2014 Protest at 34.

consolidate this proceeding with Docket No. EF14-5-000 so that the Cost Allocation Proposal and related issues can be resolved in a consistent fashion.⁵⁹

2. Bonneville Answer

38. Bonneville refutes commenters' arguments that Bonneville resists using alternatives to the OMP. In particular, Bonneville notes that multiple commenters have questioned the need for the OMP because Bonneville has not had to use it in 2013 or so far in 2014. Bonneville argues that its extensive efforts to minimize the use of its protocol should not be an argument against approval of its protocol. Bonneville argues that the OMP remains a necessary tool by which Bonneville can meet its obligations while providing comparable service.⁶⁰

3. Commission Determination

39. In the Compliance Order, the Commission directed Bonneville to set forth a cost allocation methodology that equitably allocates displacement costs and ensures comparable service for all firm transmission customers.⁶¹ As discussed below, we find that Bonneville's proposed cost allocation methodology complies with the Commission's directives in the Compliance Order and we therefore accept it.

40. We find that oversupply costs are properly allocable to Bonneville's transmission customers. Oversupply events affect Bonneville's transmission system by reducing its capacity to handle generation from sources other than Bonneville's hydroelectric power. In the past, Bonneville asserts the cost of managing these events was negligible, because thermal generation was willing to decrement in exchange for free power offered by Bonneville. However, wind generators generally receive production tax credits and renewable energy credits based on the amount of energy they generate, and have an incentive to continue operating even when there is an oversupply of energy, absent compensation sufficient to cover revenues forgone by not producing. Thus, under the OMP, Bonneville incurs costs in order to curtail wind generators during oversupply conditions – a situation that did not exist prior to the interconnection of significant amounts of wind generation on Bonneville's transmission system. Because this interconnection of wind resources to Bonneville's transmission grid is directly related to Bonneville incurring oversupply costs, we find that Bonneville's oversupply costs are

⁵⁹ Caithness June 2014 Comments at 8-12, 20.

⁶⁰ Bonneville June 30, 2014 Answer.

⁶¹ Compliance Order, 141 FERC ¶ 61,234 at P 46.

properly categorized as transmission costs.⁶² Because the OMP affects Bonneville's entire transmission system, we find that the oversupply costs are properly allocated to generation that is scheduled to use Bonneville's transmission system. Furthermore, because we find that the oversupply costs are properly allocated to generation that is scheduled to use Bonneville's transmission system, we reject arguments that this cost allocation methodology constitutes an improper subsidy to Bonneville's power rates.

41. We also find no merit in commenters' position that an allocation based on the scheduled use of transmission results in non-comparability. The scheduled use of transmission serves as a proxy measure for the amount of generation occurring during an oversupply event. The excess generation seeking to use the transmission system results in the need for Bonneville to displace generation and incur oversupply costs. Moreover, displaced generation still retains the benefits of the transmission schedule during the time it is displaced, because that generator's load continues to be served by free federal hydroelectric power. In addition, Bonneville compensates the displaced wind generators for lost revenue, thereby putting the wind generators in a similar financial position as if they were allowed to generate and deliver the power under normal conditions. The fact that displaced generators must also share the costs incurred by Bonneville to operate its transmission system reliably, while also fulfilling its environmental obligations during oversupply conditions does not render this compensation "subject to refund," as claimed by the commenters. Rather, the oversupply costs allocated to any specific displaced wind generator represents its contribution to the need for Bonneville to incur those costs, consistent with cost causation principles.

42. We are also not persuaded by commenters who argue that this arrangement is not equitable because Bonneville is the only entity that gets to use the system during oversupply conditions without accounting for its usage. These commenters appear to be mistaken regarding the outcome of the proposed cost allocation methodology. As stated by Bonneville in the Cost Allocation Proposal, federal power generation would have been allocated approximately 85 percent of the oversupply costs in 2012, as compared to 15 percent to wind generation.⁶³ Therefore, under Bonneville's proposal, wind generators bear the oversupply costs in a manner proportional to their scheduled use of the transmission system during an oversupply situation, similar to all scheduled users of the system. Thus, we find that allocating oversupply costs based on scheduled use equitably distributes these costs and meets comparability requirements.

⁶² The Commission has previously found that "[i]nterconnection is an element of transmission service." See *Tennessee Power Company*, 90 FERC ¶ 61,238 (2000).

⁶³ Cost Allocation Proposal at 6.

43. The Commission remains committed to its well-established open access and comparability principles and finds, for the reasons set forth above, our action here is consistent with those requirements. Because we find that the Revised OMP and associated cost allocation methodology, taken together, result in comparable and not unduly discriminatory or preferential transmission service for all of Bonneville's firm transmission customers, we find no need to direct Bonneville to consider other alternatives to the OMP. However, we encourage Bonneville to continue to work with its stakeholders to develop a mutually agreeable long-term solution to manage oversupply conditions rather than continuing to rely on involuntary curtailment.

44. We reject Caithness's request to consolidate this proceeding with Docket No. EF14-5-000 because the proceedings involve distinct issues. Our review of the proposed cost allocation methodology in this docket concerns whether Bonneville has complied with the directive in the Compliance Order to establish an equitable methodology for allocating costs associated with the OMP, whereas the Commission's review in Docket No. EF14-5-000 is limited to the question of whether the proposed rate is consistent with the standards set forth in the Northwest Power Act.⁶⁴

C. Revised OMP Proposal

1. Cost Allocation

a. Comments and Protests

45. M-S-R, Puget, Caithness, and Movants object to Bonneville's decision to remove the cost allocation components from the OMP. Puget contends that the removal of the cost allocation provisions from the OMP is inconsistent with the Compliance Order, which found that the cost allocation provisions are "intrinsically linked" to the non-rate aspects of the OMP.⁶⁵ Caithness and Movants argue that, without the cost allocation component, the Commission has no basis for determining whether the Revised OMP, when combined with the Cost Allocation Proposal, will result in comparable treatment

⁶⁴ As noted above, the Commission confirmed and accepted Bonneville's proposed rate as consistent with the standards of the Northwest Power Act in Docket No. EF14-5-000 in an order issued concurrently with this order. *Bonneville Power Administration*, 149 FERC ¶ 61,043 (2014).

⁶⁵ Puget March 26, 2013 Comments at 6 (citing Compliance Order, 141 FERC ¶ 61,234 at P 43) (Puget 2013 Comments).

for all transmission customers under section 211A of the FPA.⁶⁶ Movants suggest that approving the OMP without the cost allocation component may remove incentives for Bonneville to look for alternative solutions for managing oversupply conditions.⁶⁷

b. Commission Determination

46. Given that Bonneville submitted the Cost Allocation Proposal, and that the Commission will accept it for the reasons stated above, arguments that the Revised OMP cannot be properly evaluated without a cost allocation proposal are moot.

2. Comparable Treatment

a. Comments and Protests

47. Movants and Powerex argue that the Revised OMP does nothing to address the flaws identified by the Commission in the Compliance Order. Movants and Powerex argue that the non-rate terms and conditions of the Revised OMP continue to be non-comparable, unduly discriminatory and preferential, and that they are not consistent with or superior to the *pro forma* OATT. They claim that, because under the OMP, Bonneville is entitled to displace the firm transmission service of certain customers and utilize that transmission to deliver its own power to those customers' loads, the OMP cannot be made comparable or non-discriminatory by adopting a different rate.⁶⁸ Furthermore, Movants contend that the *pro forma* OATT only permits curtailments for reliability purposes, and on a non-discriminatory basis, and it contains no provision that would allow discriminatory curtailments so long as the curtailed customer gets paid an appropriate redispatch rate. Movants maintain that none of the reasons proffered by Bonneville address comparability concerns or support a finding that the non-rate terms of the Revised OMP are comparable and not unduly discriminatory or substantially consistent with or superior to the *pro forma* OATT.⁶⁹

⁶⁶ Caithness March 26, 2013 Comments at 2-4 (Caithness 2013 Comments); Movants March 26, 2013 Protest at 7-9 (Movants 2013 Protest).

⁶⁷ Movants 2013 Protest at 9.

⁶⁸ Movants 2013 Protest at 10-11; Powerex March 26, 2013 Protest at 3 (Powerex 2013 Protest).

⁶⁹ Movants 2013 Protest at 10-12, 15.

48. Specifically, Movants dispute claims by Bonneville that the Revised OMP provides comparable treatment because all entities are subject to displacement. Movants argue that the Revised OMP continues to discriminate against non-federal generation. Movants note that under the Revised OMP, generators will only be curtailed if their output is “not required to avoid spill violations,”⁷⁰ but they contend that the OMP’s applicability to federal generation is essentially meaningless, because most of Bonneville’s federal generation must run during oversupply circumstances. According to Movants, federal generation, for the most part, must run during oversupply conditions, while by contrast, non-federal generators are given a choice under the OMP of submitting displacement costs or being assigned a zero cost and being displaced first.⁷¹

49. Movants also claim that Bonneville fails to acknowledge fully the effect of the OMP on transmission rights. Even though the full amount of energy is delivered by Bonneville, Movants argue that, under the OMP, transmission customers are being deprived of their firm transmission rights. This is because, by using those rights to deliver its own energy, Bonneville prevents customers from exercising other contractual rights, such as the right to reassign the capacity to alternate points of delivery, or to resell the capacity to a third party.⁷²

50. Finally, Movants contend that Bonneville has never demonstrated that the OMP is necessary for reliability and/or environmental reasons. Rather, Movants claim that Bonneville’s transmission function is curtailing non-federal generators so that Bonneville’s merchant function can use the firm transmission capacity to transmit federal hydroelectric energy to the non-federal generators’ loads. With regard to Bonneville’s proffered environmental justifications, Movants point out that fish and wildlife advocates have intervened in this proceeding to argue that Bonneville’s oversupply policies are not necessary to meet its fish and wildlife responsibilities.⁷³

b. Answer

51. Bonneville argues that Movants’ repeated reference to the *pro forma* OATT as a basis for rejecting the non-rate terms of the Revised OMP is misplaced. Bonneville asserts that the Commission already has accepted the non-rate terms and conditions of the

⁷⁰ Movants 2013 Protest at 12 (citing Revised OMP Filing at n.19).

⁷¹ *Id.*

⁷² *Id.* at 12-13.

⁷³ *Id.* at 13-14.;

OMP, subject to Bonneville filing an acceptable cost allocation methodology. Thus, Bonneville maintains that a new rate (i.e., cost allocation methodology) is the only thing required by the Commission to ensure that service under the OMP will be comparable and not unduly discriminatory.⁷⁴

c. Commission Determination

52. We find that the non-rate terms of Bonneville's 2012 OMP, taken together with Bonneville's cost allocation methodology as discussed above, result in comparable transmission service. Bonneville's solution allows for Bonneville to resolve its oversupply issues with minimal disruption to its normal operations, and to provide appropriate compensation to those wind generators that lose revenue when displaced. The Revised OMP is substantially similar to the 2012 OMP; thus the rationale supporting conditional acceptance of the non-rate terms and conditions of the 2012 OMP, as set forth in the Compliance Order and noted above,⁷⁵ and our acceptance here of the Cost Allocation Proposal as a methodology that ensures comparable transmission service apply with equal force to the Revised OMP. Therefore, we find that the Revised OMP, when taken together with the cost allocation methodology, also results in comparable transmission service.

53. We reject arguments that Bonneville's Revised OMP violates contractual transmission rights to redirect or resell transmission service. Bonneville's OMP does not violate the contractual rights to redirect or resell transmission service because, when Bonneville uses the OMP, the scheduled transmission service is simply not available for any use other than the Bonneville's use to manage the transmission system during an oversupply event.

54. We reject arguments that Bonneville has not demonstrated that the OMP is needed because it is undisputed that Bonneville has an obligation to manage oversupply conditions. Commenters have merely expressed their objections to Bonneville's decision to utilize this particular mechanism instead of other alternatives. Bonneville has demonstrated, through its efforts to reduce its use of the OMP, its willingness to exhaust alternatives before opting to displace generation. However, when these alternatives are exhausted Bonneville needs a backstop to ensure it can operate its transmission system in accordance with all applicable statutes. Thus, we find that the OMP remains necessary at this time.

⁷⁴ Bonneville April 19, 2013 Answer at 2-4 (Bonneville 2013 Answer).

⁷⁵ See Compliance Order, 141 FERC ¶ 61,234 at PP 43, 45, 46.

3. Alternate Actions

a. Comments and Protests

55. M-S-R states that it is generally supportive of Bonneville's commitment to pursue a non-exclusive list of alternative actions before implementing the OMP. M-S-R opines that this is a necessary and practical approach that creates measurable standards that limit Bonneville's discretion. However, M-S-R requests assurances that Bonneville will curtail and displace generation at the Columbia Generating Station and other thermal generators down to minimum operating levels before curtailing any wind resources.⁷⁶

56. Puget, Portland, and Powerex, and Movants argue that, if the Commission accepts the Revised OMP, Bonneville should be required to consider selling surplus electricity at negative prices before implementing the OMP. They claim that the OMP does not address a reliability problem and they maintain that the oversupply problem arises from Bonneville's unwillingness to sell power at negative prices.⁷⁷ They also claim that Bonneville's refusal to sell at negative prices distorts the Pacific Northwest market and effectively externalizes Bonneville's supply and demand problem to the entire region.⁷⁸ Powerex asserts that, by refusing to sell its excess generation at negative prices, Bonneville has effectively established an arbitrary price floor of \$0, which is inconsistent with the bid floor in the neighboring California Independent System Operator Corporation markets. Powerex claims that Bonneville has not provided any compelling reason to reject the idea of negative pricing.⁷⁹ Movants question Bonneville's failure to identify a long-term solution that would eliminate the need for the OMP and suggest that two viable options include the negotiation of bilateral arrangements with customers during oversupply events or the sale of excess energy at negative prices.⁸⁰

57. Movants request several modifications to Bonneville's list of alternate actions in the event the Commission does not reject the Revised OMP. Movants argue that Bonneville's proffered list of "mays" does not increase transparency of Bonneville's

⁷⁶ M-S-R March 26, 2013 Comments at 2, 9-11.

⁷⁷ *E.g.*, Portland March 26, 2013 Comments at 5-6 (Portland 2013 Comments).

⁷⁸ Puget 2013 Comments at 5; Powerex 2013 Protest at 5; Portland 2013 Comments at 5-6.

⁷⁹ Powerex 2013 Protest at 4-5.

⁸⁰ Movants 2013 Protest at 20.

actions or ensure comparability of treatment of transmission customers. Thus, they request that the Commission require Bonneville to implement a definitive list of specific actions it will take before displacement. Movants also argue that Bonneville should be required to explain actions it has already taken and determinations it has made regarding the availability of any alternative action and the action's effectiveness at addressing the need for displacement.⁸¹

b. Answer

58. In response to M-S-R's request for assurances that the output at Columbia Generating Station and thermal generators will be reduced before wind is displaced under the OMP, Bonneville explains that because all thermal generators have a \$0/MWh displacement cost, they will be displaced down to the minimum operating level on file with Bonneville prior to displacing wind generators with positive displacement costs. With regard to requests for greater transparency, Bonneville asserts that it has already put into place a forum for explaining what actions it has taken. Thus, Bonneville argues that the Commission does not need to direct Bonneville to provide information that it already makes available to market participants.⁸²

c. Commission Determination

59. We find that Bonneville's proposed list of alternative actions satisfies the Commission's compliance directive. In the Compliance Order, the Commission directed Bonneville to "identify those specific actions it will take prior to displacing generation in any future proposal submitted to the Commission to address oversupply conditions," in order to achieve transparency for generators that may be affected by displacements.⁸³ We find that the non-exhaustive list of alternative actions proposed by Bonneville is reasonable, because it accounts for changes in system conditions and how various actions may be more or less feasible and/or effective as system conditions vary. We agree with Bonneville that committing, without qualification, to specific alternative actions may be counterproductive as it may result in Bonneville violating the protocol or taking actions that may increase costs without yielding any commensurate benefit. We also note that Bonneville's use of the OMP since 2012 has been minimal, which suggests that the

⁸¹ Movants 2013 Protest at 16-17.

⁸² Bonneville 2013 Answer at 6-7 (citing its weekly Spring Operations Forum conference calls, conducted during the spring and early summer high water period, where Bonneville discusses the need for displacement).

⁸³ Compliance Order, 141 FERC ¶ 61,234 at P 56.

alternative actions have been successful at reducing or eliminating the need for displacement. Thus, at this time, we find no need to direct Bonneville to modify or augment the list. Additionally, with respect to negative pricing, we note that in the December 2011 Order, which addressed the original complaint, the Commission declined to address the issue of negative pricing as a means of resolving Bonneville's over-generation problem.⁸⁴ In the Compliance Order, the Commission conditionally accepted the OMP and directed Bonneville to specify a list of actions it would take prior to displacing wind generators, but did not require Bonneville to consider negative pricing as one of those actions.⁸⁵ Here, we find that Bonneville has complied with the directives of the Compliance Order and, as discussed above, find that the Revised OMP and associated cost allocation methodology, as proposed by Bonneville, satisfy the comparability requirements of FPA section 211A. Thus, we find that the commenters have not provided any compelling reasons to revisit the issue of negative pricing.

60. We also find no need to direct Bonneville to engage in additional reporting regarding its use of the alternative actions and their effectiveness. As Bonneville explained in its 2013 Answer, it already conducts weekly conferences to provide updates on system conditions and actions that have been taken to manage any oversupply situation. We find that these conferences should be sufficient to address customers' concerns about transparency.

4. Compensation

a. Comments and Protests

61. EON asserts that compensation under the Revised OMP is virtually unchanged from that under the 2012 OMP, pursuant to which generators with contracts executed before March 6, 2012 were compensated for lost production tax credits, lost renewable energy credits, and certain contract costs, while generators with contracts executed after March 6, 2012 received compensation only for lost production tax credits and renewable energy credits. Accordingly, EON argues that the Revised OMP continues to unlawfully discriminate against generators with contracts executed after March 6, 2012. EON contends that these generators are similarly situated to those with contracts signed prior to March 6, 2012 and, therefore, they must be treated comparably under the FPA and relevant Commission precedent.⁸⁶ EON argues that this continuation of undue

⁸⁴ December 2011 Order, 137 FERC ¶ 61,185 at P 66.

⁸⁵ Compliance Order, 141 FERC ¶ 61,243 at PP 46, 56.

⁸⁶ EON March 26, 2013 Protest at 5-8, 10-11 (citing *E.ON. U.S. LLC*, 124 FERC ¶ 61,131, at P 32 (2008); *Southwest Power Pool, Inc.*, 119 FERC ¶ 61,199, at P 59 (2007))

(continued ...)

discrimination is counter to the Commission's directive in the Compliance Order that all firm transmission customers must be treated equitably and comparably.⁸⁷

62. EON also asserts that the Revised OMP is unduly preferential to certain groups of transmission customers that, in EON's view, will be compensated for contract costs. First, EON contends that the OMP compensation results in an undue preference for federal generators over non-federal generators because, according to EON, there is no evidence that federal generators will be subject to the post-March 6, 2012 exclusion of contract costs. Furthermore, EON claims that the post-March 6, 2012 exclusion provides an undue preference for existing generators over new generators. EON also argues that the OMP compensation unduly discriminates between new non-federal thermal generation, which would receive compensation for contract costs, and new non-federal renewable generation, which would not receive compensation for such costs. Thus, EON suggests that the Revised OMP could undermine investment in new non-thermal renewable generation in the region.⁸⁸

63. Similarly, Movants request that the Commission direct Bonneville to correct the OMP's undue discrimination against new entrants. Movants contend that the costs imposed on generators by the Revised OMP necessarily affect contract negotiations and will be borne either directly as a loss or indirectly by giving away something else of value in the contract. Movants note that under the Revised OMP, new generators, like existing generators with contracts executed before March 6, 2012, will still incur costs associated with lost contract revenues but, unlike existing generators with pre-March 6, 2012 contracts, will not be able to recover those costs. Movants emphasize that being on notice of the difference in compensation post-March 6, 2012 does not remedy this problem. Furthermore, Movants assert that, in addition to compensation for lost production tax credits, renewable energy credits, and contract costs, OMP compensation

(both rejecting tariff language that made existing generators eligible for a certain type of compensation immediately, but imposing a delay before new generators would become eligible); *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,192, at P 18, n.13, *reh'g denied*, 116 FERC ¶ 61,283 (2006) (rejecting a tariff provision that presumed eligibility for compensation of existing generators but requiring new generators to satisfy a "needs test" before they would be eligible)) (EON 2013 Protest).

⁸⁷ *Id.* at 6-9, 12-13.

⁸⁸ *Id.* at 9-11, 14.

should include the cost of the firm transmission rights taken by Bonneville from non-federal generators for delivery of Bonneville's hydroelectric energy.⁸⁹

b. Answers

64. Bonneville asserts that the proper time to raise concerns regarding OMP compensation was in response to the original OMP filing. Bonneville notes that the Commission already has approved OMP compensation that distinguishes between contracts executed pre- and post-March 6, 2012, and the Revised OMP does not alter this distinction. Nevertheless, Bonneville contends that EON's arguments are without merit. Bonneville highlights that federally-owned generation is not eligible for any compensation under the OMP, because it does not produce renewable energy credits and is not eligible for production tax credits. Thus, Bonneville asserts that the compensation criteria for post-March 6, 2012 contracts are not relevant to federal generation. Moreover, Bonneville contends that the cases cited by EON to support its undue discrimination argument are inapposite. Bonneville claims that these cases involved limits on compensation that would only apply to new generators, and never existing generators, based on factors outside the generators' control. Bonneville emphasizes that the OMP's compensation rules apply to all power sales contracts executed after March 6, 2012, for new and existing generators alike. Further, Bonneville asserts that the different treatment of pre- and post-March 6, 2012 is based on factors that are within generators' control, because they are on notice of the rule and have the opportunity to structure contracts accordingly.⁹⁰

65. Bonneville also contends that, because OMP compensation was conditionally approved by the Commission in a prior order and Bonneville has not proposed to revise this aspect of its proposal in the instant filing, Movants' argument that OMP compensation should include the costs for their firm transmission rights is beyond the scope of this proceeding. Furthermore, Bonneville asserts that including these costs would result in overcompensation, because the point of OMP compensation is to put the generator in the same position it would have been in had it served load with its own power. Bonneville argues that, because a firm transmission customer would still incur firm transmission costs to serve load with its own power, including this cost in OMP compensation would not be appropriate.⁹¹

⁸⁹ Movants 2013 Protest at 18-20.

⁹⁰ Bonneville 2013 Answer at 7-10.

⁹¹ *Id.* at 4-5.

66. EON continues to insist that the only way to put all generators in the same economic position when Bonneville orders curtailments is to eliminate the distinction between pre- and post-March 6, 2012 compensation. EON disagrees with Bonneville regarding the relevance of whether federal generators are eligible for compensation under the OMP. EON argues that discussion of federal generators is relevant because these generators will still be fully compensated under their contracts, whereas non-federal wind generators with contracts executed after March 6, 2012 will not be compensated for contract costs when Bonneville curtails transmission usage. EON makes similar arguments to buttress its claim that thermal generators enjoy an undue preference under the OMP. EON argues that the proper focus is not on renewable energy credits and production tax credits, but on whether both wind and thermal generators are firm transmission customers that should be compensated equally when curtailed.⁹²

67. EON also argues that Bonneville has misinterpreted the relevant Commission precedent. EON maintains that the cited cases did not turn on whether the compensation limitations were based on factors outside the generators' control, but focused solely on the principle that existing and new generation must be compensated the same because of the similar services each provides. EON asserts that all generators do not receive the same compensation opportunity under the Revised OMP. Therefore, EON contends that compensation under the OMP is unduly discriminatory and preferential.⁹³

68. EON disputes Bonneville's claim that generators executing contracts after March 6, 2012 have an opportunity to avoid losses by structuring their contracts properly. EON asserts that Bonneville's position is naïve and overlooks the fact that there is a price to pay in contract negotiations. EON raises the possibility that it may not be realistic to expect that potential purchasers would be willing to agree to a contract that imposes no penalties for non-delivery of renewable energy credits.⁹⁴

5. Commission Determination

69. We find no merit in the arguments offered by EON and Movants regarding compensation under the Revised OMP. For the Revised OMP, Bonneville proposes essentially the same compensation as it provided under the 2012 OMP. The Commission has previously considered and rejected identical arguments by EON regarding Bonneville's proposal to provide compensation for contract costs only for generators that

⁹² EON May 9, 2013 Answer at 2-4 (EON 2013 Answer).

⁹³ *Id.* at 4-5.

⁹⁴ *Id.* at 5-7.

had an executed power sales agreement prior to March 6, 2012 (the date the OMP was filed with the Commission).⁹⁵ In the June 2013 Order, the Commission found that Bonneville's proposal to distinguish between generators with pre- and post- March 6, 2012 contracts is appropriate because "[g]enerators that had already entered into contracts prior to March 6, 2012 had no opportunity to address and mitigate any possible losses associated with potential displacement during oversupply events."⁹⁶ In contrast, the Commission found that "with notice of the proposed OMP compensation rules, generators entering into new contracts have the opportunity to structure their transactions in accordance with the applicable OMP compensation provisions."⁹⁷ Finally, the Commission found no undue discrimination or preferential treatment with respect to compensation for contract costs.⁹⁸

70. The only substantive change proposed by Bonneville in this proceeding with respect to OMP compensation concerns generators' obligation to submit cost data in order to be eligible for compensation. We find that this revision is a just and reasonable measure for Bonneville to verify OMP costs, because it ensures that compensation under the Revised OMP will be supported by verifiable data, thereby helping to guard against excessive or inappropriate costs. However, the addition of this provision does not provide a reason for us to reconsider the remainder of the previously-approved OMP compensation rules. EON has not presented any new information that would cause us to reconsider the Commission's previous decision on this issue.

71. For similar reasons, we reject Movants' arguments. As noted above, the Commission previously considered and rejected objections to the distinction between pre- and post-March 6, 2012 contracts. We also find that Movants have not demonstrated that compensation under the Revised OMP, which is functionally identical to the 2012 OMP compensation, has now become unjust and unreasonable in the absence of compensation for firm transmission rights that are used by Bonneville during oversupply events. The Commission previously approved the compensation provisions without a transmission component, and Movants have not provided any information here that would cause us to reconsider the Commission's previous decision on the compensation issue.

⁹⁵ *Iberdrola Renewables, Inc. v. Bonneville Power Administration*, 143 FERC ¶ 61,274, at PP 24-27 (2013) (June 2013 Order).

⁹⁶ *Id.* P 24.

⁹⁷ *Id.*

⁹⁸ *Id.* PP 25-26.

6. Miscellaneous

a. Comments and Protests

72. Caithness and Powerex express concern that the OMP appears to have become a permanent fixture rather than an interim solution.⁹⁹ Powerex requests the Commission to direct Bonneville to continue working with parties on developing a durable, long-term solution.¹⁰⁰

73. Powerex and Portland contend that Bonneville has not complied with the Commission's directive regarding e-Tags. Portland asserts that in the Compliance Order the Commission required Bonneville to update e-Tags in accordance with applicable reliability standards and, in those instances in which an oversupply event lasts longer than one hour, to make appropriate changes to e-Tags for any subsequent hour that the oversupply event persists.¹⁰¹ Portland and Powerex argue that no oversupply events last a single hour and that Bonneville should be able to ascertain how long an event will last and be able to modify e-Tags accordingly.¹⁰² Powerex contends that, by not changing e-Tags, Bonneville denies purchasers the opportunity to refuse deliveries and insist on receiving what they contracted for, instead of federal hydropower.¹⁰³ Portland asserts that re-tagging by Bonneville would be consistent with the business practice that permits customers to re-tag generation from other generating resources to the appropriate sink during oversupply events and requests the Commission to direct Bonneville to include in the OMP a requirement to re-tag replacement power.¹⁰⁴

b. Answer

74. Bonneville maintains that, even if it has an indication that it may need the OMP for multiple hours, it cannot predict in advance of each hour the amount of displacement

⁹⁹ Caithness 2013 Comments at 4; Powerex 2013 Protest at 7-8.

¹⁰⁰ Powerex 2013 Protest at 7-8.

¹⁰¹ Portland 2013 Comments at 4 (citing Compliance Order, 141 FERC ¶ 61,234 at P 65).

¹⁰² Portland 2013 Comments at 4-5; Powerex 2013 Protest at 9-11.

¹⁰³ Powerex 2013 Protest at 12.

¹⁰⁴ Portland 2013 Comments at 5.

that will be required, thereby rendering re-tagging infeasible. According to Bonneville, Portland is incorrect in asserting that Bonneville's business practices allow Bonneville to re-tag generation within the hour. Bonneville clarifies that only the author of an e-Tag has the right to change that e-Tag. Thus, Bonneville contends that it does not have the right or the capability to modify intra-hour e-Tags for customers' transactions.¹⁰⁵

c. Commission Determination

75. With regard to concerns that the OMP has become a permanent fixture, rather than an interim solution, we remind parties that the Revised OMP, as proposed, expires on September 30, 2015. Thus, if Bonneville wishes to extend its use of the OMP beyond that date, it will need to make a filing with the Commission that explains why continued use of the OMP is justified. We encourage Bonneville to continue to work with its stakeholders to develop a mutually agreeable long-term solution rather than continuing to rely on involuntary curtailment.

76. We find that Bonneville has complied with the Commission's directive regarding e-Tags. In the Compliance Order, the Commission specified that Bonneville should make changes to e-Tags in the event that an oversupply event lasts longer than one hour. In its Revised OMP proposal, Bonneville explains that the OMP is implemented only for the operating hour, and cannot be implemented for more than one hour at a time. Thus, we find that the Commission's directive to change e-Tags during events lasting longer than one hour is inapplicable.

The Commission orders:

(A) Bonneville's Cost Allocation Proposal is hereby accepted, as discussed in the body of this order.

¹⁰⁵ Bonneville 2013 Answer at 11-13.

(B) Bonneville's Revised OMP is hereby accepted, to become effective March 31, 2013 through September 30, 2015, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.