

May 30, 2018

VIA EMAIL

RE: Powerex Comments: Bonneville's April 23, 2018 TC-20 Tariff Customer Workshop

Powerex appreciates the efforts Bonneville has invested in developing the procedures and mechanics for adopting and revising its new tariff.

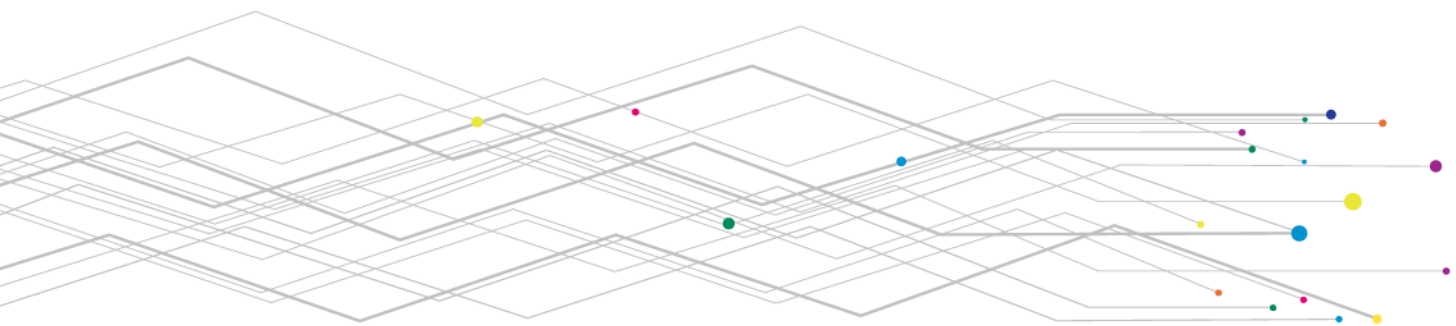
In response to Bonneville's 2016 proposal to remove FERC oversight of Bonneville's tariff revisions, a number of stakeholders expressed strong concerns about the business risk and uncertainty that would result for Bonneville's long-term firm customers whose multi-year investments provide a substantial component of Bonneville's transmission revenues.

At the April 23, 2018 workshop, Bonneville proposed a draft of Section 9 that would be included in Bonneville's new tariff.¹ This proposed Section 9 would allow the Administrator to revise unilaterally the new tariff or any service agreement should Bonneville follow the hearing procedures set forth in Section 212(i) of the *Federal Power Act*. In particular, Section 212(i) provides that when Bonneville proposes to establish terms and conditions of general applicability, Bonneville may follow procedures by which it receives testimony and evidence, a hearing officer thereafter issues a recommended decision, and the Administrator issues a final record of decision. Unlike the existing Section 9, the procedures described in Section 212(i) provide no independent review or standard by which the hearing officer would evaluate Bonneville's proposed tariff revisions or by which the Administrator would determine whether to adopt proposed revisions.

¹ As Bonneville proposed, Section 9 would provide:

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the right of the Transmission Provider to unilaterally make changes in terms and conditions, classification of service, or Service Agreement after the Transmission Provider conducts a hearing under Section 212(i)(2)(A) of the Federal Power Act. The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the rates that apply to transmission service pursuant to applicable law.

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.



As a long-term transmission customer of Bonneville, Powerex has relied on the fairness, stability, and predictability in Bonneville's terms and conditions of service in making its multi-year transmission investments and related contractual commitments. As Powerex has previously explained, this stability and predictability has allowed significant investment by Powerex and other long-term customers in Bonneville's transmission system over the past two decades.² Powerex also has explained its belief that protections comparable to the existing Section 9 are critical to ensure continued investment in substantial quantities of long-term firm transmission service.

Bonneville's April 23 proposal for Section 9 falls short of providing the necessary stability and predictability for long-term transmission customers. Unlike service under its existing OATT, Bonneville is proposing that in return for a multi-year investment commitment in its system, Bonneville will provide transmission service under terms that may be unilaterally modified at the discretion of the Administrator. The scope of the Administrator's discretion is not defined, described, or limited by the proposed Section 9, except that Bonneville must follow the procedural requirements of Section 212(i) before the Administrator can adopt proposed tariff revisions. This broad discretion will permit material and unilateral modifications to long-term service agreements at any point during the term of that agreement. Reliance on judicial review or *Federal Power Act* avenues of redress do not provide meaningful protections, given the general deference to Bonneville and the shifting of burden from Bonneville to the customer. While Powerex believes the significant degradation or elimination of investment value is not intended, the failure to provide any tariff-based assurance of fairness and stability for such changes leaves open the possibility for such outcomes over time and is sufficient to undermine investment confidence. It is imperative that Bonneville provide different options and solutions to address the concerns raised by transmission customers. Powerex does not believe that the non-binding goals and principles laid out at the workshops provide the stability and predictability necessary to support substantial long-term transmission investments.

In its workshop communications with stakeholders, Bonneville has expressed its intention to bring the new tariff closer to the *pro forma* open access transmission tariff provided by FERC. Powerex generally supports this intention and similarly supports Bonneville's stated desire to modernize its new tariff and keep the new tariff aligned with evolving industry standards. Powerex looks forward to continued workshops and discussions with Bonneville and the region on this important issue.

Submitted by:

Connor Curson, Trade Policy
Powerex

² Powerex Corp., *Powerex Comments: BPA Tariff Engagement Design* (Jan. 18, 2017).