



Your Community Energy Partner

May 30, 2018

Submitted via email to: techforum@bpa.gov

Michelle Manary
Bonneville Power Administration
905 NE 11th Ave
Portland, OR 97232

**Re: Comments of Public Utility District No. 1 of Snohomish County on
BPA's TC-20 Tariff Engagement Process**

The Public Utility District No. 1 of Snohomish County (Snohomish) appreciates the opportunity to provide comments on the subjects presented at the Customer Workshop on Terms and Conditions, TC-20 Tariff Proceeding on April 23, 2018. Snohomish's comments are split into two main parts:

1. How BPA should approach the development of a new tariff and specifically how to evaluate deviations from *pro forma*; and
2. Specific deviations that Snohomish recommends to improve the clarity and function of BPA's tariff.

Part I - Development of the BPA Transmission Tariff

Snohomish understands that BPA plans to develop its new transmission tariff by adopting the FERC *pro forma* tariff to the extent possible.¹ At the April 23rd workshop, BPA clarified that it would consider differences from the *pro forma* tariff if they were necessary to meet one of four principles.² Snohomish appreciates BPA's attempt to provide customers with some guidelines as to the types of deviations BPA will consider. We recommend, however, a slightly different approach to developing the tariff, which we believe provides a better framework for BPA to achieve its goal.

¹ BPA 2018-2023 Strategic Plan, at 50.

² The four principles that BPA will consider in proposing variations from the *pro forma* tariff are:

1. Implement BPA's statutory and legal obligations, authorities, or responsibilities;
2. Maintain the reliable and efficient operation of the federal system;
3. Prevent significant harm or provide significant benefit to BPA's mission or the region, including BPA's customers and stakeholders; or
4. Align with industry best practice when the FERC *pro forma* tariff is lagging behind industry best practice, including instances of BPA setting the industry best practice.

Specifically, we recommend that BPA adopt a standard similar to the one FERC would use to determine whether transmission tariffs proposed by non-FERC-jurisdictional utilities like BPA qualify as safe harbor reciprocity tariffs. That standard requires that tariff terms and conditions “substantially conform with or are superior to” those in the *pro forma* tariff.³ We do not suggest that BPA pursue reciprocity status, nor that BPA be bound by FERC’s past interpretation of this standard, but rather that BPA use FERC precedent as a general rule of thumb when considering tariff development. Below is a proposed step-by-step approach that aligns with our recommendation:

Step 1: Start with the *pro forma* tariff as proposed by BPA.

Step 2: Consider deviations from the *pro forma* that “substantially conform with” the *pro forma* tariff. We believe that under this step, BPA could consider implementation of statutory and legal obligations listed under principle 1, reliability provisions listed under principle 2, and other substantive deviations similar to ones FERC has allowed in the past. In addition, under the “substantially conform with” umbrella, BPA could consider ministerial or non-substantive deviations, which BPA staff appears open to, but the current principles do not appear to allow.

In subsequent sections of our comments, Snohomish suggests specific deviations from *pro forma* for BPA to consider. We believe that most of these deviations would fit under this “Step 2,” and we will provide justification in each respective section.

Step 3: Consider deviations from the *pro forma* that are “superior to” the *pro forma* tariff. We believe that under this step, BPA could consider deviations that are unique to BPA. An example is BPA not acting as the financial middleman for transmission resales. While this practice is common in other parts of the country, both BPA and its customers have expressed that it would be heavily burdensome and would not provide value. This demonstrates a situation where, for BPA, a deviation would be “superior to” the *pro forma* language.

We believe that should BPA adopt this evaluative process, the guiding principles presented and explained at the workshop will be unnecessary.⁴

Part II – Recommended Deviations

A. Distinction Between the Existing and New Tariffs

The new proposed tariff does not adequately distinguish itself from the existing tariff, which may lead to confusion for customers that will have grandfathered transmission service agreements. To avoid any potential confusion, we recommend the following:

1. Include a preamble to the new tariff that provides context for the existence of the two tariffs;

³ We note that the safe harbor reciprocity standard is slightly different than the “consistent with or superior to” standard FERC-jurisdictional entities have to meet when seeking a deviation from the *pro forma*.

⁴ Snohomish has concerns with the broad and vague nature of the four principles.

2. Reference the new tariff differently than the existing tariff throughout;
3. Include language in the new tariff that defines the effective date of the new tariff;
4. Revise references to “the Tariff” to “this Tariff;” and
5. Provide an affirmative statement that this tariff does not apply to transmission service agreements executed prior to the effective date.

In proposing general changes to better distinguish the new tariff from the old tariff, Snohomish believes that such deviations prevent confusion and have no or relatively little impact on the substantial conformance with the *pro forma*. Snohomish believes this meets the “substantially conform with” standard.

B. Tariff Revisions

Snohomish supports BPA’s proposal to use the process in Section 212(i)(2)(A) of the Federal Power Act (“FPA”) to establish *terms and conditions* in the new tariff. The *pro forma* tariff does not include references to FPA Section 212(i)(2)(A) because it is uniquely applicable to BPA only. The *pro forma* does include a provision titled “Regulatory Filings” in Section 9 that addresses how a FERC-jurisdictional entity may apply to FERC for changes to terms and conditions, among other things, under FPA Section 205. BPA now attempts to surgically revise *pro forma* Section 9 so that it addresses the FPA Section 212(i)(2)(A) process instead, while at the same time trying to keep as much of the *pro forma* language as possible. Although we appreciate the intent behind this approach, the result is a hodgepodge provision whose intended benefits do not seem to outweigh the accuracy, clarity, and specificity that would better serve BPA and its customers.

We make the following two recommendations. First, section 9 should retain the *pro forma* heading of “Regulatory Filings,” but the *pro forma* language should be deleted from section 9 and replaced with language like “Not Applicable” because BPA does not make any regulatory filings under an FPA Section 212(i)(2)(A) process. Second, BPA should add two new sections to the tariff which specifically address tariff revisions and parties’ rights. Below is our recommended language:

Section 37 – Tariff Revisions

The Bonneville Power Administration may revise the terms and conditions of this Tariff only after: (i) providing opportunity for a hearing pursuant to Section 212(i)(2)(A), and (ii) complying with the requirements thereunder. The effective date of the tariff revisions shall be sixty (60) days after publication of a final record of decision notice in the Federal Register unless otherwise determined in the final record of decision.

Section 38 – Preservation of Party Rights

Nothing contained in this Tariff or any Service Agreement under this Tariff shall be construed as affecting in any way the ability of any Party receiving service under this Tariff to exercise its rights under applicable law and pursuant to the rules and regulations promulgated thereunder.

The new section 37 is meant to track the language of FPA Section 212(i)(2)(A). Snohomish also added an effective date sentence because we believe it would help clarify the timing and that the determination required under FPA Section 212(i)(A)(2)(III) will be in a final record of decision. Such accuracy, clarity, and specificity is lacking in the currently proposed section 9.

Removing section 9 and adding a new proposed section 37 is a deviation that should be considered to be “superior to” the *pro forma* for BPA. The removal of the Section 9 language is unique to BPA because the language is inapplicable under an FPA Section 212(i)(2)(A) process and the new section 37 provision addresses the FPA Section 212(i)(2)(A) process which is also unique to BPA. Both of these deviations strengthen and clarify BPA’s tariff.

Section 38 aims to clarify that a party cannot only exercise its rights under the FPA, but also under other laws, rules and regulations when it comes to a final determination by BPA on the terms and conditions for transmission service. The *pro forma* language from section 9 understandably references the FPA only given its focus on FERC-jurisdictional entities.

Snohomish’s proposed Section 38 that addresses the preservation of a party’s rights is essentially the same as the language already in Section 9 of the *pro forma*, but is slightly revised to clarify that a party’s rights are more than those available to it under the FPA, which is the only law referenced in the *pro forma*. We believe this would be considered to “substantially conform with” the *pro forma* tariff.

C. Tariff Provisions vs. Business Practices

We recommend that BPA include a definition of “Business Practice” in the proposed tariff that reflects the “rule of reason” standard FERC applies to determine whether certain language should be in the tariff or in business practices. Specifically, provisions that “significantly affect rates, terms, and conditions” of service must be included in the tariff, while items better classified as implementation details may be included only in the business practices.⁵ Such clarity helps BPA and its customers understand what to expect in this regard, and helps prevent challenges that BPA and customers could have easily avoided. We suggest the following language:

Business Practice:

Tariff implementation details that do not significantly affect rates, terms, and conditions.

This proposed definition tracks the standard FERC has developed and has applied to this issue, but has not required in the *pro forma*. Because the FERC standard is already implicit in the FERC *pro forma* tariff, it would not impact the substantial conformance of BPA’s new tariff with the *pro forma* tariff by making the FERC standard explicit in the new tariff. BPA could therefore consider this addition to “substantially conform with” the *pro forma* tariff.

⁵ *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076, at P 656 (2007) (citing *ANP Funding I, LLC v. ISO New England, Inc.*, 110 FERC ¶ 61,040, at P 22 (2005); *Prior Notice and Filing Requirements under Part II of the FPA*, 64 FERC ¶ 61,139, at 61,986-61,989 (1993), *order on reh'g*, 65 FERC ¶ 61,081 (1993)).

Conclusion

Snohomish appreciates the opportunity to collaborate on BPA's tariff development and providing our thinking on how BPA can best approach deviations. If there are any thoughts or questions regarding these comments, please feel free to contact me.

Sincerely,



Ian Hunter
Transmission Policy Analyst
(425) 783-8309
irhunter@snopud.com