

**UNITED STATES OF AMERICA  
U.S. DEPARTMENT OF ENERGY  
BEFORE THE  
BONNEVILLE POWER ADMINISTRATION**

Fiscal Year (FY) 2014-2015 Proposed Power and Transmission Rate Adjustments
---

BPA Docket No. BP-14

**RESPONSE OF POWEREX CORP. TO NOTICE OF PROPOSED SETTLEMENT OF  
GENERATION INPUTS AND TRANSMISSION ANCILLARY  
AND CONTROL AREA SERVICES RATES**

Pursuant to the Hearing Officer's May 7, 2013 Order, BP-14-HOO-49, Powerex Corp. ("Powerex" or "PX") hereby responds in opposition to the proposed Partial Settlement Agreement of Generation Inputs and Transmission Ancillary and Control Area Services Rates ("Proposed Settlement"), filed by Bonneville Power Administration ("Bonneville"). In particular, Powerex opposes and hereby preserves all its rights to object, in this proceeding and elsewhere, to the following aspects of the Proposed Settlement:

- Section 5 of the Proposed Settlement, which requires Assenting Parties to the Proposed Settlement to waive their rights to address certain "Underlying Assumptions" (including but not limited to Dispatcher Standing Order ("DSO") 216); and
- The proposed use of financial reserves attributed to Transmission Services ("Transmission Reserves") to fund revenue shortfalls under the Settlement Agreement.

Powerex discusses each of these bases for its opposition to the Proposed Settlement below.

### **I. Waiver Requirements**

The Proposed Settlement requires “Assenting Parties,” which includes signatories to the Proposed Settlement and non-objecting parties, to agree to certain waivers of their rights for the FY 2014-15 rate period (“Rate Period”). Specifically, section 5(a) of the Proposed Settlement requires Assenting Parties to agree not to

oppose or challenge in any forum by any means during the Rate Period the Underlying Assumptions. For purposes of this Agreement, Underlying Assumptions shall mean (1) the implementation of DSO 216 curtailments to maintain system reliability requirements and limit balancing reserve capacity deployment amounts and (2) any operating practices described in Attachments 1 and 2; both consistent with this Agreement.

Section 5(b) of the Proposed Settlement provides further that, in the event any Underlying Assumption used to establish rates under the Proposed Settlement “is determined to be inconsistent or incompatible with a reciprocity transmission tariff, the Assenting Parties agree that such matters shall remain in effect for the remainder of the Rate Period.”

Powerex has consistently opposed Bonneville’s use of DSO 216 and Bonneville’s characterization of DSO 216 as a “reliability tool.” Rather, Powerex’s position is that DSO 216 is an economic choice by Bonneville that in fact presents a reliability risk to sink Balancing Authorities that receive wind power sourced in Bonneville’s Balancing Authority Area (“BAA”). Powerex also strongly opposes DSO 216 curtailments of firm energy schedules.

Additionally, Powerex notes that the present rate proceeding was specifically limited in scope to exclude discussions of DSO 216 from the record.<sup>1</sup> Powerex believes it is inappropriate for Bonneville to foreclose discussion of the merits of DSO 216 in this rate proceeding and to now insist that parties waive their rights to address DSO 216 elsewhere.

For these reasons, Powerex objects to the waiver language in section 5 of the Proposed Settlement and hereby preserves all rights to object to this waiver language, in the BP-14 proceeding or elsewhere. Powerex does not intend to waive its rights to challenge DSO 216 in whatever forum may be appropriate, whether before, during, or after the Rate Period. Thus Powerex does not agree to be considered an Assenting Party to the Proposed Settlement.

## **II. Use of Financial Reserves Attributed to Transmission Services**

The Proposed Settlement establishes rates for Variable Energy Resource Balancing Service (“VERBS”) and Dispatchable Energy Resource Balancing Service (“DERBS”) that are insufficient to cover the expected costs of providing the services and that funds from Transmission Reserves will be used to cover a portion of the remaining costs.

Powerex opposes and preserves its rights to object to this aspect of the Proposed Settlement. Under well-established principles of cost causation,<sup>2</sup>

---

<sup>1</sup> See *Fiscal Year (FY) 2014-2015 Proposed Power and Transmission Rate Adjustments; Public Hearing and Opportunities for Public Review and Comment*, 77 Fed. Reg. 66,966, 66,968 (Nov. 8, 2012).

<sup>2</sup> See, e.g., *Pub. Serv. Co. of N.H. v. FERC*, 600 F.2d 944, 959 (D.C. Cir. 1979), cert. denied, 444 U.S. 990 (1979) (The principle of cost causation includes the concept that “rates should produce revenues from each class of customers which match, as closely as practicable, the costs to serve each class or individual customer.”); *Ca. Power Exch. Corp.*, 106 FERC

Transmission Reserves, which are collected from transmission customers through their rates, should be used to the benefit of all transmission customers. Use of Transmission Reserves to benefit a limited class of transmission customers would violate these principles.

In this rate proceeding, Powerex has argued that Transmission Reserves should be used to lower proposed transmission rates and could be further used to offset potential rate impacts that may arise from Bonneville correcting its segmentation.<sup>3</sup> These uses of Transmission Reserves would provide an overall benefit to transmission customers as a whole, consistent with cost causation requirements.

Powerex also has suggested that Transmission Reserves could be *temporarily* utilized to mitigate rate impacts on Utility Delivery Charge (“UDC”) customers that may experience rate shock from properly aligning the UDC with the cost of providing service on the Utility Delivery segment; however, any reserves used for such purpose should ultimately be replenished, in order to avoid cross-subsidies to a particular class of customers.<sup>4</sup> Powerex takes a similar position with respect to the use of Transmission Reserves to fund the Proposed Settlement, i.e., that it is inappropriate for Bonneville to design rates that structurally under-recover its costs and then to assign those cost under-recoveries to transmission customers as a whole or to Transmission Reserves collected from all transmission customers.

---

¶ 61,196 at P 17 (2004) (“The well-established principle of cost causation requires that costs should be allocated, where possible, to customers based on customer benefits and cost incurrence.”).

<sup>3</sup> See Initial Brief of Powerex Corp., BP-14-B-PX-01 at 35-37.

<sup>4</sup> *Id.* at 27-28.

### III. Conclusion

For the reasons set forth above, Powerex preserves its objections to the Proposed Settlement, and urges the Administrator not to accept the Proposed Settlement.

Respectfully submitted,

**/s/ Tracy C. Davis**

Paul W. Fox

Tracy C. Davis

Bracewell & Giuliani LLP

701 Fifth Avenue, Suite 6200

Seattle, WA 98104

(206) 204-6200

[paul.fox@bqllp.com](mailto:paul.fox@bqllp.com)

[tracy.davis@bqllp.com](mailto:tracy.davis@bqllp.com)

*Counsel for Powerex Corp.*

May 9, 2013