

May 8, 2009

Department of Energy
Bonneville Power Administration
P.O. Box 64109
Vancouver, WA 98666-1409
Email: techforum@bpa.gov

**Re: Comments of Puget Sound Energy, Inc. on draft 2009 Network Open Season
Precedent Transmission Service Agreement**

To Whom It May Concern:

In this letter, Puget Sound Energy, Inc. ("PSE") comments on the draft 2009 Network Open Season Precedent Transmission Service Agreement dated April 23, 2009 ("Draft PTSA").

1. The Definition of "Direct Assignment" Does Not Adequately Address the Basis for Assignment of Facilities Costs to Customer

Bonneville's open access transmission tariff ("OATT") defines "Direct Assignment Facilities" as

Facilities or portions of facilities that are constructed by the Transmission Provider for the sole use/benefit of a particular Transmission Customer requesting service under the Tariff, the costs of which may be directly assigned to the Transmission Customer in accordance with applicable Commission policy. Direct Assignment Facilities shall be specified in the Service Agreement that governs the Transmission Customer.

This definition requires that Direct Assignment Facilities must be for the benefit of particular Transmission Customer.

The definition of "Direct Assignment" in the Draft PTSA should be modified to ensure, as does its counterpart in the OATT, that Direct Assignment Facilities benefit the Customer and are to be paid for by the Customer only to the extent of such benefit to the Customer (and not to other

PTSA customers). The following revisions to the definition, as underlined below, are suggested by PSE to achieve this purpose:

"Direct Assignment" or "Direct Assignment Facilities" means the facilities or portions of facilities that are constructed by Bonneville, that directly benefit the Customer, and that are either: (i) not integrated with the Integrated Network, as defined in Bonneville's General Rate Schedule Provisions, or (ii) not supporting the reliability of efficiency of the Integrated Network for the general benefit of the users of such system. The costs of such facilities may be proportionally directly assigned to the Customer.

2. The Definition of "Tariff" or "OATT" Does Not Refer to a FERC-Approved Tariff

Bonneville's Open Access Transmission Tariff, dated October 2008, has not yet been approved by FERC. Moreover, Bonneville indicates on its web site that such tariff contains "shaded redline language" that "is awaiting FERC approval (or other actions), and is not yet in effect." Bonneville also notes at Section 19.10 and Section 32.6 of the October 2009 OATT (both of which provide for cluster studies and contain "shaded redline language") that Section 19.10 and Section 32.6 each "covers cluster studies during and outside the Open Season process. Bonneville expects future Open Season cluster studies to work in the way expressed herein. However, Bonneville will not be conducting cluster studies of Open Season prior to FERC approval of this section." To address this inconsistency, the following revisions to the definition, as underlined below, are suggested by PSE:

"Tariff" or "OATT" means Bonneville's Open Access Transmission Tariff, dated October 2008, to the extent approved by FERC, or its successor, unless otherwise specified herein.

3. The Draft PTSA Does Not Provide For Any Treatment of Amounts Paid By Customer in Connection with a TSR Outside the Network Open Season Process

Sections 1 and 7(b) of the Draft PTSA provide for instances in which a TSR's status may be changed to "DECLINED." Should customers understand that, once a TSR is declined, deposits and other amounts paid by the customer outside the NOS process, e.g., under pre-existing study agreements, will be treated and, if provided for, refunded pursuant to the OATT?

4. The Draft PTSA Requires the Customer to Provide Information That Is Not Available to the Customer

Section 5(a)(2) of the Draft PTSA requires that the Customer "will provide Bonneville with information required in Exhibit B for use in the Cluster Studies." Among other things, Section 5(a)(2) and Exhibit B require the Customer to identify the location of the substation ultimately serving the load associated with the capacity and energy transmitted or the resource including the electrical point (substation) on the transmission system that will be displaced by the capacity and energy associated with the TSR.

PSE does not have the information available to it to identify such locations or resources. As Bonneville is aware, PSE takes delivery of power at a system Point of Delivery under Bonneville's OATT. PSE does not track, and indeed does not have a method for tracking, power flows from Bonneville's transmission system to PSE's electric system. Therefore, PSE is unable to "identify the location of the substation ultimately serving the load associated with the capacity and energy transmitted." Moreover, there is no method available to PSE for predicting which generation resource would be displaced from time to time by the capacity and energy associated with a TSR. For example, it may well be that the generation displaced by the TSR "resource" does not belong to PSE, particularly in the case of Mid-Columbia generation displacement. Accordingly, PSE requests further refinement of Section 5(a)(2) to account for circumstances, such as those described above, that affect PSE and other Transmission Customers of Bonneville.

5. Forfeiture of the Security Is Unrelated to Actual Damages Incurred by Bonneville

Section 7(b) of the Draft PTSA provides that in the event of a material breach of the PTSA by the Customer, "the Customer's Security shall be forfeited to Bonneville . . . and such forfeiture shall not preclude Bonneville from seeking additional remedies." Conceivably, the amount of the actual damages incurred by Bonneville on account of a material breach by the Customer could be less than the amount of the Security. In such a case, Bonneville would be unfairly enriched by the forfeiture of the Security. To avoid this result, the following revisions to Section 7(b), as marked below, are suggested by PSE:

(b) Potential Forfeiture of Security

In the event of a material breach of this Agreement by the Customer, the Customer's Security shall be ~~forfeited to~~ applied to pay to Bonneville any damages to which Bonneville is otherwise entitled on account of such breach, the Customer's TSR with attached Table changed to 'DECLINED' status, and such forfeiture shall not preclude Bonneville from seeking additional remedies.

6. Exhibits A and C Expose Signatories to Personal Liability

The last section of each of Exhibits A and C to the Draft PTSA provides: "The signatories represent that they are authorized to enter into this Table on behalf of the Party for which they sign." It is unclear why any representation in a contract between Bonneville and the Customer should be made by any person other than a party to the contract. It is also unclear what the legal result would be if such representation, as it currently appears, were to prove to have been false when made. For example, would a signatory be personally liable if such representation proves to be untrue? To avoid such issues, the following replacement of such sections is suggested by PSE:

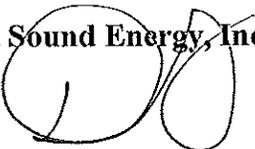
[10/12]. SIGNATURES

Each Party represents that its signatory named below is duly authorized to execute this Agreement on its behalf.

PSE appreciates BPA's review of these comments and consideration of the recommendations contained herein. By return e-mail, please confirm BPA's receipt of these comments.

Very truly yours,

Puget Sound Energy, Inc.

By 

Title Director, Energy Supply & Planning