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Powerex Comments: BPA Tariff Engagement Design

Powerex appreciates Bonneville's determination to work with its customers on the questions and issues set forth in its November 22, 2016 Letter to Customers and December 8, 2016 Tariff Engagement Design Questionnaire. Powerex also appreciates this opportunity to submit comments and looks forward to further engagement with Bonneville on these critical matters.

In its November 22 Letter to Customers, Bonneville specified a discrete set of concerns it has identified with the procedural requirements imposed by Section 9 of its tariff. While Powerex understands these concerns, it notes that Section 9's substantive protections have been important for transmission customers for nearly two decades. Powerex continues to believe that stability in tariff rates, as well as the terms and conditions of transmission service, as has been promoted to date by Section 9's procedural and substantive requirements, is fundamental to preserving the value of existing investments in long-term transmission service and incentivizing continued long-term investment in Bonneville's transmission system.

Long-term firm transmission service agreements promote the financial health of Bonneville's operation for several reasons. First, the revenues from such agreements contribute a supplemental revenue source, beyond the revenues from the Bonneville Power business line, to fund the operation of Bonneville's system. And second, the agreements provide a consistent revenue stream that mitigates Bonneville's financial risk and simplifies Bonneville's financial operations. Thus, Bonneville as a whole, both the Transmission and

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Power business lines, benefits from the provision of transmission service to third parties, and particularly from long-term service agreements that provide consistent revenues over substantial durations, such as 5, 10, or 20-year terms. Should the net effect of Bonneville's changes to Section 9 meaningfully decrease the current protections afforded to long-term firm transmission customers, such customers, like Powerex, would face increased uncertainty regarding whether their substantial financial investments can be protected over the terms of their multi-year contract. Without substantial certainty that the rights on which the transmission service was predicated will continue to be protected throughout the contract term, long-term firm customers are likely to reduce or shorten renewals to mitigate the elevated risk. Such a result would be detrimental to both Bonneville and its transmission customers.

For this reason, if Section 9 is eliminated or revised, Powerex believes it is critical that a comparable substantive protection—acceptable to Bonneville and its customers—be established and incorporated into the Bonneville tariff to provide a meaningful level of investment certainty that has to date been provided by Bonneville's commitment to FERC advisory review. Customers should be able to rely on a binding commitment by Bonneville that its OATT will continue to remain current and generally consistent with "industry standard" OATT provisions across the region to the maximum extent possible, and that revised provisions will be implemented only after a determination has been made that they merit implementation pursuant to a defined and binding standard set forth in the tariff, as discussed below.

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Powerex supports Bonneville's stated intent to develop a process and standard by which tariff changes can be made and believes that it is in the interests of all customers, as well as Bonneville, that the process and standard provide certainty to customers.

A. Substantive Standard *(Responsive to Questions 1, 3, and 14)*

As noted above, Section 9 has long provided Bonneville's transmission customers with substantive protections and certainty that have supported their investments in long-term transmission commitments. In its workshop, Bonneville staff outlined the remaining protections available to customers if Section 9 is removed (including Section 211A of the Federal Power Act and more general Ninth Circuit appeal under the Pacific Northwest Electric Power Planning and Conservation Act). In Powerex's view, these avenues fall short of providing a similar level of protection for customers.

For this reason, Powerex believes it would be useful for Bonneville to hold further customer workshops to discuss alternative substantive protections that could be adopted in a modified Section 9. Bonneville's articulation of the problems with Section 9, as laid out in its carefully considered November 22 letter to customers, do not necessarily lead to a conclusion that Section 9 must be jettisoned in its entirety; instead it is reasonable to believe that Section 9 could be revised to include a replacement substantive standard. Bonneville has raised the possibility of a using a process akin to that in Section 7(i) of the Northwest Power Act to evaluate proposed tariff revisions, but it is notable that the 7(i) procedure does not "stand alone." Rather, the Administrator's 7(i) determinations are, in turn, governed by a substantive standard (set out in Sections 7(a)(1) and (2)). The

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procedure that permits Bonneville to adopt new or modified tariff provisions should likewise be governed by a substantive standard.

In a similar fashion, the need for continued substantive protection could be satisfied with a revised Section 9 that sets forth criteria for the Administrator to evaluate tariff revisions, such as whether the proposed tariff revisions are fair, reasonable, and treat customers investing in the same class of transmission service equally. Other substantive standards that could provide similar safeguards for customers also may be acceptable, and Bonneville should hold workshops to identify an acceptable standard. In any case, the substantive standard by which the Administrator would review proposed tariff revisions should be incorporated directly into Bonneville's tariff.

B. Procedural Standards *(Responsive to Questions 1, 2, 3, 5, 6, 7, and 14)*

In addition to the adoption of a substantive standard for review of tariff provisions that Powerex believes is critical to maintaining protections for transmission customers, Powerex also appreciates the opportunity to participate in Bonneville's Tariff Engagement Design initiative, which will establish a procedure by which future tariff revisions will be adopted. Powerex supports a rigorous review procedure, but also notes that there may be categories of tariff changes that could occur with a less intensive and time-consuming process.

Any tariff revision process should reflect the following key principles:

- Bonneville should strive to maintain a stable and consistent tariff that allows a customer to invest in Bonneville's transmission services with reasonable certainty that the customer's rights under the tariff will not be materially and detrimentally altered.

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- In furtherance of tariff stability, Bonneville should favor a more formal and robust process for adopting tariff revisions.

- The tariff change procedure should protect both minority and majority stakeholder interests.

- As discussed above, a substantive standard by which proposed tariff provisions are evaluated should be included in the tariff; the tariff should also require specific Administrator findings and supporting evidence in any final decision when a formal tariff change process is required.

Consistent with these principles, Powerex submits the following of levels of process for consideration:

- Bonneville's tariff "change procedure" should, by default, commence with a more robust and formal procedure, akin to that described in Section 7(i) of the Northwest Power Act or Section 212(i)(2)(A) of the Federal Power Act. This procedure would conclude with a formal record of decision by the Administrator setting forth the rationale explaining how any why the proposed tariff revisions meet the substantive standard.

- If requested by other customers, Powerex would be supportive of exploring a streamlined or expedited "change procedure" so long as the streamlined process is used only for changes that (1) conform to FERC's *pro forma* open access transmission tariff; or (2) are minor and opposed by no customers, after customers are provided with an adequate opportunity to express such opposition. Subject to further workshops and evaluation of these standards, Powerex believes that such streamlined procedures should be available only upon a showing by Bonneville that either of the two enumerated foregoing conditions were met after the commencement of the Section 7(i)-like change process.

- Any streamlined or expedited process should require some level of procedural protection for Bonneville customers, but would not necessarily require the development of an administrative record. This process would, however, be more

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substantial than the current process for revising BPA Business Practices, as Powerex believes that process is too informal for tariff revisions.

Powerex requests that additional workshops and customer engagement processes be scheduled to provide opportunity to develop these ideas and the procedural specifics.

C. Additional Issues *(Responsive to Questions 9, 10, 11, 12)*

Regarding the timing of tariff amendment processes, Powerex is believes that the timing will likely depend on the level of process required. If a proposed amendment diverges from the relevant *pro forma* OATT provision, and will therefore require a formal review process, perhaps scheduling these processes to occur in years opposite rate cases might be a workable option. Similarly, it would be appropriate to consider other Bonneville or regional processes when selecting a schedule for a formal tariff change process. Powerex believes further broad customer input on this issue would be useful

Powerex supports customer communications to Bonneville to propose revisions to the BPA tariff that are just and reasonable and not unduly discriminatory or preferential.

D. Conclusion

Powerex appreciates Bonneville's stated strong commitment to its customers as being one of the drivers of its proposal to revise or eliminate Section 9 of its OATT. Powerex notes, however, that Bonneville's stated desire to create a less adversarial process would not be achieved by creating an "internalized" process that has the potential to pit customers against one another (arguing for or against tariff revisions without a fixed standard that provides common ground by which a proposal must be judged) with BPA acting as the entity that must arbitrate between the customers and ultimately choose sides. In the past

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20 years, customers freely offered their perspective on proposed changes at the stakeholder level and then determined which issues were substantial enough to raise in the FERC non-jurisdictional reciprocity process. FERC's acceptance of tariff revisions as consistent with the reciprocity requirements (in many cases over protests of customers, including Powerex) provided a neutral tribunal we believe was valuable for both Bonneville and its stakeholders—one that defused tensions and fostered confidence in the result. Powerex continues to believe customer confidence in the stability of rates as well as the terms and conditions of service is an essential element of encouraging continued long-term investment in Bonneville transmission. Thus, Powerex remains highly focused in this stakeholder process on changes that incorporate substantive, as well as procedural, protections to close the gap that will occur with the proposed removal of FERC oversight and evaluation that is currently required under the current OATT Section 9.

Submitted by:

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