

March 11, 2019

Via email: techforum@bpa.gov

U.S. Department of Energy
Bonneville Power Administration
Transmission Services

Re: Comments of Avangrid Renewables, LLC, Avista Corporation, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. Regarding BPA's Draft Billing Dispute Procedures Business Practice

Avangrid Renewables, LLC, Avista Corporation, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. (“Commenting Parties”) submit the following comments on the BPA draft Billing Dispute Procedures Version 1 (“Draft Procedures”).¹ Attached hereto is a redline of proposed revisions to the Draft Procedures that should be adopted by BPA. (Commenting Parties understand that the attached redline is the same as, or substantially the same as, the redline being submitted by PacifiCorp, Avangrid Renewables, LLC, Idaho Power Company, and Portland General Electric Company.)

The Draft Procedures are for a new business practice that would address billing disputes-- a matter of importance to many BPA transmission customers. Further, the Draft Procedures raise a number of important issues. These circumstances warrant further discussions between BPA and its transmission customers. BPA should schedule time for such discussions after the March 11 deadline for comments on the Draft Procedures. (*See* BPA Business Practice Process (“Business Practice Process”), Attachment 4 to the TC-20 Tariff Terms and Conditions Proceeding Final Record of Decision (March 1, 2019),² Section 4.5.1.)³

The attached redline of the Draft Procedures attempts to address and clarify several issues. As a threshold matter, the Draft Procedures are inconsistent with Section 12.1 of BPA's tariff. BPA's Business Practice Process provides, in Section 4.4.2, that “Bonneville shall not change the terms and conditions of service provided in its Tariff through a business practice or other non-tariff document.” The Draft Procedures should be revised to avoid inconsistency with BPA's Tariff.⁴

An example of an inconsistency between the Draft Procedures and BPA's tariff is that the Draft Procedures would limit a Customer's ability to request alternative dispute resolution under section 12 of BPA's Tariff or pursue legal action in a court or agency of competent jurisdiction until after BPA issues a final decision. While the Draft Procedures state that BPA will endeavor

¹ Available at <https://www.bpa.gov/transmission/Doing%20Business/bp/Redlines/Draft-Billing-Dispute-Procedures-BP-V01.pdf>.

² Available at <https://www.bpa.gov/Finance/RateCases/BP-20/Meetings/Tariff-Proceeding/TC-20-A-03.pdf>.

³ The proposed effective date for the business practice of April 8, 2019, set forth in the February 1, 2019, Tech Forum Business Practice Announcement: Billing Dispute Procedures, Version 1, should be extended to allow time for these discussions.

⁴ Available at <https://www.bpa.gov/Finance/RateCases/BP-20/Meetings/Tariff-Proceeding/TC-20-A-03>.

to complete its evaluation within a time frame set out in the Draft Procedures, there is no requirement that BPA ever complete its evaluation or issue a final decision. *See* Draft Procedures at Sections A.3.b, B.3.b. BPA's failure to do so arguably could, under the Draft Procedures, effectively prevent a customer from appealing the dispute to a court or agency of competent jurisdiction. This issue is exacerbated by the fact that the aspirational timeframe for BPA to complete its evaluation of the dispute is tied in the Draft Procedures to the date on which BPA might "formally recognize" a dispute. *See* Draft Procedures at Sections A.3.b(ii), B.3.b(ii). In other words, BPA could simply refuse to recognize a dispute thereby delaying an evaluation and final BPA decision regarding the dispute which in turn will indefinitely prevent a customer from appealing the dispute to a court or agency of competent jurisdiction. These provisions are inconsistent with Article 12.1 of BPA's Tariff, which reads as follows:

Any dispute between a Transmission Customer and the Transmission Provider involving transmission service under the Tariff (excluding rate changes) shall be referred to a designated senior representative of the Transmission Provider and a senior representative of the Transmission Customer for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days [or such other period as the Parties may agree upon], such dispute may be submitted to a court or agency of competent jurisdiction or, by mutual agreement, arbitration and resolved in accordance with the arbitration procedures set forth below.

In short, the Draft Business Practice as proposed by BPA cannot be adopted under BPA's current Tariff.

Commenting Parties respectfully submit that the proposed revisions in the attached redline of the Draft Procedures should be adopted in any final Billing Dispute Procedures. These proposed revisions should help ensure that the final Billing Dispute Procedures are not inconsistent with BPA's Tariff. In this regard, The Draft Procedures should be revised to expressly state that (a) "Nothing contained in this Business Practice shall modify or amend, or constitute a waiver or relinquishment by Bonneville or any Customer of, any rights, remedies, or obligations provided by applicable law and or under contract." and (b) "nothing in this Business Practice shall (i) require its application to a dispute if Bonneville and the Customer otherwise resolve such dispute, or (ii) amend or modify any provision of the OATT or any service agreement thereunder." Such statements will clarify the appropriate respective roles of the business practice and BPA's Tariff.

Also, the proposed revisions in the attached redline of the Draft Procedures should be adopted in any final Billing Dispute Procedures in order to provide clarity⁵ and promote a more fair and informed dispute resolution process.⁶

Finally, Commenting Parties respectfully request that BPA schedule workshops to allow further discussions on this very important issue before BPA adopts any final Billing Dispute Procedures.

* * *

Nothing contained in these Comments including the attachment hereto constitutes a waiver or relinquishment of any rights or remedies provided by applicable law or provided under BPA's Tariff or otherwise under contract. Commenting Parties appreciate 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.

⁵ For example, the proposed edits to the Draft Procedures Sections A.1.a.iv.1 and B.1.a.iv.1 clarify the references to a "rate that has its own waiver requirements" by adding an example: "(such as with respect to an Unauthorized Increase Charge)".

⁶ For example, the proposed edits to the Draft Procedures contemplate that each party will use reasonable efforts to provide to the other information relating to the dispute that is reasonably requested and that is known to the party receiving the request and do not condition the ability to dispute a bill on the Customer's necessarily knowing in advance the dollar amount in dispute.

Billing Dispute Procedures

BPA Transmission Business Practice (DRAFT)

Version 01

2/1/2019

[Revised 3/11/2019](#)

Billing Dispute Procedures

Version 01

This Business Practice provides the procedures that Customers must follow for Transmission billing disputes pursuant to sections 7 and 12 of Bonneville’s Open Access Transmission Tariff (OATT) and subject to applicable law. However, nothing in this Business Practice shall (i) require its application to a dispute if Bonneville and the Customer otherwise resolve such dispute, or (ii) amend or modify any provision of the OATT or any service agreement thereunder.

For more information, visit the [BPA Transmission Business Practices page](#) or submit questions to techforum@bpa.gov.

Table of Contents

A.	Disputing a Billed Charge After Payment to BPA	1
B.	Disputing a Billed Charge Using an Escrow Account	2
C.	<u>Billing Dispute Procedures Shall Be Consistent with OATT Section 12.1; Reservation of Rights</u>	<u>4</u>

A. Disputing a Billed Charge After Payment to BPA

1. Initiating a Dispute

- a. The customer may unilaterally initiate a billing dispute with Bonneville. To dispute a billed charge after the Customer has already paid the charge to Bonneville, the Customer must ~~provide the following information to its Transmission Account Executive in writing~~ send its Transmission Account Executive an email or some other writing indicating that the Customer is disputing a bill. Such email or writing should provide the following information, to the extent then known by the Customer:
 - i. Identification of the time period and charge(s) being disputed;
 - ii. ~~A detailed~~ An explanation of the basis for the dispute; and
 - iii. ~~Any supporting documentation for the dispute; and~~ A statement of information the Customer requests from Bonneville that may be relevant to resolving the dispute;
 - iv. Identification of the relief sought, including the dollar amount.
 1. If the relief sought includes a request for waiver of a rate that has its own waiver requirements (such as with respect to an Unauthorized Increase Charge) in BPA’s Transmission, Ancillary, and Control Area Service Rate Schedule and General Rate Schedule Provisions, the Customer must also comply with such waiver requirements.

- b. Upon receipt of the ~~above information~~ email or writing from the Customer pursuant to Section A.1.a, the Customer's Transmission Account Executive ~~will~~ shall respond with confirmation ~~formally recognizing of receipt of~~ the Customer's dispute within 3 business days.

2. Treatment of Funds in Dispute

- a. ~~Bonneville will continue to retain funds in dispute.~~ Bonneville will not transfer to an escrow account funds in dispute that have already been paid by the Customer. Bonneville will continue to retain the funds pending dispute resolution.
- b. The Customer may not withhold funds from a subsequent invoice to offset funds in dispute that were previously paid by the Customer.

3. Dispute Evaluation and Determination by Bonneville

- a. ~~At~~ Consistent with OATT Section 12.1, following initiation of a dispute by the Customer, BPA shall arrange, with the Customer's ~~request, BPA will~~ arrange assistance, a meeting with a BPA designated senior representative and a designated senior representative of the Customer to discuss the dispute as promptly as practicable. Multiple meetings may be arranged, as needed. The Customer shall make reasonable efforts to provide any additional information that Bonneville may reasonably request in writing for purposes of evaluating the Customer's dispute. Bonneville shall make reasonable efforts to provide any additional information that is reasonably requested by the Customer, including any information the Customer has identified pursuant to Section A.1.a.iii above.
- b. ~~b.~~ BPA will evaluate the merits of the dispute. BPA will endeavor to complete this evaluation within sixty (60) days of ~~the later of: i. —~~ the date of the meeting, or the final meeting, with senior representatives; ~~or,~~
- ~~ii. — the date the dispute was recognized in accordance with Section A.1.b, above.~~
- c. Once BPA completes its evaluation, the Transmission Account Executive will notify the Customer in writing of BPA's final decision regarding the dispute, along with any additional explanation of the final decision as BPA may deem necessary or appropriate.

4. ~~Appeal Procedures and~~ Disbursement of Funds

- a. BPA will disburse any funds due to the Customer consistent with its final decision. ~~b. If the Customer does not agree with BPA's final decision regarding the dispute, the Customer may request alternative dispute resolution under section 12 of the OATT or pursue legal action in (in the absence of a final determination of a court or agency of competent jurisdiction) or the final determination of~~ a court or agency of competent jurisdiction.

B. Disputing a Billed Charge Using an Escrow Account

1. Initiating a Dispute

- a. The customer may unilaterally initiate a billing dispute with Bonneville. To dispute a billed charge prior to making payment, the Customer must provide the following information to its Transmission Account Executive in writing send its Transmission Account Executive an email or some other writing indicating that the Customer is disputing a bill. Such email or writing should provide the following information, to the extent then known by the Customer:
- i. Identification of the time period and charge(s) being disputed;
 - ii. ~~A detailed~~An explanation of the basis for the dispute; and
 - iii. ~~Any supporting documentation for the dispute; and~~A statement of what information the Customer requests from Bonneville that may be relevant to resolving the dispute;
 - iv. Identification of the relief sought, including the dollar amount.
 1. If the relief sought includes a request for waiver of a rate that has its own waiver requirements (such as with respect to an Unauthorized Increase Charge) in BPA's Transmission, Ancillary and Control Area Service Rate Schedule and General Rate Schedule Provisions, the Customer must also comply with such waiver requirements.
- b. Upon receipt of the email or writing from the Customer pursuant to Section B.1.a, the Customer's Transmission Account Executive shall respond with confirmation of receipt of the Customer's dispute within 3 business days.

2. Treatment of Funds in Dispute

- a. A Customer may choose to either pay the charges in dispute consistent with Section A, above, or promptly deposit the funds into an escrow account.
 - i. Disputed charges not paid to BPA or not deposited into escrow ~~by the billing due date~~in accordance with Section B.2.b below will be subject to applicable collection procedures and timelines.
 - ii. Disputed funds deposited into an escrow account are considered unpaid and shall accrue interest pursuant to section 7.2 of BPA's OATT.
- b. Disputed Charges Deposited Into Escrow:
 - i. Upon receipt of the ~~information under~~email or writing from the Customer pursuant to Section B.1.a, BPA's Transmission Account Executive will provide the Customer with an Escrow Agreement.
 1. The Transmission Customer will be solely responsible for the setup costs and administrative fees associated with the escrow account.
 - ii. The Customer ~~must promptly execute the escrow agreement and~~Bonneville will use reasonable efforts to negotiate the unfilled terms of the Escrow Agreement and execute the Escrow Agreement with the Escrow Agent. Within five (5) business days of executing the escrow agreement, the Customer must deposit the funds in dispute into the escrow account.

~~c. Upon completion of Section B.1 and Section B.2.b the Customer's Transmission Account Executive will respond with confirmation formally recognizing the Customer's dispute.~~

3. Dispute Evaluation and Determination by BPA

a. ~~At~~ Consistent with OATT Section 12.1, following initiation of a dispute by the Customer, BPA shall arrange, with the Customer's ~~request, BPA will arrange~~ assistance, a meeting ~~between~~ with a BPA designated senior representatives ~~of BPA and a designated senior representative of~~ the Customer to discuss the dispute as promptly as practicable. Multiple meetings may be arranged, as needed. The Customer shall make reasonable efforts to provide any additional information that Bonneville may reasonably request in writing for purposes of evaluating the Customer's dispute. Bonneville shall make reasonable efforts to provide any additional information that is reasonably requested by the Customer, including any information the Customer has identified pursuant to Section B.1.a.iii above.

~~b. BPA will evaluate the merits of the dispute. BPA will endeavor to complete this evaluation within sixty (60) days of the later of: i. the date of the meeting, or the final meeting, between senior representatives; or ii. the date the dispute was recognized in accordance with Section B.2.c, above.~~

~~b. c.~~ Once BPA completes its evaluation, the Transmission Account Executive will notify the Customer in writing of BPA's final decision regarding the dispute, along with any additional explanation of the final decision as BPA may deem necessary or appropriate.

4. ~~Appeal Procedures and~~ Disbursement of Funds

a. Following BPA's final decision, the escrow funds will be disbursed in accordance with the escrow agreement.

b. ~~The Customer has 15~~ Not later than 60 days from receipt of BPA's notice provided per section B.3.c ~~to, the Customer shall~~ notify BPA of their ~~its~~ pursuit of, or intent to pursue ~~an~~ alternative dispute resolution under section 12 of the OATT or legal action in a court or agency of competent jurisdiction, in accordance with the Escrow Agreement.

i. Customer must include state in its notice that ~~funds in escrow are to~~, either:

1. ~~Remain~~ That the Customer continues to dispute the entirety of the disputed charge and therefore the funds in escrow are to remain in escrow in full, or;

2. ~~Release funds due to the customer~~ That the Customer does not dispute the entire disputed charge and that the undisputed funds should be released in accordance with the final decision. Remaining funds are to be left in escrow pending apportionment of funds pursuant to Section B.4.d below.

c. Upon disbursement of the escrow funds, BPA will calculate interest owed in accordance with section 7.2 of the OATT.

- d. Funds will be apportioned between BPA and the Customer in accordance with BPA's final decision (in the absence of a final determination of a court or agency of competent jurisdiction) or the final determination of a court or agency of competent jurisdiction.

C. Billing Dispute Procedures Shall Be Consistent with OATT Article 12.1; Reservation of Rights

1. Notwithstanding the foregoing provisions of this Business Practice, consistent with OATT Article 12.1, in the event the designated representatives are unable to resolve the dispute within thirty (30) days [or such other period as the Parties may agree upon], such dispute may be submitted to a court or agency of competent jurisdiction or, by mutual agreement, arbitration and resolved in accordance with the arbitration procedures set forth in Bonneville's OATT Article 12.
2. Nothing contained in this Business Practice shall modify or amend, or constitute a waiver or relinquishment by Bonneville or any Customer of, any rights, remedies, or obligations provided by applicable law or under contract.