Response to Customer Comments – BILLING DISPUTE PROCEDURES

BPA Transmission Business Practice

Version 1

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Version 1

This document contains Bonneville Power Administration's (BPA) responses to customer comments on its proposed Billing Dispute Procedures, Version 1, which was posted for comment from February 1 through March 11, 2019. BPA received two sets of comments. Each set of comments included redlined, edited versions of its Billing Dispute Procedures Business Practice, which were the same or substantially similar. It also received comments on its escrow agreement template. Although the escrow agreement template is not part of the Billing Disputes Procedures Business Practice, BPA has included its responses to these comments in this document.

BPA has structured its responses according to each set of comments in the way they were received. Section A contains BPA's responses to the comments of Avangrid Renewables, LLC, Avista Corporation, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. Section B contains BPA's responses to the comments of Avangrid Renewables, LLC, Idaho Power Company, PacifiCorp, and Portland General Electric Company.

For more information on business practices out for comment, visit the BPA Transmission Business Practices Comments and Responses page.

Table of Contents

A. Avangrid Renewables, LLC, Avista Corporation, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. 1

B. Avangrid Renewables, LLC, Idaho Power Company, PacifiCorp, and Portland General Electric Company.....14

A. Avangrid Renewables, LLC, Avista Corporation, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc.

Avangrid Renewables, LLC, Avista Corporation, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. ("Commenting Parties") submit the following com ments 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.)

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

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]

BPA Response

BPA appreciates the comments provided by Avangrid Renewables, LLC, Avista Corporation, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. BPA also appreciates the proposed redline provided by the Commenting Parties. BPA believes that the issues raised by its proposed Billing Dispute Procedures Business Practice have been adequately discussed in the customer call on February 8, 2019, and in all of the comments received during this notice and comment process. BPA believes that its final Billing Dispute Procedures Business Practice has been improved by this process and addresses BPA's and customers' concerns. Therefore, BPA does not think that it is necessary to schedule additional discussions with customers prior to posting its final Billing Dispute Procedures Business Practice.

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 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.

BPA Response

The Billing Dispute Procedures Business Practice is not inconsistent with Section 12 of the Tariff. Section 12.1 requires BPA and the customer to attempt to resolve "[a]ny dispute" on an informal basis between senior representatives. If the senior representatives are unable to resolve the dispute, the parties may mutually agree to arbitrate the dispute or may submit the dispute to a court or agency of competent jurisdiction. Thus, under the Tariff, customers cannot simply pursue legal action of a dispute that is subject to Section 12.1 without first attempting to resolve the dispute informally.

Section 12.1 further provides that BPA and the customer should attempt to informally resolve a dispute within 30 days unless the parties otherwise agree to a different timeframe. In BPA's experience, disputes that rise to the level of senior representatives generally require more than 30 days to resolve. Often, the Parties must gather additional information and the senior representatives may need to meet more than once, and these things take time. Other than this

[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.

suggestion of a 30-day timeframe, the Tariff does not actually define the next steps for the dispute. It does not state at what point BPA or the customer can proceed to the formal process of legal action in a court or before an agency of competent jurisdiction.

This silence in the Tariff as to an end date for the informal dispute resolution process is problematic both for BPA as well as for its customers. Disputes under the Tariff may fall within the jurisdiction of the Ninth Circuit Court of Appeals under the Pacific Northwest Electric Power Planning and Conservation Act ("Northwest Power Act"). 16 U.S.C. § 839f(e)(5). The Northwest Power Act requires a customer to raise a legal action within ninety days of the date on which BPA deems final the decision that will form the basis of the legal action. *Id*. But in the context of informal dispute resolution, it may be unclear to customers whether BPA is stating its final decision or simply a negotiation position. The silence in the Tariff as to how BPA establishes the end date for the informal dispute resolution process thus poses a challenge if the dispute falls within the jurisdiction of the Ninth Circuit Court of Appeals under the Northwest Power Act. By establishing a specific end date for the informal dispute process in this business practice, customers will have clear and unequivocal notice that BPA has issued a final decision.

BPA understands Commenting Parties' concern that the Billing Dispute Procedures Business Practice does not define a specific date by which BPA must issue its final determination. Unfortunately, there is no one-size-fits-all timeline. BPA's proposed Billing Dispute Procedures Business Practice does require that BPA issue a final determination. BPA would not have the option of remaining silent indefinitely as Commenting Parties suggest. To address Commenting Parties' concern, BPA will add language to new subsections A.3.c and B.3.c that if BPA cannot complete its evaluation within the approximated 60 days, it will provide periodic updates of its progress and an estimated timeline.

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.

BPA Response

Commenting Parties suggest that even if a customer provides its basis for the dispute, BPA could simply refuse to formally recognize the dispute, disallowing customers from pursuing dispute resolution or formal legal action. This is a misread of the Billing Dispute Procedures Business Practice. The proposed Billing Dispute Procedures Business Practice provides that if

the customer provides basic information regarding the nature of its billing dispute, BPA will formally recognize the dispute. This arrangement in which the customer needs to provide its basis for a dispute in order to initiate the dispute resolution process is consistent with Section 12.1 of the Tariff.

Section 12.1 applies to "disputes." In order for there to be a "dispute," the customer must disagree with something that BPA has done. In the context of a billing dispute, this is likely to be a disagreement with a particular charge on an invoice or something of that nature. In order to disagree with a particular charge, the customer must have some basis for that disagreement. Thus, there is no "dispute" under the Tariff unless the customer has some basis for the dispute.

A productive dispute resolution process requires the customer to provide BPA with some explanation of its position—some reason for its dispute. Other transmission providers similarly require some basic information in order to initiate a billing dispute. Southern Company, for example, provides a questionnaire that must be filled out to initiate a billing dispute. https://www.oasis.oati.com/SOCO/index.html (last accessed April 1, 2019). Requiring the customer to provide this basic information is not inconsistent with Section 12.1 of the Tariff; instead, it reflects the purpose behind the informal dispute resolution procedures embodied in Section 12.1.

BPA understands that customers may not have the basis for a dispute fully fleshed out at the time they raise a dispute because customers and BPA may need to collect additional information. The Billing Dispute Procedures Business Practice is not intended to require the customer to state its final dispute position at the outset of the dispute. BPA expects that during the dispute resolution process, additional information will become available and this may cause BPA or the customer to change positions during the process. On the other hand, customers should not initiate a billing dispute without some good faith basis for believing that an error has occurred.

Under BPA's Billing Dispute Procedures Business Practice the customer must articulate its good faith basis to dispute a charge or invoice so that the parties can engage in a productive dispute resolution process. If a customer merely has a suspicion that it may have a basis to dispute an invoice, but needs to collect additional information before it can form a good faith basis for the dispute, then the customer should follow Section A of the Billing Dispute Procedures Business Practice: dispute the charge after payment when the customer has collected the necessary information.

BPA believes that its draft Billing Dispute Procedures Business Practice may not have struck the right balance between BPA's need for the customer's basis for its dispute and the customer's potential need for additional information to fully form its basis for the dispute. BPA has adjusted these portions of its Billing Dispute Procedures Business Practice to require the customer to present BPA with its good faith basis for the dispute. If the customer does not provide some basis for its dispute at the outset, it has not properly raised a "dispute" under Sections 7.3 or 12.1 of the Tariff and BPA will not suspend collection efforts.

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.

> 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.

BPA Response
BPA has edited the opening statement of the business practice to make clear that the business practice provides the procedures and implementation details that support Sections 7 and 12 of the Tariff.

The new opening paragraph of the Billing Dispute Procedures Business Practice will state, in part: "However, nothing in this Business Practice will require its application to a dispute if BPA and the Customer otherwise resolve such dispute. This Business Practice shall not be interpreted to contradict, amend, or supersede the 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 clarity[5] and promote a more fair and informed dispute resolution process.[6]

[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)".

BPA Response
BPA will add an example of a rate with specific waiver provisions to both referenced Sections of the Business Practice.

[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.

BPA Response
The Billing Dispute Business Practice does not condition the customer's ability to initiate a dispute. It merely requires some basic information on the nature of the dispute. This is designed to address a particular issue that BPA has frequently experienced. Customers file disputes in a general manner, which causes BPA to spend an inordinate amount of time determining what is actually being disputed. For instance, a customer may simply state that it is disputing its Failure to Comply penalty charges for a particular month, but it does not identify

which hours, what amounts, or why it is disputing these charges. These types of general disputes do not provide BPA with sufficient information to begin researching the issue. If a customer believes a charge is invalid, it must have a good faith basis for this belief. The Billing Dispute Procedures Business Practice merely requires the customer to provide this basis for its dispute. Additionally, BPA needs basic information about the disputed charge or charges so that it can track the appropriate amounts through its systems and ensure that collection procedures are properly suspended while the dispute is pending. Sections A.1.a and B.1.a establish that level of detail and allow BPA to track the proper charges under dispute.

As the dispute progresses, the parties may become aware of additional charges in prior months, for example, that are also subject to the dispute. This is a normal part of the dispute resolution process in which the parties are working together to identify the full scope of the dispute. BPA will add a new sub-bullet to Sections A.1 and B.1 to express BPA's willingness to work with customers to identify the information necessary to resolve a dispute.

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.

BPA Response

See BPA's first response on page 2.

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.

BPA Response

BPA confirmed receipt of these comments on 3/11/2019 by return email.

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.

BPA Response

Nothing in this business practice or in Tariff Sections 7 and 12 prevent a customer from initiating a dispute, therefore it does not need to be specifically stated. However, BPA will adopt other proposed edits in Section A.1.a. The other proposed edits to Section A.1 will be adopted as follows:

a.ii – Will be adopted as written.
a.iii – The struck language will be retained. BPA needs the documentation supporting a customer's claim to effectively research the issue and proceed with dispute resolution. However, BPA will adopt language in a new subsection A.1.c to provide customers with the ability to request information supporting the invoiced charges from BPA.
a.iv – BPA will include the specific example provided.

Section A.1.b will be rewritten to say, "Upon receipt of the email or written notice from the customer containing the information in Section A.1.a, the Customer's Transmission Account Executive shall respond with confirmation of receipt of the Customer's dispute as soon as is practical."

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.

BPA Response
BPA will adopt the edit proposed.

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.~~

BPA Response
BPA has adopted some of the language provided; however, BPA will keep reference to arranging the meeting between senior representatives "at the Customer's request." Per Tariff Section 12.1, a meeting of senior representatives is available to the customer on every dispute. But experience has shown that few disputes rise to the level that would require a meeting of senior representatives. Customers rarely make this request. By keeping the language "at the Customer's request" the customer can decide for itself if its dispute warrants a senior representative discussion. Per Tariff Section 12.1 and the Dispute Procedures Business Practice, BPA will not deny such a request.

BPA will adopt in a new Section A.1.c "BPA and the Customer will make reasonable efforts to provide additional information related to the dispute as may be reasonably requested for the purposes of evaluating the Customer's dispute."

   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.

BPA Response
BPA will adopt the edit proposed, but A.3.c will be moved to A.3.d. BPA will add a new A.3.c that says, "If BPA cannot complete its evaluation within the approximated 60 days, then it will provide periodic updates of its progress and an estimated timeline."

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.

BPA Response
BPA agrees with the concept of this proposed edit, but believes it should be re-worded slightly. For example, if BPA issues a final decision requiring it to return 20% of the disputed funds to the customer, BPA will disburse funds accordingly. Then, if the customer proceeds to a court or agency of competent jurisdiction and receives a judgement entitling it to 30% of the disputed funds, BPA will disburse the remaining 10% that had not been previously disbursed. To accomplish this, BPA will edit the provision to read as follows: BPA will disburse any funds due to the customer consistent with its final decision unless the customer pursues an action in a court or agency of competent jurisdiction. In the latter event, BPA will disburse any funds due to the Customer consistent with 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.

BPA Response
Nothing in this business practice or in Tariff Sections 7 and 12 prevents a customer from "unilaterally" initiating a dispute; therefore, it does not need to be specifically stated. However, BPA will adopt other proposed edits in Section B.1.a. The other proposed edits to Section B.1 will be adopted as follows:

a.ii – Will be adopted as written.
a.iii – The struck language will be retained. BPA needs the documentation supporting a customer's claim to effectively research the issue and proceed with dispute resolution. However, BPA will adopt language in a new subsection B.1.b to provide customers with the ability to request information supporting the invoiced charges from BPA.
a.iv – BPA will include the specific example provided.

The customer proposed B.1.b will not be adopted. Section B is for customers who wish to fund an escrow account until there is resolution of their disputed charges. Bonneville has experienced significant delays with respect to customers funding escrow agreements after a dispute is initiated. Therefore, customers who wish to use the escrow account also have the additional responsibility outlined in Section B.2 to execute and fund the account by the bill due date otherwise the amounts will be considered unpaid and subject to applicable collection procedures and timelines. Generally, the collection procedures and timelines provide the customer at least 60 days, and up to 120 days following the bill due date prior to further collection action. This should be sufficient for customers to establish and fund an escrow account. Additional information regarding BPA's collection procedures and timelines can be found on page 2 of customers' Transmission invoices.

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.

BPA Response
Funds not properly disputed in accordance with B.1.a and properly escrowed by the bill due date will be subject to applicable collection procedures and timelines. Customers also have the option under Section A.1 to dispute the charges and pay the funds to BPA by the bill due to avoid the extra steps of initiating an escrow agreement and funding an escrow account. BPA will reword B.2.a.i to say, "Disputed charges not paid to BPA by the billing due date or not deposited into escrow in accordance with Section B.2.b below will be subject to the applicable collection procedures and timelines set forth in the Notice of Debtors Rights on the Customer invoice."

Generally, the collection procedures and timelines provide the customer between 60 and 120 days following the bill due date prior to further collection action. This should be sufficient time for customers to establish and fund an escrow account. Additional information regarding BPA's collection procedures and timelines can be found on page 2 of customer Transmission invoices.

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.

BPA Response
Section B.2.b will be rewritten to say, "Upon receipt of the email or written notice from the Customer containing the information in Section B.1.a, the Customer's Transmission Account Executive will provide the Customer with an Escrow Agreement."

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.

BPA Response
BPA has had experiences with customers in which there have been significant delays in the signing and funding of the escrow agreement. Therefore, the use of the word "promptly" is necessary to establish the appropriate expectation for completion of this step. BPA recognizes there are terms the parties need to discuss to execute the escrow agreement, but these terms are not substantial and merely require the parties to describe the dispute at a high level along with the disputed dollar amount. Section B.2.b.ii will be edited in part as follows, "The Customer and BPA will use reasonable efforts to negotiate the unfilled terms of the Escrow Agreement in order to promptly execute the Escrow Agreement with the Escrow Agent."

~~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.~~

BPA Response
BPA will retain this subsection, however it has been rewritten to say, "Upon receipt of the email or written notice from the Customer containing the information in Section B.1.a and completion of B.2.b the Customer's Transmission Account Executive will respond with confirmation of receipt of the Customer's dispute as soon as is practical."

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~~; orii. the date the dispute was recognized in accordance with Section B.2.c, above~~.

BPA Response
BPA has adopted some of the suggested language; however, BPA will keep reference to arranging the meeting between senior representatives "at the Customer's request." Per Tariff Section 12.1, a meeting of senior representatives is available to the customer on every dispute. Experience has shown that few disputes rise to the level of needing senior representatives to resolve. Customers have rarely made this request. By keeping the language "at the Customer's request" the customer can decide for itself if its dispute warrants a senior representative discussion. Per the Tariff Section 12.1 and the Dispute Procedures Business Practice, BPA will not deny such a request.

BPA will adopt in a new Section B.1.b, "BPA and the Customer will make reasonable efforts to provide additional information related to the dispute as may be reasonably requested for the purposes of evaluating the Customer's dispute."

BPA will also be retaining the language in Section B.3.b. These bullets recognize that not all customers choose a meeting with senior representatives for every dispute and therefore both are critical to establishing the timelines for working with the customer to resolve its dispute.

BPA will add a new B.3.c that says, "If BPA cannot complete its evaluation within the approximated 60 days, then it will provide periodic updates of its progress and an estimated timeline." The existing B.3.c will be moved down.

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.

BPA Response
BPA will adopt the edit proposed but will move this bullet down to B.3.d.

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.

BPA Response
BPA understands that customers found the timeline in the proposed Business Practice confusing with respect to the interplay between the timeline in the escrow agreement and the proposed 15-day notification of intent to pursue formal or alternative dispute resolution. BPA will remove this communication requirement in Section B.4.b. Following BPA's final decision, BPA will disburse funds in accordance with the escrow agreement. This means that if BPA makes a final decision and the customer does not initiate legal action in a court or agency of competent jurisdiction, nor do the parties mutually agree to arbitrate the dispute within 90 days, BPA will disburse funds in accordance with its final decision. Alternatively, if the customer agrees with BPA's final decision, the parties can jointly disburse the escrow funds pursuant to 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.

BPA Response
BPA has removed the proposed 15-day notice requirement as discussed above. Therefore, this subsection i.1 and i.2 are unnecessary and will be removed.

   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.

BPA Response
BPA will edit this subsection as follows: "BPA will disburse any funds due to the Customer consistent with its final decision unless the Customer pursues an action in a court or agency of competent jurisdiction or the parties mutually agree to arbitrate the dispute. In the latter event, BPA will disburse any funds due to the Customer consistent with 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.

BPA Response
This new Section will not be adopted because it unnecessarily restates the explicit requirements of Sections 12.1and 12.5 of BPA's Tariff.

The new opening paragraph of the Billing Dispute Procedures Business Practice will state, in part: "However, nothing in this Business Practice will require its application to a dispute if BPA and the Customer otherwise resolve such dispute. This Business Practice shall not be interpreted to contradict, amend, or supersede the Tariff."

B. Avangrid Renewables, LLC, Idaho Power Company, PacifiCorp, and Portland General Electric Company

Avangrid Renewables, LLC, Idaho Power Company, PacifiCorp, and Portland General Electric Company ("Commenting Parties," and individually, "Commenting Party") submit the following comments on the draft Billing Dispute Procedures of the Bonneville Power Administration ("Bonneville" or "Agency").[1] Commenting Parties appreciate Bonneville's receptiveness to comments and feedback from customers, as ultimately, when disputes arise, all parties want "resolution on an informal basis as promptly as practicable."[2] To that end, these comments, and the requested edits to the Billing Dispute Procedures and Draft Escrow Agreement included as Attachments 1 and 2, reiterate three key concerns shared by Commenting Parties: ensuring the Customer's unilateral ability to dispute a bill from a transmission provider, protecting the Customer against inadvertent waiver of important rights, and fairness in resolving disputes.

In addition, pursuant to Section 4.5.2 of the Business Practice Process, Commenting Parties request additional discussion of these comments, the requested edits, and whether Bonneville's draft Billing Dispute Procedures significantly affect terms and conditions of service.

BPA Response
BPA appreciates the comments provided by Avangrid Renewables, LLC, Idaho Power Company, PacifiCorp, and Portland General Electric Company. BPA also appreciates the proposed redline provided by the Commenting Parties. BPA believes that the issues raised by

[1] The comments provided here are intended to summarize and explain the intent behind—and not to replace—the requested redline edits provided in Attachments 1 and 2. Accordingly, the absence of explanation in these comments for any particular Attachment 1 or Attachment 2 edit should not be construed as an indication that such edit is not supported by Commenting Parties. A clean version of Attachment 1 is provided as Attachment 3 to these Comments.
[2] Bonneville Current Tariff Section 12.1, Settlement Tariff Section 12.1. References in these comments to "Bonneville's Tariff" are intended to refer to both Bonneville's Current and Settlement Tariff, unless otherwise stated.

its proposed Billing Dispute Business Practice have been adequately discussed in the customer call on February 8, 2019, and in all of the comments received during this notice and comment process and, therefore, additional customer meetings are unnecessary.

The Billing Dispute Procedures Business Practice implements Sections 7 and 12 of the BPA Tariff and does not significantly affect the terms or conditions of service. For jurisdictional utilities, the Federal Energy Regulatory Commission (FERC) assesses business practices to determine whether they significantly affect the terms or conditions of service. If a business practice rises to this level, FERC may require a transmission provider to include the content in its Tariff rather than adopt it as a business practice or, alternatively, file the business practice with FERC pursuant to the public utility filing requirements of Section 205 and 206 of the Federal Power Act. BPA is not a public utility and FERC precedent in this regard is not binding on BPA. Nonetheless, consistent with Section 4.4.2 of the Business Practice Process, BPA considers FERC precedent as a factor in determining whether to adopt a business practice. FERC has repeatedly found that implementation details such as "instructions, guidelines, examples and charts, which guide internal operations and inform market participants of how the [public utility] conducts its operations under the . . . Tariff" are permissible as business practices. *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271 (2008) (stating general rule).

BPA's Billing Dispute Procedures Business Practice provides procedural instructions and guidelines for billing disputes and standardizes a process under the broad terms of Sections 7 and 12 of the Tariff. This will increase transparency and predictability for customers without any significant impact to the terms or conditions of the Tariff. The Billing Dispute Procedures Business Practice does not significantly change what the customer is currently allowed to do under the Tariff. As discussed in BPA's responses throughout this document, customers must have a good faith basis for initiating a billing dispute. The Billing Dispute Procedures Business Practice simply requires Customers to share that basis with BPA when initiating a dispute. Pursuant to Section 12.1 of the Tariff, Customers must proceed through informal dispute resolution before pursuing formal dispute resolution such as in a court or agency of competent jurisdiction. The Billing Dispute Procedures Business Practice does not change these requirements. The Billing Dispute Procedures Business Practice simply provides supplemental information such as administrative timelines and instructions which are appropriate for a business practice and do not conflict with the Tariff. *See Cal. Indep. Sys. Operator Corp*., 154 FERC ¶ 61,200 (2016); *Cal. Indep. Sys. Operator Corp*., 147 FERC ¶ 61,231 (2014).

BPA believes that its final Billing Dispute Business Practice has been improved by this notice and comment process and addresses BPA's and customers' concerns.

1. Initial Comments on Bonneville's Implementation of the Newly-Adopted Business Practice Process

Notwithstanding the Administrator's recent adoption of the TC-20 Settlement Agreement,[3] Commenting Parties appreciate Bonneville's early commitment to follow the new Business Practice Process ("BP Process") incorporated as Attachment 4 of that agreement.[4] Commenting Parties also recognize that the draft Billing Dispute Procedures Business Practice is a "test run" of this new BP Process. Accordingly, and in advance of the March 19, 2019 settlement implementation meeting,[5] Commenting Parties provide the following initial feedback intended to assist Bonneville in its implementation of the BP Process:

[3] Bonneville Power Admin., TC-20 Settlement Record of Decision (March 1, 2019) (adopting the TC-20 Settlement Agreement).
[4] Tech Forum Notice (Feb. 1, 2019) ("Although the TC-20 proceeding has not yet concluded, Bonneville will follow the Business Practice Process proposed in the TC-20 proceeding to adopt the Billing Dispute Procedures business practice.").
[5] Tech Forum Notice (March 5, 2019) (announcing a meeting on March 19, 2019, in which Bonneville will discuss various TC-20 Settlement topics, including the business practice process)

In the Tech Forum Notice published for each Proposed Business Practice, Bonneville should include the information set out in both Sections 4.1 and 4.2 of the BP Process.

Section 4.1 describes certain administrative information that must be included before a Proposed Business Practice is considered complete, such as the reason for the proposal or impacts and benefits of the proposal, to the extent known.

Commenting Parties observe that certain Section 4.1 information, such as 4.1(b) and 4.1(c), was not provided in writing to stakeholders in the Tech Forum Notice or elsewhere in connection with this proposed business practice. Although the Section 4.1 information is administrative in nature, including such information in the Tech Forum Notice for each Proposed Business Practice is nonetheless important to stakeholders going forward, as it would put them on notice of the potential impact of proposed actions at issue. Moreover, such information would advance the intent behind the BP Process,[6] and Bonneville's general commitment to transparency, collaboration, and responsiveness.[7]

BPA Response

BPA appreciates the comments on the business practice procedures. Although the procedures do not take effect until October 1, 2019, BPA is working to implement the procedures ahead of the effective date. BPA expects that as it releases more business practices, there will be a refining of the process in preparation for the October 1 effective date. As BPA shared during the March 19, 2019 customer workshop, BPA is committed to transparency, collaboration and responsiveness with the development of business practices.

The Commenting Parties suggest that BPA's Tech Forum Notice did not include certain information referenced in Section 4.1 of the business practice process for determining when a proposed business practice is complete, such as the reason for the proposal and impacts and benefits of the proposal, to the extent known. The Commenting Parties request BPA to provide this information because it is important to stakeholders going forward, would put them on notice of potential impacts of the proposed business practice, and would advance the intent behind the business practice process.

The Commenting Parties misread sections 4.1 and 4.2 of the business practice process. Section 4.1 of the business practice process includes different requirements for BPA and stakeholders when proposing business practices. Section 4.1 provides that BPA may propose business practices by posting a Tech Forum Notice in accordance with Section 4.2. When stakeholders (i.e., customers or interested parties) seek to propose business practices, Section 4.1 requires an additional step: stakeholders must submit a form to BPA which includes a description of the revision, reason for the requested change, impacts and benefits of the proposal, and other administrative information. After BPA determines that the information in the form provided by stakeholders is complete, BPA is required to post a Tech Forum Notice in accordance with Section 4.2. Section 4.2 specifies that the Tech Forum Notice must include the proposed business practice, category type, effective date, and other administrative information; it does not require BPA include the information provided to BPA by stakeholders proposing business practices in accordance with Section 4.1. Additionally, when BPA proposes a business practice, Section 4.2 does not require BPA to include the reason for the proposal or its potential impacts in the Tech Forum Notice.

[6] Bonneville Power Admin., Bonneville Business Practice Process, Sec. 1 ("The intent of this Business Practice Process is to facilitate the exchange of ideas and information regarding maintenance and modifications to Bonneville's business practices associated with its open access transmission tariff (Tariff) in as transparent a way as possible so that Bonneville can make decisions in consideration of stakeholder comments, including the effect of proposed changes on stakeholders.").

[7] *See, e.g.* Bonneville Power Admin., BPA 2018-2023 Strategic Plan at 45 (noting Bonneville's Strategic Goal 4 "meet transmission customer needs efficiently and responsively"); Bonneville Power Admin, Mission Vision Values, https://www.bpa.gov/news/AboutUs/Pages/Mission-Vision-Values.aspx (noting Bonneville's intent for, among other things, collaborative relationships).

Although Section 4.2 of the Business Practice Process does not require BPA to include the reason for the proposal or potential impacts, BPA is open to voluntarily refining the process as Commenting Parties request. BPA will endeavor to provide the requested information in future Tech Forum Notices regardless of whether a customer or BPA initiates the business practice process. BPA shared a new Tech Forum template at the March 19, 2019 customer workshop. The new template can be can be found at:

https://www.bpa.gov/transmission/CustomerInvolvement/TC20Implementation/Documents/BPA-Tech-Forum-Notice-Examples-031919.pdf

2. Summary of Comments and Context of Concerns

The comments provided here, and associated requested edits, are influenced in part by Commenting Parties' own experience as long-time Bonneville customers and, for some Parties, as fellow regional transmission providers. As demonstrated in the below comparison, due to Bonneville's status as a federal power marketing administration, certain deviations from the *pro forma* OATT render key customer-protection provisions vulnerable due to their significant reliance on Bonneville's dispute resolution procedures.

7.3. Customer Default:[8]

[8] *See also*, Bonneville Power Administration, *Administrator's Final Record of Decision, Appendix D: Transmission, Ancillary, and Control Area Service Rate Schedules and General Rate Schedule Provisions*, (BP-18- A-04-AP04) at 75-76 (setting out similar customer default provisions).

In the event the Transmission Customer fails, for any reason other than a billing dispute as described below, to make payment to the Transmission Provider on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the Transmission Provider notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist. Upon the occurrence of a default, the Transmission Provider ~~may initiate a proceeding with the Commission to terminate service but shall not terminate service until the Commission so approves any such request~~ notify the Transmission Customer that it plans to terminate services in sixty (60) days. The Transmission Customer may use the dispute resolution procedures to contest such termination. In the event of a billing dispute between the Transmission Provider and the Transmission Customer, the Transmission Provider will continue to provide service under the Service Agreement as long as the Transmission Customer (i) continues to make all payments not in dispute, and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the Transmission Provider may provide notice to the Transmission Customer of its intention to suspend service in sixty (60) days~~, in accordance with Commission Policy~~.

12.1 Internal Dispute Resolution Procedures

Any dispute between a Transmission Customer and the Transmission Provider involving transmission service under the Tariff (excluding ~~applications for rate changes or other changes to the Tariff, or to any Service Agreement entered into under the Tariff, which shall be presented directly to the Commission for resolution~~ 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] ~~by mutual agreement~~, 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 reviewing the above redline comparison in the context of the draft Billing Dispute Procedures, three observations arise. First, and as discussed in the next section, conspicuously absent from the FERC pro forma Tariff, Bonneville's current Tariff, and the Settlement Tariff is any requirement that the Transmission Provider must "formally recognize" a billing dispute before the dispute resolution process can initiate. Rather, as clearly stated in Section 12.1, "[a]ny 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." Simply put, by the terms of Bonneville's own Tariff, the Customer does not need permission or "formal recognition" to dispute a bill.

BPA Response

BPA understands Commenting Parties' position that the differences between BPA's Tariff and the pro forma Tariff underscore the importance of its Billing Dispute Procedures Business Practice. BPA notes that the customer default provision of its Tariff is echoed in Section I.D.3 of its General Rate Schedule Provisions, which have repeatedly been approved by FERC.

All Commenting Parties echo a concern with a "formal recognition" requirement in order to initiate a dispute. Again, BPA believes this is a misinterpretation of its proposed Billing Dispute Procedures Business Practice. The proposed Billing Dispute Procedures Business Practice provides that if the customer provides basic information regarding the nature of its billing dispute, BPA will formally recognize the dispute. This arrangement in which the customer needs to provide its basis for a dispute in order to initiate the dispute resolution process is consistent with Section 12.1 of the Tariff.

Section 12.1 applies to "disputes." In order for there to be a "dispute," the customer must disagree with something that BPA has done. In the context of a billing dispute, this is likely to be a disagreement with a particular charge on an invoice or something of that nature. In order to disagree with a particular charge, the customer must have some basis for that disagreement. Thus, there is no "dispute" under the Tariff unless the customer has some basis for the dispute. A productive dispute resolution process requires the customer to provide BPA with some explanation of its position—some reason for its dispute. Other transmission providers similarly require some basic information in order to initiate a billing dispute. Southern Company, for example, provides a questionnaire that must be filled out to initiate a billing dispute. https://www.oasis.oati.com/SOCO/index.html (last accessed April 1, 2019). Requiring the customer to provide this basic information is not inconsistent with Section 12.1 of the Tariff; instead, it reflects the purpose behind the informal dispute resolution procedures embodied in Section 12.1.

BPA understands that customers may not have the basis for a dispute fully fleshed out at the time they raise a dispute because customers and BPA may need to collect additional information. The Billing Dispute Procedures Business Practice is not intended to require the customer to state its final dispute position at the outset of the dispute. BPA expects that during the dispute resolution process, additional information will become available and this may cause BPA or the customer to change positions during the process. On the other hand, customers should not initiate a billing dispute without some good faith basis for believing that an error has occurred.

Under BPA's Billing Dispute Procedures Business Practice the customer must articulate its good faith basis to dispute a charge so that the parties can engage in a productive dispute resolution process. This is true regardless of the differences between BPA's Tariff and the pro forma Tariff. If a customer merely has a suspicion that it may have a basis to dispute a charge, but needs to collect additional information before it can form a good faith basis for the dispute, then the customer should follow Section A of the Billing Dispute Procedures Business Practice: dispute the charge after payment when the customer has collected the necessary information.

Given that both groups of Commenting Parties misread this "formal recognition" language in the draft Billing Dispute Procedures Business Practice, BPA believes that it may not have struck the right balance between BPA's need for the customer's basis for its dispute and the customer's potential need for additional information to fully form its basis for the dispute. BPA has adjusted these portions of its Billing Dispute Procedures Business Practice to require the customer to present BPA with its good faith basis for the dispute. If the customer does not provide some basis for its dispute at the outset, it has not properly raised a "dispute" under Sections 7.3 or 12.1 of the Tariff and BPA will not suspend collection efforts.

Second, a critical deviation of Bonneville's Tariff from the pro forma Tariff is the requirement in Section 7.3 to obtain FERC permission before terminating a customer's service in the event of default. Rather, even assuming away other legal impediments to service termination (or other action) in the event of customer default, Bonneville's primary obstacle should not be a dispute resolution process that it can decline to initiate by withholding its "formal recognition." For at least PacifiCorp, this is not simply a hypothetical, but a distinct concern in light of recent experience.[9]

BPA Response

As discussed above, BPA will eliminate the term, "formal recognition." BPA has adjusted these portions of its Billing Dispute Procedures Business Practice to require the customer to present BPA with its good faith basis for the dispute. This requirement is needed to address instances in which customers have declined to identify even the most basic aspects of their disputes such as the dollar amount at issue. If the customer does not provide some basis for its dispute at the outset, it has not properly raised a "dispute" under Sections 7.3 or 12.1 of the Tariff and BPA will not suspend collection efforts. This is not an impediment to the filing of a dispute—the customer does not have a good faith dispute without also having some basis to believe an error has occurred. The customer must provide its good faith basis for initiating a dispute. When BPA confirms receipt of the dispute, it provides assurance to customers that BPA is tracking the disputed charges and that collections have been suspended.

Finally, the Customer's ability to meaningfully exercise its right in Tariff Section 12.1 to challenge Bonneville's resolution is premised on such dispute resolution process having begun in the first place. Again, there should be no "formal recognition" prerequisite as a barrier to the Customer disputing its own bill and ensuring its right to continued service during the dispute under Section 7.3 and its ability to ultimately challenge the dispute's resolution under Section 12.1.

Commenting Parties emphasize that these comments and requested edits do not seek to protect Customers at the expense of Bonneville. These comments and requested edits are

[9] *See, TC-20 Comments of PacifiCorp on Certain of BPA's Proposed Tariff Changes and Related Matters from April 23, 2018 TC-20 Meeting* (May 30, 2018) at 2-3, available at https://www.bpa.gov/Finance/RateCases/BP-20/Meetings/TC-20%20Comments/PacifiCorp%20Comments%20on%20BPA%20Proposed%20TC-20%20Tariff%20Changes%20(5.30.18).pdf (describing a previous billing dispute raised by PacifiCorp that Bonneville declined to "recognize" absent information about, and documentation to support, the merits of the dispute and the "relief sought").

intended to provide a framework for promptly resolving disputes while taking Bonneville's stated concerns into account to the extent possible and consistent with Customers' existing rights. Ultimately, having clear, fair, and reliable billing dispute procedures will better protect

Bonneville's Customers, the Agency itself, and also further Bonneville's commitments to open access transmission service and customer engagement.[10]

BPA Response
BPA has adjusted its Billing Dispute Procedures Business Practice to remove the "formal recognition" requirement, but customers must provide a good faith basis for their billing disputes. BPA believes this addresses Commenting Parties' concerns and appreciates Commenting Parties' assistance in this regard.

3. Comments on the Billing Dispute Procedures
At the outset, Commenting Parties request prefatory language at the beginning of the Billing Dispute Procedures that reinforce that the Billing Dispute Procedures are subject to applicable law, such as Bonneville's Tariff itself, executed service agreements, and the Agency's statutory framework. In addition, Commenting Parties recommend language to clarify that Bonneville and a disputing Customer remain free to resolve their dispute outside of the Billing Dispute Procedures, such as through settlement. The remaining edits proposed by Commenting Parties underscore the group's concerns with: ensuring the Customer's unilateral ability to dispute a bill from a transmission provider, protecting the Customer against inadvertent waiver of important rights, and fairness in resolving disputes.

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.

BPA Response
BPA has edited the opening statement of the business practice to make clear that the business practice provides the procedures and implementation details that support Sections 7 and 12 of the Tariff.

The new opening paragraph of the Billing Dispute Procedures Business Practice will state, in part: "However, nothing in this Business Practice will require its application to a dispute if BPA and the Customer otherwise resolve such dispute. This Business Practice shall not be interpreted to contradict, amend, or supersede the Tariff."

A. Initiating a Dispute
As noted previously, there is no express requirement in Bonneville's current Tariff, Settlement Tariff, or the FERC *pro forma* Tariff that the Transmission Provider must "formally recognize" a Customer's dispute before initiating the dispute resolution process. In addition, requiring certain additional information as a prerequisite to such initiation could become burdensome and unreasonable, especially because dispute initiation triggers important rights under Sections 7.3 and 12.1, which may need to be exercised on a time-sensitive basis.

[10] *See, e.g.* Bonneville Settlement Tariff Section 9(a)(1) ("Subject to applicable law, Bonneville commits to open access transmission service."); Bonneville Strategic Plan 2018-2023 (Jan. 2018) at 50, available at https://www.bpa.gov/StrategicPlan/StrategicPlan/2018-Strategic-Plan.pdf (stating, as part of Bonneville's strategic plan to meet transmission customer needs efficiently and responsively," that Bonneville's intent to "[o]ffer more standardized products and services by better aligning BPA's Open Access Transmission Tariff with pro forma and industry best practices").

Accordingly, requested edits to Sections A.1 and B.1, as shown in Attachment 1 ensure that the Customer may unilaterally initiate a dispute to its own transmission bill, which is what the Tariff clearly contemplates, what is *status quo* in the industry, and what is most just and reasonable for Bonneville's Customers.

BPA Response

As discussed above, BPA will remove the "formal recognition" requirement, but Customers must still provide a good faith basis for initiating a billing dispute. As to time sensitivity, BPA's Tariff does not limit customers to disputes within a timeframe such as one year or less, as other transmission providers have done. BPA's Tariff also does not place limits on a customer's ability to dispute a charge after payment. There may be other time limitations under applicable laws, but BPA has not created any particular time limitations in its Tariff.

There are multiple entities that require transmission customers to provide information in order to initiate a billing dispute. As discussed above, Southern Company requires customers to fill out a questionnaire. The industry uses a range of methods for customers to initiate a dispute.

The Billing Dispute Procedures Business Practice does not condition the customer's ability to initiate a dispute. It merely requires some basic information on the nature of the dispute. This is designed to address a particular issue that BPA has frequently experienced. Customers file disputes in a general manner, which causes BPA to spend an inordinate amount of time determining what is actually being disputed. For instance, a customer may simply state that it is disputing its Failure to Comply penalty charges for a particular month, but it does not identify which hours, what amounts, or why it is disputing these charges. These types of general disputes do not provide BPA with sufficient information to begin researching the issue. If a customer believes a charge is invalid, it must have a good faith basis for this belief. The Billing Dispute Procedures Business Practice merely requires the customer to provide this basis for its dispute. Additionally, BPA needs basic information about the disputed charge or charges so that it can track the appropriate amounts through its systems and ensure that collection procedures are properly suspended while the dispute is pending. Sections A.1.a and B.1.a establish that level of detail and allow BPA to properly track the charges in dispute.

As the dispute progresses, the parties may become aware of additional charges in prior months, for example, that are also subject to the dispute. This is a normal part of the dispute resolution process in which the parties are working together to identify the full scope of the dispute. BPA will add a new sub-bullet to Sections A.1 and B.1 to express BPA's willingness to work with customers to identify the information necessary to resolve a dispute.

Among the revisions shown in Attachment 1, Commenting Parties request that subsection (a) under A.1 and B.1 be revised to state that the Customer should indicate in writing that it is disputing a bill and provide certain initial information to the extent then known by the Customer. Customers may not have all the data or other information necessary to resolve a dispute or, on some occasions, to even to understand the extent of a dispute. For example, a Customer may need meter readings from Bonneville or certain maps or diagrams that are solely in Bonneville's possession and not publicly available. Rather, the extent to which either the transmission provider or Customer need additional information from each other should pertain only to the resolution of the dispute, not to whether such a dispute exists in the first place.

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.

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.

BPA Response

Nothing in this business practice or in Tariff Sections 7 or 12 prevent a customer from "unilaterally" initiating a dispute therefore it does not need to be specifically stated.

BPA will adopt proposed edits in Section A.1.a as follows:

a.ii – Will be adopted as written.
a.iii – The struck language will be retained. BPA needs the documentation supporting a customer's claim to effectively research the issue and proceed with dispute resolution. However, BPA will adopt language in a new subsection A.1.c to provide customers with the ability to request information supporting the invoiced charges from BPA.
a.iv – BPA will include the specific example provided.

Section A.1.b will be rewritten to say, "Upon receipt of the email or other written notification from the Customer containing the information in Section A.1.a, the Customer's Transmission Account Executive shall respond with confirmation of receipt of the Customer's dispute as soon as is practical."

BPA will adopt proposed edits in Section B.1.a as follows:

a.ii – Will be adopted as written.
a.iii – The struck language will be retained. BPA needs the documentation supporting a customer's claim to effectively research the issue and proceed with dispute resolution. However, BPA will adopt language in a new subsection B.1.b to provide customers with the ability to request information supporting the invoiced charges from BPA.
a.iv – BPA will include the specific example provided.

The customer proposed B.1.b will not be adopted. Section B is for customers who wish to fund an escrow account until there is resolution of their disputed charges. Bonneville has experienced significant delays with respect to customers funding escrow agreements after a dispute is initiated. Therefore, customers who wish to use the escrow account also have the

additional responsibility outlined in Section B.2 to execute and fund the account by the bill due date otherwise the amounts will be considered unpaid and subject to applicable collection procedures and timelines. Generally, the collection procedures and timelines provide the customer between 60 and 120 days following the bill due date prior to further collection action. This should be sufficient for customers to establish and fund an escrow account. Additional information regarding BPA's collection procedures and timelines can be found on page 2 of customer Transmission Invoices.

Furthermore, suggested edits to Sections A.3 and B.3 would allow both Bonneville and the Customer ample opportunity to reasonably seek additional information from each other as necessary for the dispute to be resolved.

A.3:

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.~~

BPA Response

BPA has adopted some of the language provided; however, BPA will be keeping reference to arranging the meeting between senior representatives "at the Customer's request." Per Tariff Section 12.1, a meeting of senior representatives is available to the customer on every dispute but experience has shown that few disputes rise to the level of needing senior representatives to resolve therefore customers have rarely made this request. By keeping the language "at the Customer's request" the customer can decide for themselves if their dispute warrants a senior representative discussion. Per the BPA Tariff Section 12.1 and the Dispute Procedures Business Practice, the request will not be denied.

BPA will adopt in a new Section A.1.c "BPA and the Customer will make reasonable efforts to provide additional information related to the dispute as may be reasonably requested for the purposes of evaluating the Customer's dispute"

BPA will also be retaining the language in Section A.3.b. These bullets recognize that not all customers choose a meeting with senior representatives for every dispute and therefore both are critical to establishing the timelines for working with the customer to resolve their dispute.

BPA will add a new A.3.c that says, "If BPA cannot complete its evaluation within the approximated 60 days, then it will provide periodic updates of its progress and an estimated timeline." The existing A.3.c will be moved down.

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.

BPA Response
BPA will adopt the edit as proposed but it will be moved down to A.3.d.

B.3:

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~~; orii. the date the dispute was recognized in accordance with Section B.2.c, above~~.

BPA Response
BPA has adopted some of the language provided; however, BPA will be keeping reference to arranging the meeting between senior representatives "at the Customer's request." Per Tariff Section 12.1, a meeting of senior representatives is available to the customer on every dispute but experience has shown that few disputes rise to the level of needing senior representatives to resolve therefore customers have rarely made this request. By keeping the language "at the Customer's request" the customer can decide for themselves if their dispute warrants a senior representative discussion. Per the BPA Tariff Section 12.1 and the Dispute Procedures Business Practice, the request will not be denied.

BPA will adopt in a new Section B.1.b "BPA and the Customer will make reasonable efforts to provide additional information related to the dispute as may be reasonably requested for the purposes of evaluating the Customer's dispute."

BPA will also be retaining the language in Section B.3.b. These bullets first recognize that not all customers choose a meeting with senior representatives for every dispute and therefore both are critical to establishing the timelines for working with the customer to resolve their dispute.

BPA will add a new B.3.c that says, "If BPA cannot complete its evaluation within the approximated 60 days, then it will provide periodic updates of its progress and an estimated timeline." The existing B.3.c will be moved down.

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.

BPA Response
BPA will adopt the edit proposed but it will be moved down to B.3.d.

Commenting Parties further request that "detailed" be deleted from item (ii), as that immediately raises the question of whether a dispute is sufficiently "detailed" to initiate the billing dispute process, which is not an explicit requirement in the Tariff.

ii. ~~A detailed~~An explanation of the basis for the dispute; and

BPA Response
BPA will adopt the edit proposed.

In addition, Commenting Parties request that item (iii) be replaced with "a statement of information the customer requests from Bonneville that may be relevant to resolving the dispute." Customers would likely be providing any then-available supporting documentation as part of their explanation in item (ii).

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;

BPA Response
Commenting Parties presume that Customers provide any supporting documentation when they provide information on the basis of their disputes. However, in BPA's experience, customers frequently do not provide available supporting documentation even when it is readily available to them. For example, under (ii) a customer disputing its Failure to Comply penalty charge might say it had a system failure that prevented it from complying with the dispatch directive. Under (iii) the customer would provide a copy of the trouble ticket submitted to the vendor as support of its explanation under (ii). The struck language will be retained. The more information the customer is able to provide at the outset, the sooner the parties can focus on resolving the dispute rather than collecting information. In many cases, BPA needs the documentation supporting a customer's claim to effectively evaluate the issue. BPA will adopt language in a new subsection A.1.c to provide customers with the ability to request information supporting the invoiced charges from BPA with the expectation that customers will not use this provision to request from BPA information that is readily accessible to customers.

With regard to Section A.1.a.iv.1 and Section b.1.a.iv.1, Commenting interpret those sections solely as a reference to what other requirements may exist for Customers to comply with outside of the Billing Dispute Process, and not an additional limitation on the Customer to initiate a dispute.

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.

BPA Response
BPA will include the specific example provided.

Finally, and critically, in subsection (b) in Sections A.1 and B.1, Commenting Parties request that Bonneville replace the "formal recognition" requirement with an obligation by the Transmission Account Executive to confirm Bonneville's receipt of the Customer's dispute-related communication within three business days. Removal of the "formal recognition" requirement re-emphasizes that Customer retains sole control of initiating a dispute of its own bill, which is consistent with Bonneville's Tariff and standard industry practice.

A.1.b:

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.

B.1.b

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.

BPA Response

Section A.1.b will be rewritten to say, "Upon receipt of the email or other written notice from the Customer containing the information in Section A.1.a the Customer's Transmission Account Executive shall respond with confirmation of receipt of the Customer's dispute as soon as is practical."

The customer proposed B.1.b will not be adopted. Section B is for Customers who wish to fund an escrow account until there is resolution of their disputed charges. Bonneville has experienced significant delays with customers funding escrow accounts in the context of disputes. Therefore, Customers who wish to use the escrow account also have the additional responsibility outlined in Section B.2 to execute and fund the account by the bill due date otherwise the amounts will be considered unpaid and subject to applicable collection procedures and timelines. Generally, the collection procedures and timelines provide the customer with 60 to 120 days following the bill due date prior to further collection action. This should be sufficient for customers to establish and fund an escrow account. Additional information regarding BPA's collection procedures and timelines can be found on page 2 of customer Transmission invoices.

B. Treatment of Funds in Dispute

Commenting Parties request that Bonneville delete the sentence "Bonneville will continue to retain funds in dispute," from Section A.2.a, as that sentence creates ambiguity over what Bonneville's obligations are with regard to the funds in dispute, and it moreover conflicts with the final sentence in that subsection, "Bonneville will continue to retain the funds pending dispute resolution."

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.

BPA Response
BPA will adopt the edit proposed.

Commenting Parties' requested edits to Section B.2 complement the requested edits to Sections A.1 and B.1, and are intended to remove barriers to initiating a dispute under Section B, thereby ensuring consistent treatment between Customers and preserving each Customer's rights under Section 7.3 (right to continued service during dispute) and Section 12.1 (right to appeal dispute resolution). In addition, these edits avoid the timing conflict apparent in original Section B.2, wherein Bonneville's "formal recognition" of the dispute would be based partly on the Customer executing the escrow agreement and funding the escrow account—steps that cannot be taken without the active involvement and counter signatures of Bonneville and the Escrow Agent.[11]

[11] *See, e.g.* Draft Escrow Agreement Recitals (noting that the dispute must be summarized); Draft Escrow Agreement Section 3 ("Deposit of Escrow Funds. Within five (5) business days of the execution and delivery of this Escrow Agreement. Depositor [customer] will transfer the Escrow Funds in the amount $____ by wire transfer immediately available funds, to an account designated by Escrow Agent.").

BPA Response
As previously discussed BPA will edit the language related to the term "formal recognition" of a dispute.

It is the customer's choice to either pay the disputed amount to BPA under Section A or fund an escrow account under Section B. The time it takes to establish and fund an escrow account should be considered when making this choice. When a customer chooses escrow, the unpaid charges remain collectable until the escrow account is funded.

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.

BPA Response
Section B.2.b.i will be rewritten to say, "Upon receipt of the email or other written notice from the Customer containing the information in Section B.1.a, the Customer's Transmission Account Executive will provide the Customer with an Escrow Agreement."

Accordingly, and as shown in Attachment 1, Commenting Parties request the removal of current Section B.2.c, as it would be inconsistent with Bonneville's Tariff and unreasonable to hinge the Customer's dispute initiation, and the critical rights attendant thereto, on a process that the Customer cannot complete on its own and would be burdensome in any event simply to initiate a dispute.

~~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.~~

BPA Response
BPA will retain this subsection however it has been rewritten to say, "Upon receipt of the email

or other written notice from the Customer containing the information in Section B.1.a and completion of B.2.b the Customer's Transmission Account Executive shall respond with confirmation of receipt of the Customer's dispute as soon as is practical."

Recognizing the importance of diligently resolving the dispute, however, Commenting Parties suggest incorporating language that would obligate the Customer to use reasonable efforts to negotiate any unfilled terms in the Escrow Agreement and execute the agreement with Bonneville and the Escrow Agent as promptly as possible, with full funding of the account by the Customer following within five business days thereafter.

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.

BPA Response
BPA has had experiences with Customers in which there have been significant delays in the signing of the escrow agreement. Therefore, the use of the word "promptly" is necessary to establish the appropriate expectation for completion of this step. BPA recognizes there are terms the parties need to discuss to execute the escrow agreement, but these terms are not substantial and merely require the parties to describe the dispute at a high level along with the disputed dollar amount. Section B.2.b.ii will be edited to read in part as follows, "The Customer and BPA will use reasonable efforts to negotiate the unfilled terms of the Escrow Agreement in order to promptly execute the Escrow Agreement with the Escrow Agent."

Commenting Parties also request that "by the billing due date" be struck from Section B.2.a.i and replaced with "in accordance with Section B.2.b" to be consistent with other edits made in Section B and out of recognition that the originally-drafted timeline for execution may be unworkable for Bonneville, the Customer, and the Escrow Agent.

Finally, as a matter of clarification, Commenting Parties request that Bonneville insert the word "not" in Section B.2.a.i. Specifically, Commenting Parties request that that subsection be changed to: "Disputed charges not paid to BPA or not deposited into escrow by the billing due date will be subject to applicable collection procedures and timelines." This addition will prevent conflicts with the Escrow Agreement.

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.

BPA Response
Funds not properly disputed in accordance with B.1.a and properly escrowed by the bill due date will be subject to applicable collection procedures and timelines. Customers also have the option under Section A.1 to dispute the charges and pay the funds to BPA by the bill due to avoid the extra steps of initiating an escrow agreement and funding an escrow account. BPA will

reword B.2.a.i bullet to say, "Disputed charges not paid to BPA by the billing due date or not deposited into escrow in accordance with Section B.2.b below will be subject to the applicable collection procedures and timelines set forth in the Notice of Debtors Rights on the Customer invoice."

Generally, the collection procedures and timelines provide the customer with 60 to 120 days following the bill due date prior to further collection action. This should be sufficient for customers to establish and fund an escrow account. Additional information regarding BPA's collection procedures and timelines can be found on page 2 of customer Transmission invoices.

C. Dispute Evaluation and Determination by BPA

Commenting Parties request that Bonneville incorporate various edits in Sections A.3 and B.3. First, Commenting Parties request insertion of a cross-reference to Bonneville Tariff Section 12.1, which clarifies the primacy of the Tariff and guarantees that once a dispute is initiated by a Customer, it must be referred to designated senior representatives of both Bonneville and the Customer. The obligation in Tariff Section 12.1 to refer a dispute to senior representatives by the parties also informs the edits to Sections A.3.b and B.3.b.

A.3.

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.

B.3

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~~; orii. 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.

BPA Response

BPA has adopted some of the language suggested; however, BPA will keep reference to arranging the meeting between senior representatives "at the Customer's request." Per Tariff Section 12.1, a meeting of senior representatives is available to the customer on every dispute. Experience has shown that few disputes rise to the level of needing senior representatives to resolve. Customers rarely make this request. By keeping the language "at the Customer's request" the customer can decide for itself if its dispute warrants a senior representative discussion. Per Tariff Section 12.1 and the Dispute Procedures Business Practice, BPA will not deny such a request.

BPA will adopt in a new Section A.1.c: "BPA and the Customer will make reasonable efforts to provide additional information related to the dispute as may be reasonably requested for the purposes of evaluating the Customer's dispute."

BPA will also be retaining the language in the previous Section A.3.b and B.3.b. These bullets recognize that not all customers choose a meeting with senior representatives for every dispute and therefore both are critical to establishing the timelines for working with the customer to resolve the dispute.

BPA will add a new A.3.c and B.3.c that says, "If BPA cannot complete its evaluation within the approximated 60 days, then it will provide periodic updates of its progress and an estimated timeline." The existing A.3.c and B.3.c will be moved down.

Lastly, Sections A.3.c and B.3.c will be adopted as suggested, but will be moved down to A.3.d and B.3.d.

Second, Commenting Parties suggest language that would ensure full opportunity for the Customer and Bonneville—once the Customer initiates the dispute—to reasonably request additional information for purposes of resolving the dispute. From the Customer call on February 8, 2019, it appeared that most of Bonneville's concerns behind the enumerated items in Sections A.1 and B.1 were to ensure sufficient information was gathered at the outset.
As noted previously, however, Bonneville's current and Settlement Tariffs do not obligate the Customer to provide "detailed" information to initiate the dispute, and to impose such a requirement, or any other impediment to the Customer's unilateral right to dispute a bill, would be inconsistent with Bonneville's Tariff and would invite transmission provider discretion that is neither appropriate nor reasonable at the dispute initiation stage**.**

Nonetheless, it may be necessary for the Customer to provide additional information before Bonneville can fully resolve the dispute in accordance with Sections A.3 and B.3 and the Tariff. Similarly, as reflected in revised Sections A.1.a.iii and B.1.a.iii, the Customer may also need additional information from Bonneville. As such, the added language would ensure that both parties could obtain the information that they need to resolve the dispute.

BPA Response
As discussed above, customers must have a good faith basis to initiate a billing dispute. BPA's Billing Dispute Procedures Business Practice simply requires customers to articulate that good faith basis. This is not an impediment to a customer initiating a dispute.

Also as discussed above, BPA will add language allowing for reasonable exchanges of information with the expectation that the customer will not request of BPA information that is readily available to the customer.

Finally, Commenting Parties suggest adding language in Sections A.3.c and B.3.c that would prompt Bonneville to explain its Final Decision, to the extent Bonneville deems such explanation is necessary or appropriate. This proposed language will help set Customer expectations as to the form and substance of Bonneville's final decision and may also forestall an appeal by the Customer under Sections A.4 and B.4. Ultimately, however, Bonneville would remain in control of the level of detail it provides Customers at this stage.

A.3.c:

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.

B.3.c:

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.

BPA Response
BPA will adopt the edits as proposed, but these bullets will be moved down to A.3.d and B.3.d.

D. Disbursement of Funds (Formerly Appeal Procedures and Disbursement of Funds)
As reflected in Attachment 1, Commenting Parties request various edits to Section A.4 and B.4, which are primarily intended to reaffirm that Customers are not waiving any rights retained under the Tariff, statute, or contract, as a result of these dispute procedures. Accordingly, from both a Tariff compliance and practical standpoint, Commenting Parties are concerned with the original 15-day timing requirement in which a Customer must provide notice of its intent to pursue alternative dispute resolution or legal action before a court or agency following Bonneville's notice of final decision. First, under Bonneville's Tariff Section 12.1, customers are entitled to submit their dispute to a court, agency, or to arbitration in the event that the dispute cannot be resolved within thirty days (or such other period that the Parties may agree on). As such, Commenting Parties have revised Section B.4.b to obligate the customer to notify Bonneville that the Customer has already, or intends, to pursue the options set out in Tariff Section 12.1.

A.4:

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.

BPA Response
Section A.4.a will be edited to say, "BPA will disburse any funds due to the Customer consistent with its final decision unless the Customer pursues an action in a court or agency of competent jurisdiction. In the latter event, BPA will disburse any funds due to the Customer consistent with the final determination of a court or agency of competent jurisdiction."

B.4:

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.

Second, the 15-day timing requirement also conflicts with how the Escrow Agreement defines "Escrow Period." In relevant part, "Escrow Period" is defined as the period in which the Escrow Agreement is in effect, and it runs from the date of execution by the parties until 90 days following Bonneville's final resolution of the dispute, unless earlier terminated by mutual agreement or if a claim challenging Bonneville's final resolution is "actively pending" in a court or agency of competent jurisdiction. As the current draft Billing Dispute Procedures read, a Customer would have 15 days to signal its intent to contest Bonneville's final decision, when, under the Escrow Agreement, the Customer would have up to 90 days to make that decision before the funds could be distributed. Moreover, it raises the added complication of what happens if, by day 16, the Customer then decides to dispute the decision. On the February 8, 2019 call, Bonneville staff acknowledged that this could be a problematic outcome. Again, the Customer retains its right to seek relief from a court, agency, or through arbitration in accordance with Bonneville's Tariff, but the 15-day timing requirement presents additional textual interpretation hurdles when compared to the Escrow Agreement.

Third, practically speaking, it may take longer than 15 days for the Customer to assess Bonneville's final decision, evaluate the merits of pursuing alternative dispute resolution or legal action in a court or agency, and obtain the internal approvals necessary. Insisting on a limited 15-day window within which to signal this next critical step may invite unnecessary litigation and tension when a longer time frame could both allow the Customer more time to evaluate its options, while ensuring that Bonneville has sufficient leeway before, as the Agency claims, it must consider sending a Customer's outstanding bill to the U.S. Treasury Department. To that end, Commenting Parties request an extension out to 60 days for the Customer to give notice that they have either exercised, or intend to exercise, the rights afforded them under Tariff Section 12.1.

Finally, both Sections A.4 and B.4 clarify that Bonneville will disburse the funds in dispute in accordance with Bonneville'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. Additional requested edits in Section B.4.b would clarify the procedure by which a Customer can further state its intentions following Bonneville's final decision.

BPA Response

BPA understands that customers found the timeline in the proposed Business Practice confusing with respect to the interplay between the timeline in the escrow agreement and the proposed 15-day notification of intent to pursue formal or alternative dispute resolution. BPA will remove this communication requirement in Section B.4.b. Following BPA's final decision, BPA will disburse funds in accordance with the escrow agreement. This means that if BPA makes a final decision and the customer does not file an action in a court or agency of competent jurisdiction and the parties do not mutually agree to arbitrate the dispute within 90 days, BPA will disburse funds in accordance with its final decision. Alternatively, if the customer agrees with BPA's final decision, the parties can disburse the escrow funds immediately pursuant to the escrow agreement.

With the removal of the original B.4.b the new B.4.c will be edited to say, "BPA will disburse any funds due to the Customer consistent with its final decision unless the Customer pursues an action in a court or agency of competent jurisdiction. In the latter event, BPA will disperse any funds due to the Customer consistent with the final determination of a court or agency of competent jurisdiction."

4. New Section C: Billing Dispute Procedures Shall be Consistent with OATT Section 12.1 and the Customer's Reservation of Rights

Commenting Parties request that Bonneville insert the edits presented in new Section C of Attachment 1. These edits are consistent with Section 9 of Bonneville's Tariff, Section 7 of the Business Practice Development Process, and consistent with other edits described in these Comments: that Customers are not waiving, modifying, or amending any rights, remedies, or obligations that are guaranteed to them by applicable law or under Contract. In particular, and as the Commenting Parties expressly point out in Section C.1, Tariff Section 12.1 preserves the Customer's right to submit its dispute to a court or agency of competent jurisdiction or, by mutual agreement with Bonneville, to arbitration.

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.

BPA Response

BPA has edited the opening statement of the business practice to make clear that the business practice provides the procedures and implementation details that support Sections 7 and 12 of

the Tariff.

The new opening paragraph of the Billing Dispute Procedures Business Practice will state, in part: "However, nothing in this Business Practice will require its application to a dispute if BPA and the Customer otherwise resolve such dispute. This Business Practice shall not be interpreted to contradict, amend, or supersede the Tariff."

5. Comments on the Draft Escrow Agreement

As shown in Attachment 2 and explained below, Commenting Parties also have several suggested edits to the draft Escrow Agreement, recognizing that this is a draft template subject to further review by Bonneville, a disputing Customer, and the Escrow Agent as needed and on a case-by-case basis:

 Recitals: Commenting Parties recommend inserting the right of the Customer, as provided in Bonneville Tariff Section 7.3, to continue receiving transmission service provided that certain conditions are met. This is consistent with Bonneville's Tariff and ensures that expectations and rights are understood**.**

RECITALS

A. Depositor and Recipient have entered into an electric transmission service agreement (BPA Contract No. _____) (the "Underlying Agreement"), dated _____ and updated with amended exhibits from time to time under the Recipient's Open Access Transmission Tariff ("Tariff"). Under Section 7.3 of the Tariff, ~~Depositor pays Recipient for certain transmission services, but if an invoiced amount is disputed, it can be paid~~in the event of a billing dispute between Recipient and Depositor, Recipient will continue to provide service under the Underlying Agreement as long as Depositor: (i) continues to make all payments not in dispute; and (ii) pays into an independent escrow account the portion of the invoice(s) in dispute, pending resolution of ~~the~~such dispute under, among other things, Section 12 of the Tariff**.** Accordingly, Depositor will deposit the Escrow Funds (defined below) in a segregated escrow account to be held by Escrow Agent for the purpose of holding such funds pending dispute resolution. For purposes of this Escrow Agreement, the dispute relates to {summarize the dispute}(hereinafter, the "Dispute").

BPA Response

BPA agrees to the proposed edit.

 Section 1 (Definition of "Escrow Period"): Commenting Parties recommend striking "actively" from the term "actively pending" in reference to when there is a claim challenging Bonneville's final resolution before a court, agency, or submitted to arbitration. "Actively" paired with "pending" creates ambiguity, as those terms could indicate when a matter is under consideration by a decision-maker, awaiting briefing, in motion practice, or stayed pending settlement discussions by the Parties or mandatory mediation (in the case of the Ninth Circuit Court of Appeals).

"Escrow Period" is the period during which the Escrow Funds may be held in the Escrow Account. The Escrow Period begins on the date of this Escrow Agreement. The Escrow Period ends ninety (90) days from the date of Recipient's letter to Depositor providing its Final Resolution of the Dispute, unless: (1) the Escrow Agreement is earlier terminated by mutual agreement of Depositor and Recipient; or (2) a claim challenging Recipient's Final Resolution of the Dispute is ~~actively~~ pending in a court or agency of competent jurisdiction~~.~~, or submitted to arbitration in accordance with Tariff Section 12.1. If a claim is actively pending on the date ninety (90) days from Recipient's letter to Depositor providing its Final Resolution of the Dispute, the Escrow Period will end in accordance with that court's or agency's final decision.

BPA Response
BPA agrees with the proposed edit, but notes that arbitration is only available by mutual agreement of the parties. It will also remove the word "actively" in the sentence that follows the edit to read: "If a claim is pending on the date ninety (90) days . . . ."

 Section 1 (Definition of "Escrow Period"): Commenting Parties recommend language to incorporate the possibility of arbitration being a proceeding that could delay release of the escrow funds in a similar fashion as challenges to Bonneville's final resolution before a court or agency. Including arbitration in this way is also consistent with Bonneville's Tariff.

"Escrow Period" is the period during which the Escrow Funds may be held in the Escrow Account. The Escrow Period begins on the date of this Escrow Agreement. The Escrow Period ends ninety (90) days from the date of Recipient's letter to Depositor providing its Final Resolution of the Dispute, unless: (1) the Escrow Agreement is earlier terminated by mutual agreement of Depositor and Recipient; or (2) a claim challenging Recipient's Final Resolution of the Dispute is ~~actively~~ pending in a court or agency of competent jurisdiction~~.~~, or submitted to arbitration in accordance with Tariff Section 12.1. If a claim is actively pending on the date ninety (90) days from Recipient's letter to Depositor providing its Final Resolution of the Dispute, the Escrow Period will end in accordance with that court's or agency's final decision.

BPA Response
BPA agrees with the proposed edit, but notes that arbitration is only available by mutual agreement of the parties. It will also remove the word "actively" in the sentence that follows the edit to read: "If a claim is pending on the date ninety (90) days . . . ."

 Section 1 ("Joint Written Direction'): The suggested edits here are to ensure that the escrow funds can be disbursed subject to written direction by both the Customer and Bonneville, which would be standard practice and is consistent with past Bonneville escrow agreements.

"Joint Written Direction" is a direction in writing, executed by one each of the Representatives from the Depositor and Recipient, directing Escrow Agent to disburse all or a portion of the Escrow Funds or take or refrain from taking any other action pursuant to this Escrow Agreement.

BPA Response
BPA agrees to the proposed edits.

 Section 7 ("Resignation or Removal of Escrow Agent"). The suggested edits here are to enable the Customer and Bonneville to determine a different escrow agent, if needed. This is consistent with past escrow agreements executed between Bonneville and its Customers.

7. Resignation or Removal of Escrow Agent. Escrow Agent may resign and be discharged from the performance of its duties hereunder at any time by giving ten (10) days prior written notice to the Depositor and Recipient specifying a date when such resignation shall take effect and, after the date of such resignation notice, notwithstanding any other provision of this Agreement, Escrow Agent's sole obligation will be to hold the Escrow Funds pending appointment of a successor Escrow Agent. Similarly, Escrow Agent may be removed at any time by Depositor and Recipient giving at least thirty (30) days' prior written notice to Escrow Agent specifying the date when such removal shall take effect. Upon any such notice of resignation, Depositor and Recipient jointly shall appoint a successor Escrow Agent hereunder prior to the effective date of such resignation or removal. If the Depositor and Recipient fail to appoint a successor Escrow Agent within such time, the Escrow Agent shall have the right to petition a court of competent jurisdiction to appoint a successor Escrow Agent, and all costs and expenses (including without limitation attorneys' fees) related to such petition shall be paid joint and severally by Depositor and Recipient. The retiring Escrow Agent shall transmit all records pertaining to the Escrow Funds and shall pay all Escrow Funds to the successor Escrow Agent, after making copies of such records as the retiring Escrow Agent deems advisable and after deduction and payment to the retiring Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by the retiring Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder. After any retiring Escrow Agent's resignation or removal, the provisions of this Escrow Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Escrow Agent under this Escrow Agreement.

BPA Response
BPA agrees with the proposed edits in large part, but does not agree to joint and several liability. The Depositor is responsible for all costs and expenses associated with maintaining the escrow account. BPA will remove "joint and severally" and "and Recipient."

 Section 12(b) (Representations and Warranties): The suggested edits here are to clarify that the same representatives that had authority to execute the Escrow Agreement also have authority to amend, modify, or waive any provisions of the Agreement or take any other authorized action. This is consistent with past escrow agreements executed between Bonneville and its Customers.

(b) each of the persons designated on Schedule C on behalf of Depositor and Recipient have been duly appointed to act as authorized representatives hereunder and individually have full power and authority to execute and deliver any Joint Written Direction, to amend, modify or waive any provision of this Escrow Agreement and to take any and all other actions as authorized representatives under this Escrow Agreement, and in the case of the Recipient Representative, Final Written Direction, without further consent or direction from, or notice to, it or any other party, provided that any change in designation of such authorized representative shall be provided by written notice delivered to each party to this Escrow Agreement.

BPA Response
BPA agrees to the proposed edit to the extent agreed to by the escrow agent.

 Section 26(c) (Imputed Interest): Commenting Parties recommend minimal edits here to reflect that Section 7.2 of Bonneville's Tariff may also apply to the question of calculating interest.

(c) Imputed Interest. To the extent that IRS imputed interest regulations ~~apply~~or Tariff Section 7.2 applies, Depositor and Recipient shall so inform Escrow Agent, provide Escrow Agent with all imputed interest calculations and direct Escrow Agent to disburse imputed interest amounts as Depositor and Recipient deem appropriate. Escrow Agent shall rely solely on such provided calculations and information and shall have no responsibility for the accuracy or completeness of any such calculations or information.

BPA Response
BPA cannot accept the proposed edit. Imputed interest is a creation of the Internal Revenue Service. It is not akin to interest under Tariff Section 7.2. BPA calculates interest under Section 7.2 at the conclusion of the dispute after funds have been distributed from the escrow account. Computation of interest under Tariff Section 7.2 thus does not need to involve the Escrow Agent.

6. Reservation of Rights and Request for Additional Customer Workshops
Commenting Parties reiterate that nothing contained in these Comments or Attachments constitutes a waiver or relinquishment of any rights or remedies provided by applicable law, Bonneville's Tariff, or by contract. Furthermore, each Commenting Party individually reserves its right, as established through the newly established Business Practice Development process, to initiate a Proposed Business Practice to address any issues that may arise in the course of implementing this, or any other, business practice.

Finally, and as noted previously, Commenting Parties request an additional workshop or other discussion opportunity with Bonneville pursuant to Section 4.5.2 of the Business Practice Process to consider these comments and edits and whether Bonneville's draft Billing Dispute Procedures, if unrevised, would significantly affect terms and conditions of service.

BPA Response
Again, BPA appreciates the comments submitted by Commenting Parties. BPA believes that the issues raised by its proposed Billing Dispute Business Practice have been adequately discussed in the customer call on February 8, 2019, and in all of the comments received during this notice and comment process. BPA believes that its final Billing Dispute Business Practice has been improved by this process and addresses BPA's and customers' concerns. Thus, additional workshops or discussions are not necessary.

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.

BPA confirmed receipt of these comments on 3/11/2019 by return email.