

Response to Questions Raised at TIPSC Regarding Proposal to Modify Section 9 of Bonneville's Tariff

Bonneville's proposed revision to section 9 of the Bonneville Tariff was discussed at the 9 June 2008 Transmission Issues Policy Steering Committee (TIPSC). The current Tariff language requires FERC approval before Bonneville can change its Tariff. Bonneville proposes to revise this language to remove the requirement for FERC approval to instead allow Bonneville to unilaterally change the Tariff after a public process involving Transmission Customers (Customers) and interested parties.

During the TIPSC meeting, participants asked Bonneville for additional information in three areas. First, it was requested that Bonneville provide the exact language of section 9 as currently written and the proposed revised language. Second, they wanted to know why section 9 was put in the Bonneville Tariff in the first place. Third, they wanted to know what rights they are giving up and what recourse will be available to them, should they have a complaint in the future.

Section 9

Current language in the Bonneville Tariff:

9 Regulatory Filings

Nothing contained in the Tariff shall be construed as affecting in any way the right of the Transmission Provider to unilaterally propose a change in rates, terms and conditions, charges or classification of service. The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the rates that apply to transmission service under such Service Agreement pursuant to applicable law. The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the terms and conditions of this Tariff upon, and only upon, a determination by the Commission that (i) such change is just and reasonable and not unduly discriminatory or preferential, or (ii) such change meets the non-public utility reciprocity requirements pursuant to a request for declaratory order under 18 CFR § 35.28(e).

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

Proposed revision, with deletions indicated and new language underlined:

9 Regulatory Filings

~~The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the rates that apply to transmission service under such Service Agreement pursuant to applicable law. The Transmission Provider may, subject to the provisions of the applicable Service Agreement under this Tariff, change the terms and conditions of this Tariff~~ after conducting a public process in which

Deleted: Nothing contained in the Tariff shall be construed as affecting in any way the right of the Transmission Provider to unilaterally propose a change in rates, terms and conditions, charges or classification of service.

Transmission Customers and other interested parties have an opportunity to review and comment on all proposed changes. Such public process shall include the following: (i) at least one public meeting, with additional public meetings to be held as necessary and appropriate; (ii) a period of not less than 30 days after the conclusion of the public meeting process during which all Transmission Customers and other interested parties may file written comments with the Transmission Provider regarding the proposed changes; and (iii) written responses by the Transmission Provider to all written comments received, posted on the Transmission Provider's web site.

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

Deleted: upon, and only upon, a determination by the Commission that (i) such change is just and reasonable and not unduly discriminatory or preferential, or (ii) such change meets the non-public utility reciprocity requirements pursuant to a request for declaratory order under 18 CFR § 35.28(e).

History of Section 9

In 1996, FERC issued the *pro forma* Tariff and required all public utilities to adopt it as the terms and conditions for transmission service for all Customers. Under section 9 of the Tariff, public utilities may unilaterally apply to FERC for a change in the Tariff. If approved, the change applies to all Customers.

Historically, Bonneville entered into bilateral contracts with Customers where each contract contained the terms and conditions of transmission service. Bonneville could amend a contract only with the consent of the other party. However, Bonneville also adopted the *pro forma* Tariff, with some deviations, in order to obtain reciprocity. Recognizing that the Tariff must be free to grow and change over time, Bonneville also wanted the right to change the Tariff. The Customers, however, were concerned about giving Bonneville, which was not subject to FERC's authority, the right to unilaterally change the Tariff. As part of the 1996 Final Transmission Terms and Conditions Proposal, Bonneville reached a compromise with its Customers under which Bonneville adopted its own version of section 9.¹ Bonneville included a section 14 in its initial Tariff that provided:

BPA may impose subsequent Tariff changes upon Customers who have executed Service Agreements only upon a determination by the Commission that the changes are just and reasonable, not unduly discriminatory or preferential, unless otherwise agreed in writing. Though not required to do so under law, BPA agreed to this as part of the Transmission Settlement.²

Included in the Standard Form of Service Agreements was the following provision:

Unless otherwise mutually agreed in writing by the parties, Bonneville may change the terms and conditions of the Tariff upon, and only upon, a determination by the Commission that such change is just and reasonable and not unduly discriminatory or preferential.³

¹ Bonneville Power Administration, FERC Docket No. NJ97-3-000, Petition for Declaratory Order Regarding Transmission Terms, Conditions and Rates for Open Access Transmission Service (Dec. 16, 1996).

² Id. at 27-28 (internal citation omitted).

³ Id. at Attachment 2, Bonneville Power Administration Point-to-Point Transmission Service Tariff, TC-96-FS-BPA-02 at 64; Id. at Attachment 2, Bonneville Power Administration Network Integration Service Tariff, TC-96-FS-BPA-01 at 44.

In 2001 Bonneville held a second terms and conditions proceeding, in which it amended a number of Tariff provisions. As part of that process Bonneville removed the above language from the service agreement and incorporated similar language in section 9 of the Tariff (this is the current section 9). Thus, currently, even if the parties agree to a change to the existing Tariff, if FERC does not approve the change it will not take effect. With the revised language, a public process involving the parties would replace FERC approval.

Customer Recourse under the Revised Section 9

There is one significant difference if Bonneville adopts the proposed revision of section 9 (or some variation thereof): Bonneville would have the right to amend the Tariff even if FERC did not approve the amendment. However, Bonneville would be sacrificing reciprocity status by doing so, and therefore would not make such a change lightly.

It is also important to note what would not change. The following paragraphs summarize the status of Bonneville's Tariff if it revises section 9:

1. Bonneville would continue to file its Tariff with FERC. (Although it should be noted that if FERC ever disapproves an amendment, and Bonneville adopts the amendment anyway, Bonneville will sacrifice reciprocity and therefore will have little reason to file Tariff amendments with FERC thereafter.) In order to obtain safe-harbor status, the non-jurisdictional Transmission Provider must file all amendments to its Tariff with FERC for approval. Safe-harbor status means that, because FERC has approved your Tariff, public utilities know at the time you request service that you meet FERC's test for reciprocity. Therefore, they must grant you open access transmission. If you have not filed your Tariff with FERC, you are still entitled to reciprocity, that is, to open access service from public utilities, if your Tariff satisfies FERC's standards. However, because FERC has not approved your Tariff, public utilities have an opening to argue that your Tariff does not satisfy FERC's standards.

Removal or amendment of section 9 would not change this process; note that of the 20 non-jurisdictional utilities that filed reciprocity Tariffs with FERC after the issuance of Order 888, only two retained a requirement for FERC approval of Tariff amendments. Therefore, it is important to separate the requirement of FERC approval from the FERC filing process itself. FERC did not expect non-jurisdictionals to include in their Tariffs a requirement of Commission approval of amendments. If Bonneville amends section 9 it can make a change before obtaining FERC approval if it wishes (or without FERC approval). But if Bonneville wants to retain safe-harbor status, it will still have to file its Tariff with FERC and obtain the Commission's approval.

2. The process for protesting a proposed amendment to Bonneville's Tariff will be unchanged (as long as Bonneville retains reciprocity). If Bonneville continues to file proposed Tariff changes with FERC, any party can file a protest arguing that Bonneville's proposed change does not meet the Commission's reciprocity standards. The Commission would then make its decision just as it does today. The difference is that even if FERC disapproved the amendment Bonneville could still adopt it. However, Bonneville would have to be prepared to sacrifice safe-harbor status.
3. The complaint process would also be unchanged (again, at least as long as Bonneville maintained reciprocity status). Any Customer that believed Bonneville was not following

its Tariff could file a complaint at FERC. If FERC agreed with the complaint, it could issue an order requiring Bonneville to follow the Tariff if it wanted to maintain reciprocity status. That is the same order that FERC would issue today. Today, all FERC can do in response to a complaint against Bonneville is threaten to pull reciprocity unless Bonneville adheres to its order. FERC cannot order Bonneville to follow the Tariff. Therefore, the removal or amendment of section 9 would not affect the remedies available to Customers.

4. Amendment of section 9 also would not affect Bonneville's current policy of following new FERC initiatives, such as Order 890. Note that section 9 *prohibits* Bonneville from making changes without FERC approval. It does not *require* Bonneville to amend its Tariff when FERC amends the *pro forma* Tariff, or even include any implication that we will do so. It is irrelevant to that issue. Therefore, the course Bonneville has followed regarding Order 890, in which Bonneville is adopting the 890 Tariff provisions to the greatest extent possible, would have been no different if section 9 were not in the Tariff. Likewise, Bonneville's incorporation of various NAESB business practices in the Tariff has nothing to do with section 9.

Customer Benefit Under the Revised Section 9

Finally, Customers can benefit from the proposed amendment to section 9. Today, if Customers support an amendment but FERC does not, Bonneville cannot change the Tariff. For example, Order 890 prohibited NT Customers from designating system sales as Network Resources. Bonneville planned to request a deviation, which became unnecessary when FERC changed its position in Order 890A. Had FERC not done so, it could have denied Bonneville's request for a deviation, causing major problems for Bonneville's NT Customers. However, if Bonneville had already amended section 9, it could have allowed system sales to qualify as Network Resources even if FERC did not agree.