

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>United States Department of Energy</b>	)	
<b>Bonneville Power Administration</b>	)	<b>Docket No. NJ09-1-001</b>
	)	

**MOTION TO INTERVENE OUT OF TIME AND  
COMMENTS IN SUPPORT OF TECHNICAL CONFERENCE OF  
THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Section 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.212 and § 385.214 (2006), the Electric Power Supply Association (“EPSA”) respectfully files this motion for leave to intervene out-of-time and comment in the above-captioned proceeding. Order No. 890 was issued more than four years ago; EPSA seeks to intervene in this docket at this time only because Bonneville Power Administration’s (“BPA”) failure to be in compliance with Order No. 890 is egregious and clearly warrants immediate Commission attention. EPSA supports the Northwest and Intermountain Power Producers Coalition’s (“NIPPC”) request for a FERC technical conference to explore how and why BPA has languished in complying with Order No. 890 for four years and to ensure non-discriminatory open access for all electricity suppliers in the Northwest region. <sup>1</sup>

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<sup>1</sup> *Request for Leave to File a Response and Response of the Northwest & Intermountain Power Producers Coalition to the Bonneville Power Administration’s Response to Notice Establishing Time for Filing*, Docket No. NJ09-1-001 (February 14, 2011). (“NIPPC Request”)

## **I. MOTION TO INTERVENE OUT OF TIME**

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers.<sup>2</sup>

EPSA's members actively participate in the Pacific Northwest region and therefore any policy or procedural questions that involve BPA directly affect EPSA's membership. Further, BPA's continued delay in filing a workable reciprocity tariff raises serious concerns about the non-discriminatory open access policies in the BPA footprint, which directly impact competitive suppliers and their customers in the region.

EPSA is filing this intervention out of time. EPSA submits that good cause exists for the late intervention; EPSA did not intervene when this proceeding began in 2008 because there was no reason to anticipate BPA's stakeholder process would be so lengthy. EPSA's intervention now is solely for the purpose of supporting a timely conclusion and assurance of open access principles in the Northwest. EPSA, as the national trade group for competitive suppliers, believes that their interests need to be represented in this proceeding. EPSA will accept the record in this proceeding as it stands, and accordingly, its intervention out of time will not delay this proceeding nor prejudice any other party.

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<sup>2</sup> The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

All pleadings, correspondence and other communications concerning this proceeding should be directed to:

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## II. BACKGROUND

Order No. 890 was issued on February 16, 2007.<sup>3</sup> On October 3, 2008, BPA filed a petition for declaratory order asking the Commission to grant approval for certain deviations from the Order No. 890's *pro forma* OATT and that FERC approve BPA's submission as an acceptable reciprocity tariff.<sup>4</sup> FERC issued an Order on July 15, 2009, denying BPA's request for safe harbor reciprocity status, noting that BPA's tariff was incomplete as filed and requesting further modifications. BPA requested rehearing of the July 15 Order, but subsequently asked the Commission to postpone responding to the rehearing request as BPA decided whether to: (1) file a conforming tariff pursuant to the July 15 Order; (2) request a Commission-led technical conference; or, (3) continue with its intention to seek rehearing. In the end, a year and a half after its initial request, BPA reverted back to its request for rehearing.<sup>5</sup>

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<sup>3</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007).

<sup>4</sup> *Bonneville Power Administration Petition for Declaratory Order Granting Reciprocity Approval*, Docket No. NJ09-1-000 (October 3, 2008).

<sup>5</sup> *Bonneville Power Administration Request for Leave to File Answer and Answer to Filing of the Northwest & Intermountain Power Producers Coalition*, Docket No. NJ09-1-001 (February 22, 2011). ("BPA Answer")

After BPA's request that the Commission rule on its earlier rehearing request, NIPCC submitted an answer asking the Commission to convene a technical conference "to provide updated and more detailed information regarding its estimate of the cost, resources and time required and the competing priorities associated with adopting of the disputed tariff provisions."<sup>6</sup> BPA subsequently filed an answer to NIPPC's request opposing any such technical conference.

### **III. COMMENTS**

In the spirit of transparency and efficiency, EPSA supports NIPPC's request for a technical conference. BPA lists three reasons why the Commission should reject NIPPC's request for a technical conference, all of which are unacceptable. A one-day conference could, in fact, accomplish a great deal in terms of identifying which items in the multi-year process to build an acceptable reciprocity tariff are still outstanding, why they are so and how they might be resolved.

As the first reason for rejecting the request for technical conference, BPA simply states, "the Commission is without jurisdiction to mandate Bonneville's participation."<sup>7</sup> This is simply non-cooperative. While the reason may be technically correct – that FERC cannot mandate that BPA participate in a technical conference – the Commission has broad authority under FPA Section 211A to require non-regulated entities such as BPA to offer non-discriminatory transmission services. NIPPC pointed to the Commission's Section 211A

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<sup>6</sup> NIPPC Request, p. 4.

<sup>7</sup> BPA Answer, p. 3.

authority in its February 22, 2011 request for a technical conference, noting that if BPA fails to come to a consensus on reciprocity issues, the Commission may invoke that authority.<sup>8</sup> It is unclear, then, why BPA now refuses to cooperate and participate in a technical conference to identify outlying issues. Though BPA is technically correct that FERC cannot force it to participate in a technical conference, EPSA sees no constructive reason for BPA to rest on such a position. Federal policy in favor of generator access to transmission has been well established for decades. How ironic that a federal agency, BPA, is among the most recalcitrant transmission owners in the country. BPA and all of its stakeholders should instead welcome an opportunity to refocus and crystallize its reciprocity priorities.

According to BPA, the second reason for the Commission to reject a request for technical conference is that BPA brought up the prospect of a technical conference first and ultimately rejected it. “It would be even more unusual,” BPA writes, “if not unprecedented, for the Commission to convene a conference when the party that submitted the petition in the case and raised the prospect of a conference decided that it preferred to allow the normal process to take its course.”<sup>9</sup> This second reason is nonsensical in the supposition that because BPA asked for a technical conference but then reconsidered, the Commission cannot now convene one based on the request of other stakeholders. BPA states that such an action is unprecedented; it is not. In fact, in many cases where a tariff is at issue, it is protesters or other parties in the

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<sup>8</sup> NIPPC Request, p. 11.

<sup>9</sup> BPA Answer, p. 4.

case and not the entity holding a tariff that request a technical conference. The Commission has granted technical conferences on the request of all types of stakeholders based on the possible productivity of such a conference and its potential ability to move the proceeding forward.<sup>10</sup> EPSA supports NIPPC's request because such a technical conference promises to be productive in moving BPA forward at long last towards compliance with Order No. 890. The Commission should decide whether to hold a technical conference based solely on the merits of such a conference.

The third and final reason BPA lists in favor of rejecting NIPPC's request for technical conference is that, "A public conference sponsored by the Commission is not the appropriate place for NIPPC to vent its feeling regarding Bonneville's customer outreach process."<sup>11</sup> However, while NIPPC's request expresses frustration with the length of time BPA has taken to comply with Order No. 890, it is a genuine request for a transparent platform to get information and prioritize outlying issues. Indeed, NIPPC's pleading notes:

It is possible that, with additional information to be provided at the conference, some of Bonneville's request for deviations from the Commission's *pro forma* OATT might be justified. NIPPC might, in fact, support some deviations or selective delays in implementation.<sup>12</sup>

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<sup>10</sup> For example, see: *Order accepting and suspending tariff records subject to refund and establishing hearing procedures and a technical conference re Tennessee Gas Pipeline Company*, 133 FERC ¶ 61,266 (December 29, 2010); *Order accepting and suspending tariff records subject to refund and establishing hearing procedures and a technical conference re Columbia Gulf Transmission Company*, 133 FERC ¶ 61,182 (November 30, 2010); *Order accepting and suspending tariff and establishing technical conference re Dixie Pipeline Company*, 132 FERC ¶ 61,194 (August 31, 2010); *Order granting rehearing for further consideration and scheduling technical conference re Mandatory Reliability Standards for the Bulk Power System*, 131 FERC ¶ 61,136 (May 13, 2010).

<sup>11</sup> BPA Answer, p. 4.

<sup>12</sup> NIPPC Request, p. 6.

NIPPC has already expressed in writing its frustration with the 2010 reciprocity process that had neither cogent results nor a specific conclusion; the NIPPC request simply seeks to identify the delays in the BPA process and find a way to move forward. EPISA supports NIPPC's goals. Further, it is the Commission, not NIPPC, that will set the agenda for this technical conference. Therefore, even if NIPPC wanted to use the conference merely as a platform to "vent its feeling[s]," the Commission has control over the content and conduct of the conference, not NIPPC. BPA further notes that NIPPC has no reason for such complaining, as "Bonneville's reciprocity process has yet to conclude because Bonneville has devoted significant resources to other initiatives that benefit NIPPC's members."<sup>13</sup> Thus, BPA admits that it is having trouble focusing on the FERC process because it is devoting its resources to other things. In any case, the argument that BPA has other priorities on which to focus can only be seen as an argument for a technical conference; it is not a viable reason to avoid the conference all together. A succinct technical conference will be in the best interest of all parties.

BPA has presented no compelling reason as to why a technical conference should not occur. The reasons that it has presented – that it is not jurisdictional, that BPA asked for a conference first but then reneged, and fears that NIPPC will use the platform simply to vent – are unfounded. As Order No. 890 was issued ***more than four years ago***, it is very timely that the Commission explore the reasons why BPA is not yet in compliance. EPISA sees no reason, and the Commission has been presented with no reason, why this technical

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<sup>13</sup> BPA Answer, p. 4.

conference should not occur. A chance to refocus and prioritize the issues in this case offers numerous potential benefits with no apparent downside.

### **III. CONCLUSION**

WHEREFORE, EPSA respectfully requests that the Commission grant its motion for leave to intervene out of time and convene a technical conference to assess the state of BPA's reciprocity tariff, as set forth above.

Respectfully submitted,



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March 3, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., March 3, 2011.



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Nancy Bagot, Vice President of Regulatory Affairs