

Bonneville Power Administration

Response to Comments
Regarding Transmission Service Request Data Exhibit Validation

September 3, 2024

I. Introduction

The Bonneville Power Administration (Bonneville or BPA) appreciates the comments of all stakeholders that have engaged in the public process regarding the information requirements for transmission service requests (TSRs) in advance of the 2025 cluster study. Almost all parties that submitted comments recognized the need for complete and accurate information to support TSRs, and the constructive feedback offered by parties has resulted in better information requirements that are more tailored to the concerns they are intended to address.

In response to the latest round of stakeholder comments, Bonneville has made some revisions to the notice of enforcement of the data exhibit requirements as posted on July 2, 2024. First, Bonneville has added language to clarify that it will be re-examining the previously-validated data exhibits of only those TSRs that could be eligible for the 2025 cluster study. Second, Bonneville has narrowed the scope of the “POD Requirement” to exclude TSRs with a point of delivery that connects to an adjoining system and the Receiving Party would be expected to take open access transmission service from that point on the adjoining system. Finally, Bonneville has clarified that one of the examples of how to demonstrate the rights to deliver energy to the point of receipt in the TSR is intended to apply when the resource identified in the data exhibit is not located at the point of receipt. Bonneville has incorporated these changes into the final version of the notice, which is attached to this document and will be posted on Bonneville’s OASIS. Bonneville also has incorporated the language of the notice into the data exhibit form posted on its website.

This document includes Bonneville’s response to the stakeholder comments.

II. Background

A. Background of the Information Requirements and Data Exhibit Process

Section 17.2 of Bonneville’s Open Access Transmission Tariff (Tariff or OATT) requires a party to provide certain information in support of a request for transmission service on Bonneville’s system.¹ The section includes a non-exclusive list of information that must be provided and incorporates a Federal Energy Regulatory Commission (FERC or Commission) rule, 18 C.F.R. § 2.20, that provides additional detail about the requirements and procedures for requests for service. The Commission rule is intended to help determine what are “good faith” requests for transmission service and contemplates an “open exchange of information that exhibits a reasonable degree of specificity and completeness between the party requesting transmission services and the transmitting utility.” 18 C.F.R. § 2.20.

Section 17.2 calls for generic information, such as the identity and contact information for the party requesting service, but also requires detailed information related to the resources and loads underlying the request for service. Among other things, it requires the 1) location of the Point

¹ The requirements in section 17.2 are part of the requirements for a “Completed Application” for service. Bonneville’s Tariff defines “Completed Application” as an “Application that satisfies all of the information and other requirements of the Tariff, including any required deposit.” Bonneville OATT § 1.22.

of Receipt (POR)² and Point of Delivery (POD)³ on the transmission system; 2) location of the generating facility supplying the capacity and energy; 3) supply characteristics of the capacity and energy to be delivered; 4) location of the load ultimately served by the capacity and energy transmitted; and 5) identities of the “Delivering Parties” and the “Receiving Parties”⁴ for the capacity and energy transmitted. Bonneville OATT § 17.2.

These information requirements (in various forms) have been part of Bonneville’s Tariff since 1996, and Bonneville’s approach to enforcement of these requirements has evolved over the years. For many years after Bonneville first adopted its Tariff, Bonneville did not have an established process to consistently enforce the requirements to provide all the information required in section 17.2. When Bonneville had available capacity on the existing transmission system and fewer requests for service in the “queue”⁵ that includes all TSRs, it could, in many cases, grant service without requiring system upgrades. In other cases, it could make reasonable assumptions in the technical studies it performed to determine the system upgrades that would be necessary to provide the requested service. As the transmission system has become more constrained, however, Bonneville’s ability to provide new long-term service for a TSR without upgrading the system has virtually been eliminated. In addition, as the number and complexity of TSRs in Bonneville’s queue has grown, Bonneville’s ability to make study assumptions it has confidence in has become extremely limited. As a result, the information supporting a TSR has become essential to studying and otherwise processing requests for service.

The information a party provides to support a TSR serves two important functions. First, it is a critical input to Bonneville’s studies of the system upgrades necessary to provide the requested service. Without accurate information for a TSR, Bonneville risks inaccurate study results that could lead to system upgrades that are unnecessary or insufficient to provide service. Second, the information requirements help assure a degree of certainty around the intended use or purpose of a TSR. Perfect certainty is not necessary, but the requestor should be able to provide credible information about the intended use. The Tariff contemplates “good faith” requests for service, meaning parties requesting service must be able to provide sufficient information to support the request and intend to use the service consistent with the information provided. Although the Tariff provides for certain flexibilities if a customer ultimately takes service and circumstances change in the future, TSRs based on pure speculation about potential future use result in unnecessary processing, can skew study results, and may cause misallocation of the finite resources for developing system upgrades.

² Unless specified otherwise, capitalized terms in this document have the meaning in Bonneville’s OATT. The Point of Receipt is the “Point(s) of interconnection on the Transmission Provider’s Transmission System where capacity and energy will be made available to the Transmission Provider by the Delivering Party under Parts II and III of the Tariff.” Id. § 1.76.

³ The Point of Delivery is the “Point(s) on the Transmission Provider’s Transmission System, or points on other utility systems, where capacity and energy transmitted by the Transmission Provider will be made available to the Receiving Party under Parts II and III of the Tariff.” Id. § 1.75.

⁴ The “Receiving Party” is the “entity receiving the capacity and energy transmitted by the Transmission Provider to Point(s) of Delivery.” Id. § 1.82. The requirements to provide information supporting the “Receiving Party” identified in the data exhibit are the focus of most of the stakeholder comments.

⁵ Under the Tariff, Bonneville maintains a queue that includes all requests for long-term firm transmission service. New requests for service are assigned a queue position based on the time they are submitted and are evaluated for offers of service in queue order.

Section 17.2 does not specify a particular process or method for parties to provide the required information, so Bonneville has developed a “data exhibit” process in which parties complete and submit a form with the required information at the time of the request for service.⁶ Bonneville’s “Requesting Transmission Service” business practice requires parties to submit the completed data exhibit at the time of the request for service.⁷ The business practice addresses the process for submitting, reviewing, and maintaining validity of the data exhibit, as well as for addressing any deficiencies, but it does not specify the substantive information the party must provide or include the data exhibit itself. Bonneville posts the data exhibit “form” on its website.⁸ The form includes fields to fill in the required information and instructions about completing and returning the exhibit to Bonneville.

Bonneville has used the data exhibit process for many years. As described above, the process contemplates an exchange of information and communication about the information parties provide as opposed to a “one-time” opportunity to comply. After an applicant for service submits a completed data exhibit, Bonneville reviews the information and determines if there are deficiencies. If there are no deficiencies, the party is notified the application is complete and ultimately will be offered a cluster study agreement to participate in the cluster study. If there are deficiencies, Bonneville notifies the party and provides an opportunity to “cure” the deficiency.⁹ Even after a data exhibit is initially validated, the business practice contemplates that information can change. The process allows for Bonneville or the applicant for service to identify any changes in information, and, as described above, allows the applicant an opportunity to cure any deficiency as required by Bonneville.

The form of the data exhibit itself has evolved over the years. Early versions called for detailed information about only the “source” and “sink” for the TSR. As the transmission system has grown more constrained and Bonneville’s technical studies have become larger and more complex, Bonneville has updated the data exhibit to be more specific about the type of information it needs. Bonneville studies requests for service on its network in “Cluster Studies” conducted on a regular basis, and Bonneville has updated the data exhibit in some respect before almost every

⁶ All requests for transmission service must be submitted through Bonneville’s Open Access Same-Time Information System (OASIS), which is an automated, web-based platform for submitting and managing TSRs and reservations. OASIS is a standardized platform used by most transmission providers in the industry. Bonneville’s OASIS includes no specific “fields” or other options for providing all the information required by section 17.2 at the time a customer submits a TSR.

⁷ Where Bonneville’s Tariff does not include details for implementing a provision, Bonneville adopts “business practices” that include the implementation or other details. In this case, the requirement to complete and submit the data exhibit is in the “Requesting Transmission Service” business practice. See Bonneville Power Administration, Requesting Transmission Service, BPA Business Practice, V. 47, § F (Jan. 22, 2024), available at <https://www.bpa.gov/-/media/Aep/transmission/business-practices/tbp/requesting-transmission-service-bp.pdf>.

⁸ See <https://www.bpa.gov/energy-and-services/transmission/business-practices/forms>. Bonneville offers two forms of long-term firm transmission service under its OATT: Point-to-Point service and Network Integration service. Bonneville has a separate data exhibit for each form of service.

⁹ Bonneville expects parties to cure deficiencies by clarifying or supplementing the information initially provided for the TSR, but not to materially change or replace the initial information just to satisfy the information requirements (i.e., the information needs to be consistent with the initial request).

cluster study.¹⁰ Each study has tended to reveal new situations or issues that highlight information Bonneville needs to complete its analysis, and Bonneville has updated the data exhibit based on its experience, so it has the information it needs for the next cluster study.¹¹

Bonneville has typically updated the data exhibit without any public process.¹² The data exhibit form is posted on Bonneville’s website for use by entities submitting TSRs, and most parties have been able to provide the information for most TSRs regardless of the specifics. When issues or deficiencies have arisen during the data exhibit process, the communication, exchange of information, and opportunity to cure have typically been sufficient to address the issues for most parties and TSRs. If, however, if a party ultimately cannot correct a deficiency, the TSR at issue will be withdrawn by the customer (or deemed withdrawn by Bonneville) and removed from the queue.

B. Background of the Notice for the Data Exhibit for the 2025 Cluster Study

On May 17, 2024, BPA posted a notice on its OASIS that, due to unprecedented activity in its TSR queue, it would be strictly enforcing the data exhibit requirements for customers to provide information supporting new TSRs.¹³ The “strict enforcement” message was in recognition of the number of TSRs that could be eligible for the 2025 cluster study and the history of sometimes applying less stringent standards. At the time of the May 17 notice, the queue included approximately 30,000 MW of potentially eligible TSRs. Since that time, parties have submitted approximately 38,000 MW of additional TSRs that could be eligible. As shown in the table below, although the size of Bonneville’s cluster studies has grown over the years, the current number of potentially eligible TSRs and the volume of megawatts is unprecedented by any measure.

¹⁰ Until March 2023, applicants for service were required to submit completed data exhibits at the time of signing and returning the cluster study agreement rather than at the time of submitting a TSR. Under this approach, applicants did not submit completed data exhibits year-round with each TSR. Instead, they submitted data exhibits just before the start of the cluster study and only for TSRs they wanted to include in the study. As a result, revisions to the data exhibit in advance of the cluster study applied to all TSRs that could be eligible for that cluster study. In March 2023, Bonneville changed this process to require data exhibits at the time of the request for service to better reflect the process contemplated in section 17.2. See Tech Forum email, Updated Data Exhibit Requirement for all TSRs in effect March 24, 2023 (Mar. 23, 2023) (on file with author).

¹¹ For example, TSRs seeking service related to solar resources or energy storage devices have become more common in recent years. Bonneville has updated the data exhibits to tailor the information requirements to those types of resources and devices.

¹² Bonneville last updated the data exhibit form before the 2023 cluster study. Bonneville met with customers informally to discuss the updates but did not conduct a public process.

¹³ In addition to posting the notice on OASIS, Bonneville distributed the notice through its “Tech Forum” email distribution list and conducted informal outreach through transmission account executives. The primary focus of the notice was TSRs that could be eligible for the 2025 cluster study. Bonneville also expects to apply the strict enforcement approach going forward.

Year	TSRs	Megawatts
2008	153	6,410
2009	34	1,553
2010	76	3,759
2013	50	3,673
2016	51	2,042
2019	104	3,965
2020	62	3,871
2021	116	5,842
2022	144	11,118
2023	222	15,965
2025*	651	68,370
*based on pending queue as of August 15, 2024		

The sheer number of TSRs means that it is imperative Bonneville has complete and accurate information for each TSR and all requests seek to use the system as requested. Although in the past Bonneville may have had flexibility or time during the study to determine the appropriate assumptions or perform analyses to define appropriate modeling, that is no longer an option. Bonneville’s May 17, 2024 notice was intended to set the expectation that some of the flexibility that may have been extended in the data exhibit process in the past would not be available for the 2025 cluster study and going forward.

Part of Bonneville’s modeling in the cluster study involves attempting to “balance” loads in the region (and exports) with the resources underlying the TSRs. The current amount of TSRs in the queue so dramatically exceeds the amount of load that could potentially use transmission service that developing reasonable assumptions to “balance” the loads and resources is problematic. For context, on July 9, 2024, Bonneville recorded the highest ever summer peak load on its system. It was 9,365 MW. The total average annual load in the Pacific Northwest is approximately 24,000 MW.¹⁴ The information provided in the data exhibits is critical to helping Bonneville develop the most reasonable assumptions possible in this situation.

In addition to the number of TSRs, Bonneville was concerned about the nature of certain requests. The queue includes approximately 3,000 MW of TSRs seeking “point-to-point” service to deliver to utilities that serve their load using “network integration” service from Bonneville. Point-to-point and network integration are different forms of transmission service under Bonneville’s Tariff. Point-to-point service is intended for a variety of uses (not just serving loads) and provides for delivery of a specific amount of energy and capacity across the system from one discrete point (the POR) to another (the POD). Bonneville OATT, Part II, § 1.77. Point-to-point service customers are charged for a specific amount of “reserved capacity” specified in their transmission service agreements. Network integration service is exclusively for serving loads and is intended to allow the customer to integrate resources in the same manner the Transmission Provider integrates its

¹⁴ While increasing use of intermittent resources requires more resources than load, the degree to which intermittent resources cited in data exhibits are exceeding load is so significant that case modeling will present significant issues.

own resources. It provides for more flexible use of the system to deliver energy and capacity from designated resources to serve designated loads. Id., Part III, § 1.59. Network integration customers are billed based on metered load rather than a specific amount of capacity.

A request for point-to-point service to deliver to the designated load of a network integration customer is unusual. Although there could be reasons for it, on its face it seeks two different forms of service that must be taken and paid for separately to serve the same load.¹⁵ In addition, Bonneville already has an obligation to plan the system to serve the designated loads of network integration customers and has a process separate from the cluster study to obtain and evaluate the transmission forecasts provided by those customers to serve their loads. In other words, point-to-point customers requesting point-to-point service to deliver energy to loads of network integration customers that Bonneville already plans for raises serious questions. Each network integration customer already provides Bonneville forecasts of its transmission needs to serve load at particular PODs, so it would be potentially duplicative for a different customer taking a different form of service to need to deliver energy to serve load at those PODs. There could be explanations for what the point-to-point customer is trying to accomplish, but it is, at best, unusual and likely to skew the result of the study.¹⁶ At worst, it could reflect anti-competitive behavior such as attempting to block access to or hoard capacity on a particular transmission path. Part of the information Bonneville is seeking in the data exhibit process before the 2025 cluster study is intended to provide answers to those questions.

Based on these concerns, Bonneville issued the May 17, 2024 notice stating that, along with identifying the Receiving Party, the customer would need to include a demonstration of “a reasonable expectation that the Receiving Party will take delivery of the energy at the POD” for the TSR (referred to hereinafter as the “POD Requirement”).¹⁷ The notice focuses on two other areas as well: 1) information supplied for “Newpoint” TSRs;¹⁸ and 2) identification of the rights to deliver

¹⁵ FERC’s orders reflect a long history of discussion whether it is permissible to use both point-to-point and network integration service to serve the same load. See Preventing Undue Discrimination and Preference in Transmission Service, 118 FERC ¶ 61,119, Order No. 890 at P 1702 (Feb. 16, 2007) (“the Commission already determined in Order Nos. 888 and 888-A that a transmission customer is not allowed to take a combination of both network and point-to-point transmission service to serve the same discrete load. We are not persuaded to modify that policy here.”) and 123 FERC ¶ 61,299, Order 890-B at P 219 (Jun. 23, 2008) (“The Commission clarifies, to the extent necessary, that there is no per se prohibition on a transmission customer using both point-to-point and network transmission service . . .”).

¹⁶ For example, a state retail direct access program could provide the opportunity to serve the load instead of the local utility. Bonneville would expect a customer with such an opportunity to present that information in the data exhibit process.

¹⁷ May 17, 2024 Notice at 2, available at <https://www.bpa.gov/-/media/Aep/transmission/atc-methodology/data-exhibit-validation-notice.pdf>.

¹⁸ Id. at 1. “Newpoint” TSRs request service for a resource or load (as identified in the data exhibit for the TSR) at a point on the system that is not modeled on OASIS. See Bonneville Power Administration, Requesting Transmission Service, BPA Transmission Business Practice, Version 47, § H (Jan. 22, 2024), available at <https://www.bpa.gov/-/media/Aep/transmission/business-practices/tbp/requesting-transmission-service-bp.pdf>. Bonneville originally developed this policy to provide flexibility for resource developers to request transmission for a resource seeking to interconnect in a location that was not yet a valid reservation point on OASIS.

energy to the POR for the TSR.¹⁹ As described below, the majority of stakeholder comments focus on the POD Requirement.

The notice does not prescribe specific information a party must provide to demonstrate the reasonable expectation for the POD Requirement (or the other areas of focus). Instead, it includes examples of the type of information that could be provided.²⁰ If customers have information not described in the examples, Bonneville encourages them to provide that information for consideration in the data exhibit process.

The notice specified that Bonneville would be strictly enforcing the requirements for data exhibits that had not been reviewed yet and re-examining the information in data exhibits that had already been validated. BPA clarified in public meetings (described below) that the focus of the notice was TSRs that could be eligible for the 2025 cluster study and not TSRs that had been included in previous cluster studies. Announcing that Bonneville intended to re-examine data exhibits is not a step that Bonneville took lightly, but it was necessary given the unprecedented activity in the queue, the opportunity to act before the 2025 cluster study, and the need to ensure all TSRs that could be eligible for the 2025 cluster study were required to meet the same information requirements.

C. Public Process for the Notice

After posting the initial notice on May 17, 2024, BPA held a public meeting on May 24, 2024, to provide an opportunity for discussion and to solicit feedback. Following the public meeting, Bonneville received written comments from the Northwest & Intermountain Power Producers Coalition (NIPPC), Seattle City Light (SCL), and Shell Energy North America (US), L.P. (Shell). Bonneville received additional feedback through email from NewSun Energy Transmission Company, LLC (NewSun) and through informal discussions and meetings with customers. Although some comments supported Bonneville's effort, some expressed concern. The concerns mostly focused on the POD Requirement and the process Bonneville was following.

After considering the customer feedback about the initial notice, Bonneville issued a revised notice on July 2, 2024,²¹ and scheduled an additional public meeting. The revised notice

¹⁹ May 17, 2024 Notice at 2, available at <https://www.bpa.gov/-/media/Aep/transmission/atc-methodology/data-exhibit-validation-notice.pdf>. Section II.G of this response discusses the reasons for the POR requirement.

²⁰ The examples, as updated on July 2, 2024, include a) an approved action plan from an Integrated Resource Plan (IRP) that has been acknowledged, accepted, or otherwise finalized and indicates that the Receiving Party expects to hold a process to acquire generation for which the transmission service request could be utilized; b) verifiable intention of the load-serving entity to take actions that might reflect a need for the requested transmission service (for example, to conduct a request for proposal for which the requested transmission service could be used to participate), c) in the case of a request for point-to-point service for delivery to a network integration customer, documentation that such customer is interested in serving a portion of its load on point-to-point service, d) other demonstration of a business relationship that creates a reasonable expectation that the transmission service will be utilized consistent with the Receiving Party information cited in the Data Exhibit, and e) for delivery to a market hub, customer may enter "market delivery."

²¹ Available at <https://www.bpa.gov/-/media/Aep/transmission/atc-methodology/070224-dataexhibitvalidationnotice-update-finalclean.pdf>.

clarified and “softened” certain aspects of the POD Requirement and expanded upon the examples of the information a customer could provide to comply. Most notably, the revised notice calls for a “reasonable expectation that the Receiving Party may take delivery of the energy at the POD” instead of “will take delivery” as stated in the initial notice. In addition, in response to concerns that it could take time to coordinate with the Receiving Party identified in the data exhibit, Bonneville stated that it might provide more than one cure period to provide the information if more time is needed to work with the Receiving Party.

Bonneville held a public meeting about the revised notice on July 9, 2024, and once again accepted comments on the proposal. BPA received written comments on the updated notice from NIPPC, SCL, NewSun, and Pacific Northwest Generating Cooperative (PNGC). Bonneville subsequently received additional feedback from NewSun through email. Bonneville addresses all the comments in the next section.

III. Response to Comments

Most of the comments received during the public process acknowledged Bonneville’s need for technical information to study system upgrades needed to provide transmission service requested by customers. NIPPC May Comments at 1; NewSun Comments at 1; Shell Comments at 1. NIPPC supports the requirements of the notice but cautioned that some level of uncertainty regarding the PORs and PODs in TSRs will always exist. NIPPC May Comments at 1. Shell, SCL, and PNGC did not explicitly support or oppose the requirements, but suggested Bonneville should provide additional process or time for discussion. Shell Comments at 1; SCL May Comments at 1; PNGC Comments at 1. SCL offered suggested revisions to the requirements. SCL July Comments at 1-2.

NewSun²² is the only party that opposes the data exhibit requirements, and its objections are mostly limited to the POD Requirement and the process Bonneville followed.²³ NewSun Comments at 1, 8. For convenience, Bonneville has organized the responses below according to the primary themes in the comments of NewSun and the other parties.

A. Comments about Process

Shell and other customers reacted to the initial notice by commenting that the process and timeline were lacking. Shell Comments at 1. Bonneville acknowledges the concern regarding the relatively short timeline for the announcement about stricter enforcement of the data exhibit requirements and recognizes that any shift in the administration of requirements that may impact eligibility to participate in the cluster study deserve thoughtful consideration. In response to the initial feedback about the process and the substance of the notice itself, Bonneville revised the

²² NewSun has TSRs that could be eligible for the 2025 cluster study and manages “affiliates” with potentially eligible TSRs as well. NewSun Comments at 4, 9, 21. NewSun and its affiliates have submitted over 90 TSRs (for approximately 9,400 MW) that could be eligible for the 2025 cluster study, seeking new service to at least 17 different PODs across Bonneville’s system. In addition to the TSRs that could be eligible for the 2025 cluster study, NewSun and its affiliates have over 3,700 MW of other TSRs that have been studied in previous cluster studies and remain under consideration for service.

²³ NewSun’s comments include brief discussion of the requirements related to the POR of the TSR. NewSun Comments at 8, 19. Those concerns are discussed in section III.H of this response.

requirements, held a second public meeting, provided additional opportunity for comments, and adopted additional modifications based on those comments. Although Bonneville did not prescribe the particulars for this process from the start, the flexibility to adapt the process and requirements based on the feedback has resulted in multiple rounds of comments and revisions that are not provided for in the business practice or Tariff revision processes that some customers suggest. See SCL July Comments at 1 (suggesting use of the business practice revision process); NewSun Comments at 10 (suggesting use of the Tariff revision process).

PNGC urged Bonneville to delay the decision on the requirements to hold another public meeting. PNGC Comments at 1. Due to the need prepare for the 2025 cluster study, Bonneville is not convinced that the potential benefit of delaying a decision for additional public meetings or comments at this time outweighs the disruption associated with a delay in the initiating the cluster study. Bonneville has temporarily paused review of data exhibits pending the conclusion of this public process. That pause affects multiple internal timelines and processes, including, for example, performance of the power flow studies Bonneville uses to determine the availability of service without upgrading the system and preparing and offering the study agreements that customers must sign to have TSRs included the 2025 cluster study. To resume the operation of these coordinated processes, Bonneville must resume review of the data exhibits.

The last public meeting on the data exhibit requirements largely involved discussion of hypothetical scenarios applying the data exhibit requirements. Rather than holding another public meeting for Bonneville staff and customers to discuss hypothetical application of the requirements, Bonneville believes it will be more productive to move forward with review and discussion of actual TSRs and data exhibits in the data exhibit process.

SCL suggested that the requirements set forth in Bonneville’s notice constitute a “major change” and that Bonneville should follow the formal process to revise the Requesting Transmission Service business practice to effectuate the change. SCL July Comments at 1. As described above, the Requesting Transmission Service business practice describes the process around submitting and reviewing the data exhibit. It does not include the information requirements themselves. The data exhibit itself has always been separate from the business practice, and Bonneville has repeatedly updated the data exhibit form without any public process in the past.²⁴

Moreover, Bonneville’s process for revising a business practice involves providing notice of the proposed change through Tech Forum, holding a public meeting soon after the notice, providing an opportunity to submit comments, and issuing a response to the comments. That is effectively the process that Bonneville has followed for the notice about the data exhibit requirements. In fact, Bonneville has published multiple notices, held multiple public meetings, offered multiple opportunities to comment, and revised the proposal in response to customer feedback. The public process Bonneville has conducted since the initial notice was published on May 17, 2024, has been more extensive than what would be required for a change to the business practice.

NewSun maintains the POD Requirement amounts to a change to Bonneville’s Tariff itself and that Bonneville must go through the process of revising the Tariff. NewSun Comments at 10.

²⁴ NIPPC noted that Bonneville could have moved forward with strictly enforcing the requirements with no public process. NIPPC July Comments at 1.

For the reasons explained in the next section, Bonneville disagrees that the data exhibit requirements rise to the level of a Tariff change.

NewSun states that Bonneville has not meaningfully responded to requests to meet to clarify how the POD requirement would apply to pending TSRs of NewSun affiliates. *Id.* at 3.²⁵ Contrary to NewSun’s assertions, Bonneville staff responded to NewSun’s emails; staff just declined to meet. Not only would staff have been compelled to offer the same opportunity for a meeting to all other parties with TSRs that could be eligible for the 2025 cluster study, but staff would also have to repeat those efforts again in the data exhibit process itself.

NewSun’s request to meet to discuss the details of over 90 TSRs highlights one reason for the need for “strict enforcement” of the data exhibit requirements for the 2025 cluster study. Bonneville has received over 650 TSRs that could be eligible for the study. Bonneville staff reviews the data exhibit for every TSR and works with customers to “cure” requests with inaccurate or incomplete information whenever possible. Given the number of TSRs being submitted, staff now spends an immense amount of time reviewing data exhibits, identifying issues, and communicating with customers simply to determine if a TSR meets the most basic requirements for a “Completed Application” for service. Although in the past staff may have been able to provide a certain degree of flexibility or assistance if a data exhibit was incomplete or inaccurate, staff’s ability to continue that approach has been significantly limited by the number of TSRs to review. While staff intends to continue to work with parties submitting TSRs to the extent possible, those parties need to be responsible at the outset for providing complete and accurate information that reflects the service they are requesting.

B. Comments about Consistency with the OATT

NewSun states that the POD Requirement is not merely implementation of the requirements in Section 17.2 but rather an addition to those requirements that requires a change to the Tariff itself.²⁶ NewSun Comments at 10. NewSun maintains the Tariff requires disclosing the “location” of the POD and the “identity” of the Receiving Party but not any requirement to “provide evidence of some commercial relationship with the Receiving Party or plans to use some specific amount of power.” *Id.*

Although NewSun correctly notes section 17.2(iii) of the Tariff lists the location of the POD and identity of the Receiving Party among the information required for a Completed Application, it otherwise reads the information requirements too narrowly. The list of information in section 17.2 is not exclusive. A Completed Application must include “all of the information included in 18 C.F.R § 2.20 including but not limited to” the details explicitly listed in section 17.2. Bonneville OATT § 17.2 (emphasis added). As described above, 18 C.F.R § 2.20 is a FERC rule that sets forth the

²⁵ See Email from Jake Stephens to Bonneville Power Administration staff, Data Exhibit Review for all 2025 TSEP TSRs (July 9, 2024, 10:09 a.m. PST) (on file with author); Email from Jake Stephens to Bonneville Power Administration staff, Data Exhibit Review for all 2025 TSEP TSRs (July 9, 2024, 10:52 a.m. PST) (on file with author); Email from Jake Stephens to Bonneville Power Administration staff, Re: Data Exhibit Review for all 2025 TSEP TSRs (July 16, 2024, 2:24 p.m. PST) (on file with author).

²⁶ NewSun acknowledges that some of the requirements in the notice “are merely clarifications and technical information requirements” and then goes on to focus on the POD Requirement. NewSun Comments at 1. Bonneville does not understand NewSun’s comments to suggest that the provisions of the notice other than the POD Requirement would require a Tariff revision.

components of a “good faith request” for transmission service. The rule explicitly provides the ability to require any “other information to facilitate the expeditious processing of [a] request.” 18 C.F.R § 2.20(b)(12). In other words, the plain language of section 17.2 provides for obtaining the information needed to process and study TSRs.

Section 17.2 of Bonneville’s Tariff is based on the FERC pro forma tariff, and the Commission’s orders confirm the ability of a transmission provider to obtain the information it needs to process and study TSRs. In approving a tariff revision requiring detailed source and sink information for TSRs, the Commission stated that “transmission providers are entitled to complete and accurate information when evaluating a transmission request, not just when evaluating the transmission schedule or electronic tag.” *Entergy Servs., Inc.*, 91 FERC ¶ 61,151 (2000) (emphasis added); see also *S. Companies Servs., Inc.*, 95 FERC ¶ 61,078 (2001) (affirming the same rationale as in *Entergy*).

NewSun argues that nothing in section 17.2 or the Requesting Transmission Service business practice implies or “could even remotely be interpreted to put customers on notice” of the POD Requirement. NewSun Comments at 10-11. Bonneville disagrees. Section 17.2 requires the customer to identify the “Receiving Party,” and that is not intended to be a “fill-in-the-blank” exercise.²⁷ The POD Requirement implements the obligations in section 17.2 by seeking some assurance of a “reasonable expectation” the Receiving Party “may” take delivery of the energy at the POD. Bonneville is not expecting complete certainty, and the POD Requirement does not call for that, but a customer should not be able to casually identify any Receiving Party (or provide other information) to nominally satisfy the requirements for a Completed Application for service. Requiring the customer to have some basis for the information it provides is implicit in the Tariff and inherent in the notion of submitting “good faith” requests for service.

As described above, the POD Requirement grew out of questions about requests for point-to-point service to deliver to PODs of network integration service customers that Bonneville already has an obligation to plan for. That is unusual on its face and otherwise appears duplicative or redundant. Given the volume of TSRs and data exhibits Bonneville staff now must process, staff no longer has the time to consider and evaluate the unusual scenarios presented by certain TSRs and the potential impacts on the study. The POD Requirement makes the customer responsible for demonstrating some basis for the information the customer provides, and Bonneville has provided clear examples of multiple types on information a customer could submit to comply.

NewSun maintains the POD Requirement is inconsistent with open access transmission principles. According to NewSun, Bonneville is asserting “review authority and judgment and discretion as to what is appropriate use of the transmission system—in BPA’s opinion” and creating a right “to discriminate and pontificate on the which [sic] of a diversity of transmission requestors’ intended market uses of requested transmission service are ‘real’” *Id.* at 1. These are not Bonneville’s motives. Bonneville needs complete and accurate information for TSRs in the cluster study and is responding to unprecedented challenges by making the customer responsible for demonstrating a “reasonable expectation” behind the Receiving Party the customer chooses to identify.

²⁷ The Tariff defines “Receiving Party” as the “entity receiving the capacity and energy transmitted by the Transmission Provider to Point(s) of Delivery.” Bonneville OATT § 1.82.

A major premise behind the Commission’s adoption of open access transmission was the concern that utilities were restricting access to the transmission system to benefit the utility’s own resources or merchant function. Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 75 FERC ¶ 61,080, FERC Order No. 888 at 4 (Apr. 24, 1996); Preventing Undue Discrimination and Preference in Transmission Service, 118 FERC ¶ 61,119, Order No. 890 at P 14 (Feb. 16, 2007). NewSun suggests the POD Requirement will restrict access in favor of load-serving entities (LSEs) such as investor-owned utilities or even independent power producers (other than NewSun). See NewSun Comments at 14 (referring to bias “towards [transmission owner] type LSEs and existing capacity holders” and stating that just “because PGE or Brookfield asserts a load may exist 5-10 years from now doesn’t make it necessarily more probable than if NewSun asserts it.”). NewSun offers no logical explanation why Bonneville would be biased in favor investor-owned utilities or particular independent power producers. The fact that NIPPC, a trade organization that represents developers and independent power producers just like NewSun, has offered measured support for requiring this information shows that the discriminatory intent and dire consequences alleged by NewSun are unfounded.

C. Comments about Retroactivity

NewSun maintains that applying the POD Requirement to TSRs with data exhibits that have been already validated²⁸ is a violation of the filed rate doctrine and due process principles. NewSun Comments at 11-12; see also Shell Comments at 1. As described above and in the public meetings, the focus of the notice is TSRs that could be eligible for the 2025 Cluster Study. In order to ensure that all TSRs in that category are subject to the same standards, that focus covers all such TSRs regardless of whether the associated data exhibit has previously been validated. Bonneville is not, however, proposing to apply the criteria in the notice to TSRs that have already been studied in a previous cluster study and that already have a plan of service. The strict enforcement of the POD Requirement and other data exhibit requirements is being applied to TSRs that are eligible for the 2025 cluster study, and Bonneville would expect to take this approach to all new TSRs going forward. Bonneville has clarified this further in the latest version of the notice.

NewSun’s arguments about retroactive ratemaking and the filed rate doctrine are misplaced. As a power marketing administration organized under the Department of Energy, Bonneville ratemaking is governed by specific provisions of the Northwest Power Act and other statutes. See 16 U.S.C. § 839e. For that reason, Bonneville rates are separate from the terms and conditions of transmission service in Bonneville’s Tariff. Bonneville has not engaged in “ratemaking” (or, as explained below, impermissible retroactive rulemaking) by strictly enforcing the data exhibit requirements.

While NewSun is correct there is a general prohibition on retroactive ratemaking and a corollary known as the filed rate doctrine, those rules would not apply even if Bonneville were engaged in ratemaking here. See NewSun Comments at 12 citing PJM Power Providers Group v. FERC, 96 F.4th 390, 394 (3rd Cir. 2024). Because Bonneville rates are governed by specific statutory standards, including the paramount obligation to set rates to recover its costs, Bonneville

²⁸ As described in section II.A, data exhibits must be submitted with the TSR, and Bonneville staff reviews the submissions on a continuous basis. As a result, some of the data exhibits for TSRs that could be eligible for the 2025 cluster study had already been validated at the time of the May 17, 2024 notice.

ratemaking is not governed by limitations that apply to regulated utilities and utility regulators. U.S. Dep’t of Energy– Southeastern Power Admin., 55 FERC ¶ 61,016, at 61,045 (1991) (the “prohibition against retroactive ratemaking contained in the Federal Power Act . . . does not apply to PMAs . . . that operate subject to a different statutory and regulatory scheme.”).

NewSun establishes no legal basis for its claim the filed rate doctrine should apply to Bonneville’s Tariff and the POD Requirement. See NewSun Comments at 12. NewSun cites a D.C. Circuit opinion about the Federal Power Act provisions that are the foundation for application of the doctrine to FERC and public utilities subject to FERC jurisdiction. See *id.* citing *PJM Power Providers*, 96 F.4th at 394–95 (summarizing 16 U.S.C §§ 824(b), 824d(a)-(d), 824e(a)). Those provisions do not apply to Bonneville. See 16 U.S.C § 824(e), (f). Indeed, the threshold requirement of the filed rate doctrine is that the regulated entity must file a rate (or, as NewSun alleges, a tariff) with the regulator. *PJM Power Providers Group*, 96 F.4th at 394 (“The rates a utility charges must first be filed with FERC and be made publicly available. [16 U.S.C.] § 824d(c).”). Bonneville is not required to file its Tariff with FERC or any other regulator. See 16 U.S.C § 824(e), (f).

The second element of the doctrine requires the regulated utility to charge the filed rate and prohibits the regulator (or other decisionmaker) from changing or invalidating that rate after the fact. See *Transmission Agency of N. Cal. v. Sierra Pac. Power Co.*, 295 F.3d 918, 929 (9th Cir. 2002) (“[a]t its most basic, the filed rate doctrine provides that state law, and some federal law (e.g. antitrust law), may not be used to invalidate a filed rate nor to assume a rate would be charged other than the rate adopted by the federal agency in question.”). Even if NewSun had established a legal basis for applying the filed rate doctrine to Bonneville’s Tariff, which it has not, enforcement of the POD Requirement is consistent with the Tariff. As explained above, section 17.2 of the Tariff requires a customer to identify a Receiving Party for a TSR, and the POD Requirement ensures the customer has some basis for the Receiving Party the customer chooses to identify. This is consistent with the notion of “strict enforcement” of the existing requirements of the Tariff and data exhibit process. With respect to data exhibits that have already been validated, “strict enforcement” involves reexamining the data exhibits to ensure that support exists. That is not the equivalent of changing or deviating from the terms and conditions of the Tariff.

Likewise, even if a strict enforcement approach to the data exhibits were to be considered imposing a “new” requirement, it does not constitute impermissible retroactive rulemaking under the applicable legal standards. NewSun argues that an “administrative rule is illegally retroactive if it ‘would impair rights a party possessed when he acted, increase a party’s liability for past conduct, or impose new duties with respect to transactions already completed.’” NewSun Comments at 12 quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994). The legal standards governing retroactive rulemaking focus on “vested rights,” and an applicant has no vested right in a request for transmission service. See *Cox v. Kijakazi*, 77 F.4th 983, 991 (D.C. Cir. 2023) (Social Security Administration rules did not impair an applicant’s “vested rights—that is, legal rights that she already possessed when she filed her claim.”). Courts look to an individual’s actions in reliance on a supposed right to determine whether it has vested. *Fernandez–Vargas v. Gonzales*, 548 U.S. 30, 44 n.10 (2006); *Montoya v. Holder*, 744 F.3d 614, 616 (9th Cir. 2014) “[A]ny action taken must ‘elevate [the expectation] above the level of hope,’ and therefore actions that do little to substantially further the individual’s expectation of relief are insufficient to create a vested right.” *Montoya*, 744 F.3d at 616 (citing *Fernandez–Vargas*, 548 U.S. at 44 n.10). In *Montoya*, the petitioner’s place on a waiting list was not a vested right, even when the application had been approved by the agency, in large part because it was the first step in a long process requiring

affirmative action on the part of the applicant to avail themselves of the right. Id. at 616-17; see also *Chadmoore Commc'ns, Inc. v. FCC*, 113 F.3d 235, 241 (D.C. Cir. 1997) (holding rights do not vest upon the filing of an application with the FCC).

NewSun is incorrect in its claim that a “TSR that has been accepted and processed by BPA carries with it specific rights established by the TSR’s queue position and award of transmission rights.” NewSun Comments at 12. NewSun’s claim that there is an “award of transmission rights” associated with a TSR is entirely inaccurate. A TSR has no transmission rights. A customer with a TSR has not been awarded or offered transmission service and has no right to use the system. A TSR is merely an application for service.

NewSun does not identify the “specific rights” it otherwise claims are associated with a TSR. See id. Submitting a TSR is the very first step in seeking transmission service. Bonneville Power Administration, *TSR Study and Expansion Process (TSEP)*, BPA Business Practice, V. 10, § A (Jan. 22, 2024), available at <https://www.bpa.gov/-/media/Aep/transmission/business-practices/tbp/tsr-study-expansion-process-bp.pdf>. Once a TSR has been submitted, the applicant is mostly limited to two choices: satisfy the requirements to continue moving forward in the process to seek service or withdraw the request.²⁹ The applicant cannot modify the details of the TSR in any material way, transfer it to another customer, or take any number of other actions that might typically be associated with a vested right.

At the point the POD Requirement applies, Bonneville is still evaluating whether the TSR meets the threshold requirements for a “Completed Application” for service. Even if Bonneville determines the application is complete, that is just the first step in a multi-stage process in which the applicant will have to meet many other requirements (and from which the applicant can withdraw at any time). After deeming an application “complete,” Bonneville first evaluates whether transmission capacity is immediately available or whether eligible TSRs should be included in a cluster study. Id. If the TSR should be in the cluster study, a cluster study agreement is tendered, and the applicant must agree to pay for a portion of the costs of the study. Id. After the cluster study, the TSR goes through a preliminary engineering study, an environmental study, and, finally, project construction, each stage requiring additional contracts and costs to be borne by the applicant. Id. The applicant is not offered service until this process is complete, and the party is free to reject the offer. This process can take many years, and TSRs that are subject to the data exhibit requirements are at the very beginning.

Here, even if a TSR has been initially validated, no applicant has signed a cluster study agreement (or any subsequent agreement for that matter). While Bonneville recognizes that effort and expense likely went into the decision for an applicant to prepare and submit a particular TSR, no “reliance” would have occurred based on validation alone, certainly not to a level that rises beyond a mere hope for the desired outcome.

The terms of the study agreements applicants must sign to continue moving forward in the study process confirm the lack of a vested right affected by the POD Requirement. The agreements for the cluster study, preliminary engineering, and environmental study all require the applicant to

²⁹ Applicants frequently decide not to continue moving forward in the process to seek service after the cluster study. For example, following the 2023 cluster study, NewSun affiliates declined to move forward with 88 TSRs (for 5500 MW) that had been included in that study.

provide “all technical information” requested by Bonneville. In other words, even without the information requirements in section 17.2 of the Tariff, the data exhibit process, or the POD Requirement itself, Bonneville could request, and the applicant must provide, the information as part of the requirement to sign any number of agreements that are forthcoming if the TSR continues in the process.

Agencies may apply rules retroactively if the affected party has notice. See, e.g., *Indep. Petroleum Ass’n of Am. v. DeWitt*, 279 F.3d 1036, 1039 (D.C. Cir. 2002) (holding that contracts reserved the Department of Interior’s authority to unilaterally modify certain terms). Here, applicants for service were on notice that they needed to provide the identity of the “Receiving Party.” Bonneville OATT § 17.2. As described above, this is more than a “fill-in-the-blank” exercise. Applicants submitting good faith requests for service should not be surprised at the need to have some basis for the information they provide.

Aside from the Tariff language, BPA has provided notice and conducted a public process before enforcing the requirement, and all applicants will have the opportunity to comply. NewSun seems to equate adoption and enforcement of the POD Requirement with automatic removal of TSRs from the queue. This is not the case. All applicants, even those with data exhibits that Bonneville has already reviewed, will have the opportunity to comply.

The instructions in the data exhibit form, including the one used for data exhibits that have already been validated (i.e., as posted for use before the May 17, 2024 notice), also put the applicant on notice that additional information may be required. The instructions explicitly state that “BPA reserves the right to seek additional information, consistent with its OATT, not included in this Data Exhibit where it identifies a need for such information.”³⁰ In other words, applicants with data exhibits that have already been validated were on notice at the time they completed the data exhibits that other information could be required.

Finally, an agency’s action will be upheld if it is considered secondary retroactivity, and it is not arbitrary and capricious. *Mobile Relay Assocs. v. F.C.C.*, 457 F.3d 1, 11 (D.C. Cir. 2006) (“Secondary retroactivity—which occurs if an agency’s rule affects a regulated entity’s investment made in reliance on the regulatory status quo before the rule’s promulgation—will be upheld “‘if it is reasonable,’ i.e., if it is not ‘arbitrary’ or ‘capricious.’”). Primary retroactivity alters the past legal effects of past actions, while secondary retroactivity alters the future legal effects of past transactions. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 219 (1988) (Scalia, J. concurring).

Here, Bonneville’s action has not altered the past effect of a past transaction and are not arbitrary or capricious. The change was necessitated by the unprecedented number of requests in the queue and the nature of the issues Bonneville was observing. Applicants for service have had notice of the change and will have opportunities to cure any deficiencies identified.

³⁰ See Point to Point Transmission Service Request Data Exhibit at 3, available at <https://www.bpa.gov/-/media/Aep/transmission/business-practices/forms/ptp-data-exhibit.pdf>; Network Integration Transmission Service Request Data Exhibit at 3, available at <https://www.bpa.gov/-/media/Aep/transmission/business-practices/forms/nt-data-exhibit.pdf>.

D. Comments about Lack of Clear Standards and Proposed Revisions

NewSun states that the POD Requirement lacks clear standards and that during the public meetings Bonneville staff “expressly punted” questions about what would satisfy the requirement. NewSun Comments at 13. NewSun maintains the alleged lack of clarity results in “destabilization of the transmission service request environment and the prevailing paradigm of transmission expansion” that parties have relied on and invested in. Id.

NewSun correctly quotes the “reasonable expectation” language at the heart of the POD Requirement, so that standard does not seem to be the source of NewSun’s concern. See id. The alleged lack of clarity appears to stem from the list of examples Bonneville has provided to show the type of information a party could provide to comply. The initial notice included multiple examples to provide some guidance. In response to comments and other feedback following the first public meeting, Bonneville revised and added to the examples to increase clarity. As a general matter, Bonneville did not want to prescribe the information a party must provide in all situations. As described above, the data exhibit process contemplates the open exchange of information so Bonneville can obtain the information it needs to process and study the TSR. Bonneville encourages parties to submit whatever information they can provide, and Bonneville will evaluate it as part of the process. Staff expressed that same sentiment in the public meetings, but that hardly equates to “ill-defined, un-defined, ambiguous” standards that make it “impossible to determine” what is acceptable.” See id. at 13, 16.

Shell suggests a 30-day cure period should be provided in the first two years of the POD Requirement or until more data is available. Shell Comments at 1. BPA recognized that the potential need for the applicant to work with the Receiving Party to provide documentation of a business relationship may take time. As a result, in the updated notice, BPA provided for the possibility of additional cure period(s) if the applicant informs BPA that it is in the process of working with the Receiving Party to obtain documentation.

Shell also suggested an appeals process should the Receiving Party identified by the customer “not respond to a demonstrated ‘need’.” Id. An appeals process would be a fundamental change to the data exhibit process Bonneville and customers have been using for many years. Bonneville has not set out to make changes to that process and is not convinced a right to appeal is necessary at this time. The notice lists a variety of information a customer could provide to satisfy the POD Requirement, and not all of those involve obtaining information from the Receiving Party itself. In addition, Bonneville is willing to consider whatever information a customer provides and has committed to the potential for multiple cure periods if there are concerns about the time it takes to work with a Receiving Party. The data exhibit process already requires significant resources. An appeals process could require additional resources with no material benefit to Bonneville or the customer.

SCL suggested adding “or need” to the example in section 3.d of the notice so it would read: “Other demonstration of a business relationship or need that creates a reasonable expectation that the transmission service will be utilized consistent with the Receiving Party

information cited in the Data Exhibit.”³¹ SCL July Comments at 2. Bonneville appreciates the constructive suggestion, but the “need” of the Receiving Party is already covered in the example in section 3.b. It provides for compliance through demonstrating intent “of the load-serving entity to take actions that might reflect a need for the requested transmission service (for example, to conduct a request for proposal)” (emphasis added).

E. Comments about Anti-competitiveness

NewSun argues the POD Requirement is anti-competitive and advantages certain market players over others. NewSun Comments at 15-18. NewSun maintains the POD Requirement is “strikingly similar to ‘commercial readiness’ requirements FERC recently rejected because they are unduly anticompetitive.” Id. at 15 (referencing without citation Improvements to Generator Interconnection Procedures and Agreements, 184 FERC ¶ 61,054 (July 28, 2023) (Order 2023)). NewSun urges Bonneville not to adopt the POD Requirement based on FERC’s reasoning about the anti-competitive effect of the criteria at issue in Order 2023.³² Id.

The commercial readiness requirements FERC declined to adopt in Order 2023 were among a host of proposed reforms for “more stringent financial commitments and readiness requirements” to discourage speculative interconnection requests. Order 2023 at P 490. Despite NewSun’s claims that the “non-financial” commercial readiness criteria proposed by the Commission in the Notice of Proposed Rulemaking that preceded Order 2023 are similar to the POD Requirement, the letter and spirit of the requirements are quite different. The Commission’s proposal was prescriptive, requiring executed term sheets, provisional LGIAs, or evidence a resource had been selected in a resource plan or request for proposals (RFP). Improvements to Generator Interconnection Procedures and Agreements, 179 FERC ¶ 61,194, Notice of Proposed Rulemaking at P 129 (2022). Bonneville has proposed a relatively broad and forward-looking “reasonable expectation” standard and, as described above, provided a non-exclusive list of examples of information an applicant could provide to comply.³³ Bonneville is willing to consider other information an applicant might provide as well.

Even if the POD Requirement was similar to the non-financial commercial readiness criteria the Commission proposed before Order 2023, the Commission did not, as NewSun claims, reject those criteria because it found them anti-competitive. See Order 2023 at PP 490, 694; NewSun Comments at 15. The Commission found that the non-financial commercial readiness criteria were

³¹ SCL suggested adding “or need” in the parallel example (in section 2.d) for the requirement at the POR as well: “Other demonstration of business relationship or need that creates a reasonable expectation that the transmission service will be utilized consistent with the Generation Facility information cited in the Data Exhibit.” SCL July Comments at 1. Adding “or need” in section 2.d is inconsistent with the overarching requirements at the POR, which focuses on demonstration of a “business relationship with the owner of the energy being delivered” and not just a need. Section III.H of this response discusses the POR.

³² NewSun also states that “[f]ailure to comply with FERC’s findings puts BPA at odds with FERC’s open access policies and therefore places BPA’s OATT out of compliance with FERC requirements and in violation of FERC’s ‘Safe Harbor’ policies.” NewSun Comments at 15. This statement is incorrect on multiple levels, including that the requirements at issue in Order 2023 apply to interconnection service, Bonneville is not required to be in “compliance” with FERC’s order, and Bonneville does not file its Tariff with FERC under the Commission’s safe harbor procedures.

³³ See section II.C of this response; see also July 2, 2024 Notice at 2, available at <https://www.bpa.gov/-/media/Aep/transmission/atc-methodology/data-exhibit-validation-notice.pdf>.

“not necessary” because the financial criteria it was adopting were sufficient to address the need for reform. Order 2023 at P 694. Moreover, the Commission acknowledged certain parties had raised concerns about anti-competitiveness but stated it “need not further address” those concerns because it was not adopting the non-financial criteria. *Id.* at P 700. In other words, the Commission made no findings about anti-competitiveness. See *id.* In fact, rather than condemning the non-financial criteria as anti-competitive, the Commission went out of its way to clarify it was not altering its approval of similar criteria for certain transmission providers in the past or precluding other transmission providers from adopting non-financial commercial readiness demonstrations in the future. *Id.* at P 701. Although the number of TSRs in Bonneville’s transmission queue supports the need to address the type of speculative requests at the heart of the Commission’s concern in Order 2023, the relevance of the Commission’s findings in Order 2023 ends there.

NewSun suggests that LSEs will be able to “self-qualif[y]” for the POD Requirement while an obligation to “identify specific customers with specific needs places independent producers in an impossible position” of having “to win an RFP or otherwise obtain a commitment from an end-use customer to buy power” NewSun Comments at 6, 16, 19. The requirement to “identify specific customers” (i.e., the Receiving Party) is among the most basic information required by both Bonneville’s OATT and the Commission’s pro forma tariff that applies to TSRs submitted across the country. NewSun exaggerates the impossibility and competitive disadvantage associated with identifying and providing some support for the Receiving Party for a TSR. Nevertheless, Bonneville takes comments about the potential for unintended, anti-competitive effects seriously and has no interest in making the POD Requirement broader than necessary. In the final notice, Bonneville has revised the requirement to exclude TSRs with PODs that connect to adjoining systems of other transmission providers offering OATT service such that the Receiving Party would be expected to take OATT service from the other transmission provider. Those TSRs are not the focus of Bonneville’s concern.

NewSun mischaracterizes the POD Requirement as well. Although the notice specifies that a party could comply by providing evidence of an action plan from a utility’s integrated resource plan or intent to conduct an RFP, that is not the same as requiring that party to “win an RFP” or “obtain a commitment” to buy power. *Id.* at 16. NewSun basically repeats the arguments it made to FERC about the non-financial readiness criteria without regard to the specifics of the POD Requirement. See *id.* at 16-17 (NewSun quoting its comments to FERC). Although claims about having to “win an RFP” or “obtain a commitment” to buy power may have applied to FERC’s proposal, they do not apply to the POD Requirement. The information a party could submit for the POD Requirement is more forward-looking and open-ended. For example, where FERC would have required a party to demonstrate a resource “had been selected” in an RFP process, Bonneville would accept information verifying an LSE intends to “conduct” an RFP in which the requested transmission service could be used to participate.³⁴

While NewSun is correct that LSEs will have to comply with the POD Requirement, the claims of LSE “self-qualification” are unfounded. See NewSun Comments at 18-19. LSEs will have to meet the same standards as all other parties submitting TSRs. NewSun’s true concern seems to be grounded in allegations of self-dealing and abuse of RFPs or resource planning processes by

³⁴ See July 2, 2024 Notice at 2, available at <https://www.bpa.gov/-/media/Aep/transmission/atc-methodology/data-exhibit-validation-notice.pdf>.

Oregon investor-owned utilities. See *id.* at 15, 18-19. Those concerns are unproven and go beyond the scope of the issues BPA is addressing here.³⁵ NewSun goes so far as to argue that PacifiCorp’s abuse of its discretion over RFP and resource planning processes in combination with the POD Requirement will enable the company “to help destroy or prevent TSRs from being filed” *Id.* at 19. NewSun’s claims prove too much.³⁶ NewSun offers no explanation why Bonneville would adopt policies to advantage Oregon investor-owned utilities specifically to the detriment of other entities that also are Bonneville transmission customers. As a practical matter, although evidence of the intent of a Receiving Party to conduct an RFP could be one way (for any party) to comply with the POD Requirement, BPA’s adoption of that requirement is highly unlikely to influence an Oregon investor-owned utility (or any LSE) to develop, carry out, or modify an RFP that is otherwise unnecessary or inconsistent with the pre-existing resource plans. That would be the proverbial tail wagging the dog.

F. Comments about Potential for Disparate Treatment and Undue Discrimination

NewSun’s comments about the potential for disparate treatment and undue discrimination mix acknowledgment that the POD Requirement is well-intended with alarmist accusations that Bonneville is facilitating monopolist abuses and targeting NewSun specifically. See NewSun Comments at 8 (“the underlying goal . . . is well-intended”) and 5 (issuing a “discriminatory treatment alert!” and stating that PacifiCorp or other LSEs could “legitimately request service [to a POD] under BPA’s new policy. Just not NewSun.”). The POD Requirement is neither discriminatory in effect nor targeted at NewSun specifically.

NewSun maintains the POD Requirement is contrary to BPA’s statutory obligations under the Transmission System Act and Preference Act to make transmission capacity available to non-federal customers. *Id.* at 12 citing Transmission System Act of 1974, 16 U.S.C. § 838 *et seq.*, and Pacific Northwest Consumer Power Preference Act, 16 U.S.C. § 837 *et seq.* According to NewSun, these statutes “permit BPA to limit the availability of transmission capacity on the federal system only if it is needed to transmit federal power and provide no discretion to add additional conditions on the availability of transmission capacity.” *Id.* at 13. The argument that the Administrator has no ability to place conditions on the availability of transmission capacity beyond the need to transmit federal power is unfounded. The extension is that Bonneville has no authority to sign transmission service agreements with conditions on that service or to adopt a transmission Tariff. This is at odds with the most fundamental authority of the Administrator to enter into contracts or operate, maintain, and construct improvements to the transmission system as the Administrator determines are “appropriate and required” to serve customers. See Bonneville Project Act, 16 U.S.C. § 832a(f); Transmission System Act, 16 U.S.C. § 838b.

³⁵ NewSun correctly points out that the Public Utility Commission of Oregon is the appropriate body to address concerns about competitive solicitation or resource planning processes of regulated utilities in Oregon. See NewSun Comments at 15, 18.

³⁶ NewSun argues at one point that parties submitting TSRs will have to “obtain a commitment” from an LSE to buy power, which allegedly is “a near-impossibility in a region that still permits utility incumbents to control access to retail markets,” but maintains at other points that even parties with executed power purchase agreements will not be “safe” from application of the POD Requirement. NewSun Comments at 6, 16. There is no credible claim that the POD Requirement demands obtaining a commitment to buy power and that parties with executed power purchase agreements will be unable to comply.

NewSun alleges inherent discrimination in LSEs' alleged ability to self-qualify for the POD Requirement while others will have to "win an RFP" or "obtain a commitment" to buy power. NewSun Comments at 16. As described above, the same standards apply to all parties submitting TSRs, and NewSun's complaints are based on mischaracterizing and misstating the POD Requirement and what it takes to comply. No party must win an RFP or secure a power purchase agreement to meet the requirement. NewSun claims at one point that the POD Requirement is inherently discriminatory in favor of LSEs but also that "some of those being harmed may also include other LSEs." Id. at 7. A requirement that LSEs (or any other party) may be able to satisfy in some situations but not others is not inherently discriminatory. That is the nature of compliance.

NewSun says it welcomes the "additional flexibility" Bonneville incorporated into the POD Requirement in response to the initial customer feedback but complains that ambiguity and lack of clear guidelines create potential for disparate treatment of similarly situated TSRs. Id. at 16 (the "new language is so ambiguous that it becomes impossible to determine" what BPA might accept). As described above, the overarching standard, which applies to all customers, is demonstrating "a reasonable expectation that the Receiving Party will take delivery of the energy at the POD," and Bonneville has provided examples of the types of information a party could provide to comply. For years, the data exhibit process has followed a fairly flexible approach that involves the open exchange of information. Bonneville believes this process has served both Bonneville and customers submitting TSRs well. Bonneville has heard no concerns about applying inconsistent standards or discriminatory treatment in the past, and NewSun provides no basis for its claims that Bonneville would apply different standards to similarly situated customers in the future. Given the concerns about the requirement, however, Bonneville will pay particularly close attention to the consistency of the application of the requirements for TSRs that could be eligible for the 2025 cluster study.³⁷

NewSun's concerns about discriminatory treatment intersect with its arguments about "retroactive" application of the POD Requirement.³⁸ See NewSun Comments at 8. NewSun urges Bonneville not to apply the POD Requirement to any TSRs that have already been submitted. Id. This effectively suggests distinguishing TSRs by queue time relative to the adoption of the POD Requirement. From Bonneville's perspective, however, the non-discrimination principles NewSun emphasizes throughout its comments call for applying the same standards to all TSRs that could be eligible for the 2025 cluster study. Under NewSun's suggestion, TSRs submitted before adoption of the POD Requirement would have to meet one set of standards while those submitted a day later would be subject to another. Distinguishing TSRs by queue time does nothing to get Bonneville the information it needs for the 2025 cluster study under these circumstances, especially considering all the TSRs at issue are still at the very beginning of the process of requesting service. The relevant

³⁷ NewSun and its affiliates have arguably been the biggest beneficiaries of the flexibility of the data exhibit process thus far. Bonneville has spent far more time and resources reviewing, discussing, and correcting deficiencies in the data exhibits of NewSun and its affiliates than for any other group of customers. For example, before the 2021 Cluster Study, a NewSun affiliate submitted data exhibits with "TBD" (or "to be determined") for certain resource information for multiple TSRs. Through the course of multiple emails and at least one meeting addressing numerous TSRs and data exhibits at issue, Bonneville ultimately accepted "TBD" for that aspect of the data exhibit at that time pending additional progress on the interconnection studies for the TSRs. That is the only instance when Bonneville has accepted "TBD" in a data exhibit.

³⁸ Section III.C of this response addresses why adopting the POD Requirement is not prohibited retroactive rulemaking.

subset of “similarly situated TSRs” includes all of those that could be eligible for the 2025 cluster study, and all TSRs in the 2025 cluster study should be required to satisfy the same standards.

G. Comments about Effects on Transmission System Planning and Development

NewSun states that enforcement of the POD Requirement will cause BPA to incorrectly identify needs for transmission system planning and hamper development of transmission in the region. NewSun Comments at 20. NewSun may misunderstand the information and analysis that is utilized to define plans of service for transmission system expansion. TSRs and their data exhibits only provide a portion of the information utilized to plan transmission system expansion within cluster studies. Bonneville starts with WECC-developed base cases and may make adjustments based on customer load forecasts, generation and load interconnection study plans of service, information from regional planning forums, planner-to-planner conversations with other transmission providers, and other information. Bonneville also considers the impacts of identified transmission projects not yet energized. TSRs are represented through the addition of generation and/or load in these cases, which are integrated into the large pool of Northwest resources available and/or the total Northwest load. While there is a great deal more detail to transmission planning, the vital information from the TSR is often the source of generation that the customer is seeking to move, whether that generation is existing or new, where it will interconnect electrically on the transmission system, how many MW of service are being sought, and the Receiving Party for the generation. By assessing network usage with and without the TSR-based resources, BPA can identify its transmission system needs and develop plans of service specifically driven by TSRs. This ensures that customers are supporting projects driven by business needs, and not requiring increased customer funds for projects that may appear necessary with an inflated resource pool but could otherwise become unused assets.

H. Comments about the POR Requirements

Although the bulk of NewSun’s comments focuses on the POD Requirement, NewSun raises a few issues with the requirements that relate to the POR of a TSR (the “POR Requirement”) in section 2 of the notice. NewSun Comments at 8, 14, 19. Section 2 of the notice requires “[i]dentification of the rights to deliver energy to the POR,” including “demonstration of a business relationship with the owner of the energy being delivered, such as the owner of the cited Generation Facility specified in the Data Exhibit.” Like the POD Requirement, the notice includes multiple examples of ways to comply with the POR Requirement.³⁹

NewSun seizes on one of the examples to attack the nature of the POR Requirement as a whole. Section 2.c of the notice, as posted on July 2, 2024, provides that a “contract with the owner of the transmission to deliver energy to the POR” is one way to satisfy the requirement. NewSun states it is unclear what duration of contract with an adjoining system is adequate, and that any

³⁹ The examples include a) the customer submitting the TSR is the same as the legal entity or shares common ownership with the entity that owns the Generation Facility or generator interconnection request cited in the Data Exhibit; b) demonstration that the owner or developer of the cited Generation Facility is selling or intends to sell the output of the facility and the TSR submitter intends to purchase the output; c) a contract with the owner of the transmission to deliver energy to the POR; and d) other demonstration of a business relationship that creates a reasonable expectation that the transmission service will be utilized consistent with the Generation Facility information cited in the data exhibit.

inability to identify short-term uses discriminates in favor of long-term rights holders, LSEs, and existing capacity holders. NewSun Comments at 14.

The focus of the POR Requirement is neither contract rights nor adjoining systems. The focus is obtaining information about the resource behind the TSR. Most of the description of the POR Requirement and three of the four examples address the relationship of the entity submitting the TSR to the owner of the energy being delivered. The example NewSun focuses on is intended to address TSRs with a POR at one point on the system but for which the customer identifies a resource (or generator interconnection request) at a different point. Although identifying a contract for transmission service to deliver energy from the resource to the POR is one way to comply with the requirement in that situation, the contract arrangements are not the primary focus of the POR Requirement.

Bonneville has received several data exhibits in recent years in which an applicant for service has identified resources or generator interconnection requests the applicant had no apparent connection with as the basis for the energy to be delivered by the TSR. In other words, one party effectively requested transmission service for the delivery of energy from the resource of another party. Without some connection between the two parties or other explanation, this type of TSR is unusual at best.⁴⁰ A TSR like this became a problem in the 2023 cluster study when one party submitted a data exhibit that cited a generator interconnection request submitted by another party as the basis for the TSR, and the party with the generator interconnection request subsequently withdrew that request. Although withdrawal of the generator interconnection request signaled the proposed generation facility was no longer under development, the party that submitted the TSR was still seeking transmission service purportedly associated with that facility. Bonneville was left to sort out the details while the cluster study was underway.

The POR Requirement is intended to help ensure the existence of some relationship between the party requesting transmission service and the entity that owns the energy to be delivered. The relationship could take different forms, but there needs to be a basis for the resource information a customer is providing. As described above, completing the data exhibit is not intended to be a fill-in-the-blank exercise.

NewSun suggests clarifying that short-term transmission rights on an adjoining system would satisfy the POR Requirement under the example in section 2.c. As described above, the example addresses when the TSR includes a POR at one point on the system, but the resource or generator interconnection request cited in the data exhibit for the TSR is not at that POR. It is not limited to adjoining systems. Bonneville has revised the example in section 2.c to clarify that point.

As for NewSun's suggestion to accept use of short-term transmission rights under the example in section 2.c, that is inconsistent with the focus of the cluster study. Although customers may use short-term transmission to the extent it is available on Bonneville's system, the cluster study assesses the system upgrades for providing long-term transmission service (and in response to requests for long-term service). Accounting for short-term uses for delivery from a resource not located at the POR of a TSR would be inconsistent with Bonneville's long-term planning in the cluster study.

⁴⁰ This could otherwise reflect a speculative request or, at worst, an improper attempt to gain queue position to block others from access to capacity.

Attachment A

Final - Transmission Service Request Data Exhibit Validation Requirements Enforcement

September 3, 2024

BPA is currently experiencing unprecedented activity in its queue for long-term firm transmission service and is announcing measures to help address the challenges posed by this activity.

As of the August 15, 2024 deadline for submitting transmission service requests (TSRs) for the 2025 cluster study, BPA's queue includes approximately 68,000 MW of new requests for long-term firm transmission service. This follows the completion of the 2023 Cluster Study, which included over 16,000 MW of TSRs. BPA is concerned that the volume of new TSRs, in combination with the degree of uncertainty in the underlying information, presents challenges for the queue, the resources required to effectively validate the Data Exhibits for the TSRs, and the success of BPA's future Cluster Studies. BPA believes it is important to act now so the queue continues to function in a manner consistent with open access principles as well as to better enable the Cluster Study process to continue to provide meaningful results.

Effective immediately, BPA will strictly enforce the existing Data Exhibit requirements for customers to provide detailed underlying information about a TSR. These requirements help ensure that all TSRs in the queue represent good faith requests for service and are supported by sufficient information for BPA to effectively study and plan for regional transmission needs. BPA has observed issues associated with the resource and load information provided in an increasing number of Data Exhibits. Customers should not provide inaccurate load and resource information merely to comply with the Data Exhibit requirements. As submitted, TSRs and associated Data Exhibits should reflect expected use of the transmission system.

BPA will strictly enforce the information requirements for Data Exhibits that have not yet been validated. **BPA will also be reexamining the information in Data Exhibits that have previously been validated for TSRs that are potentially eligible for the 2025 cluster study.** BPA will contact customers by email about any deficiencies in a Data Exhibit and provide the opportunity to correct the deficiency. For any deficiencies that are not corrected within the applicable timelines stated in BPA's [Requesting Transmission Service Business Practice](#), sections F.5. and F.8., the TSR will be declined on OASIS.

Some of the primary requirements on which BPA is increasing its focus include:

1. The information supplied for "NEWPOINT" requests. BPA reserves the right to determine the sufficiency of a plan of service identified for a NEWPOINT point of receipt (POR) or point of delivery (POD).
2. Identification of the rights to deliver energy to the POR. Identification of such rights include demonstration of a business relationship with the owner of the energy being delivered, such as the owner of the cited Generation Facility specified in the Data Exhibit. BPA may accept generic generation sources such as "market purchase" for PORs that are established trading points for energy transfers such as NWH, BIGEDDY, JOHNDAY, COB, or NOB.

The following are examples of the business relationships that BPA would accept:

- a. The customer submitting the TSR is the same as the legal entity or shares common ownership with the entity that owns the Generation Facility or Generator Interconnection Request from BPA's interconnection queue cited in the Data Exhibit.
 - b. Demonstration that the owner or developer of the cited Generation Facility is selling or intends to sell the output of the facility and the TSR submitter intends to purchase the output.
 - c. If the resource cited in the data exhibit is not located at the POR of the TSR, long-term transmission rights to deliver energy from the resource to the POR.
 - d. Other demonstration of business relationship that creates a reasonable expectation that the transmission service will be utilized consistent with the Generation Facility information cited in the Data Exhibit.
3. Demonstration of a reasonable expectation that the Receiving Party may take delivery of the energy at the POD. This requirement will not apply to a TSR with a POD that connects to an adjoining transmission system on which another transmission provider offers OATT service such that the Receiving Party would be expected to take OATT service from the POD on the adjoining system.

The following are examples of acceptable demonstration:

- a. An approved action plan from an Integrated Resource Plan (IRP) that has been acknowledged, accepted, or otherwise approved and indicates that the Receiving Party expects to hold a process to acquire generation for which the transmission service request could be utilized.
- b. Verifiable intention of the load-serving entity to take actions that might reflect a need for the requested transmission service (for example, to conduct a request for proposal for which the requested transmission service could be used to participate).
- c. In the case of a request for point-to-point service for delivery to a network integration customer, documentation that such customer is interested in serving a portion of its load on point-to-point service.
- d. Other demonstration of a business relationship that creates a reasonable expectation that the transmission service will be utilized consistent with the Receiving Party information cited in the Data Exhibit.
- e. For delivery to a market hub, customer may enter "market delivery."

In response to customer feedback, for TSRs submitted through the close of the 2025 cluster study window, BPA may provide more than one cure period if a customer notifies BPA it is working with the Receiving Party identified in a Data Exhibit to obtain information to demonstrate the reasonable expectation the Receiving Party may take delivery at the POD.

If BPA has questions for the requestor regarding information in the Data Exhibit, BPA will contact the Customer's point of contact provided in the Data Exhibit. In addition, Customers should expect that BPA will contact entities identified by the TSR requestor in a Data Exhibit to verify information provided to demonstrate business relationships. Demonstration of business relationships is an ongoing requirement. Customers should notify BPA of any changes to information in a Data Exhibit for further evaluation.

BPA reserves the right to identify other Data Exhibit validation requirements consistent with the OATT

not described herein or in the current relevant Business Practices.

See updated Data Exhibit instructions to reflect this notice in the [NT Data Exhibit](#) and [PTP Data Exhibit](#) forms on the [Business Practices forms page](#).

Questions may be sent to TXDataExhibits@bpa.gov.