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3
4 UNITED STATES OF AMERICA
5 U.S. DEPARTMENT OF ENERGY
6 BEFORE THE
7 BPA POWER ADMINISTRATION
8

9)
10 BPA OVERSUPPLY RATE PROCEEDING) Docket Number OS-14
11

12
13 **INITIAL BRIEF**
14 **OF**
15 **M-S-R PUBLIC POWER AGENCY**
16

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26 Status of Prefiled Exhibits
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28 The following exhibits, including attachments thereto, were submitted during
29 these proceedings, and M-S-R hereby moves for their admission into the Record
30 of this matter.
31

32 Initial Testimony of Dr. David Arthur OS-14-E-MS-01
33 Rebuttal Testimony of Dr. David Arthur OS-14-E-MS-02
34 Qualifications of Dr. David Arthur OS-41-Q-MS-01
35 Narrative Statement
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1 **Introduction**

2 M-S-R Public Power Agency (hereafter M-S-R) is a public entity, without
3 taxing power, created pursuant to the provisions of California law governing
4 joint exercise of powers and a Joint Exercise of Powers Agreement, whose
5 members are the City of Santa Clara, the City of Redding and Modesto
6 Irrigation District, each of which owns and operates a municipal electric
7 utility system in Northern California.

8 Combined, the members of M-S-R purchase more than 350 MW of wind
9 resources from one or more entities in the Pacific Northwest, or nearly
10 1,000,000 MWH, to be delivered on a firm basis to California over the
11 Southern Intertie pursuant to contracts that were first executed in 2005.
12 The costs for such wind resources are paid entirely through rates paid by M-
13 S-R member's native load.

14 M-S-R sought renewable resources in the Pacific Northwest that could
15 easily be delivered to California using its existing ownership rights in the
16 California-Oregon Transmission Project (COTP or the Third AC). M-S-R holds
17 approximately 600 MW on the Third AC. M-S-R members are load-serving
18 entities. The power purchased by M-S-R is transmitted to California to serve
19 its members' native load.

20
21

22 **Legal Discussion**

23 Bonneville Power Administration (BPA) is primarily governed by
24 four statutes¹, of which the most comprehensive is the Northwest Power Act.
25 The statutes collectively instruct and inform the Administrator in how the
26 BPA system, power production and transmission, is to be managed. The
27 Administrator enjoys substantial deference in the manner in which he carries
28 out his duties. However, that deference is not without limits. There is an
29 open question of the role of FERC in determining the direction BPA should
30 take with respect to Oversupply Management Policy (OMP). Under the Northwest

¹ *BPA Project Act, 16 USC Sec 832-832m; Federal Power Act, 16 USC 824 e(a);
the Columbia River Transmission Act, 16 USC 838(d)* (hereafter the
Transmission Act); and *the Pacific Northwest Electric Power Planning and
Conservation Act, 16 USC Sec 839-839h, of 1980* ("the Northwest Power Act").
(Collectively the "BPA Statutes").

1 Power Act, BPA's Administrator has the responsibility for developing rates.
2 The rates are then submitted to FERC for approval or disapproval. FERC's
3 review of BPA's regional power rates and transmission rates is limited to
4 determining whether the rates ensure repayment of the Federal investment in
5 Columbia River power system after meeting BPA's total system costs and, in
6 the case of transmission rates, whether the rates equitably allocate the
7 transmission costs among federal and non-federal power and determining
8 whether the rates would encourage the most widespread use of BPA power and
9 provide the lowest possible rates to consumers consistent with sound business
10 practices. If the standards are satisfied, FERC is required to confirm and
11 approve the rates.

12 The development of wind generation was spurred by statutes enacted in
13 the past decade throughout the West requiring utilities to include renewable
14 resources in their portfolios. These statutes represent obligations that
15 many Northwest Utilities must follow. BPA is charged under its own statutes
16 with obligations related to Fish and Wildlife, energy efficiency and
17 conservation and to encourage the development of renewable resources as
18 mandated by the Northwest Power Act. The Act puts obligations on BPA
19 customers, which are addressed by BPA in developing rates. These include
20 specific cost obligations under 839e (g) entitled, "Allocation of cost and
21 benefits," Northwest Power Act, 7(g), 94 Stat 2726.

22 The Ninth Circuit has concluded that BPA must follow the direct
23 mandates under its organic statutes and cannot replace directives with
24 inconsistent policy decisions and Congressional intent.² The Transmission Act
25 contains additional requirements for BPA to adhere to, including assuring
26 comparable service, that the costs of the system are equitably allocated
27 between federal and non-federal use, and to encourage the broadest possible
28 use of the system consistent with sound business practices.

29 M-S-R believes that BPA must first provide sufficient power and
30 transmission to serve the firm loads of the requirements customers. Once
31 that obligation has been met, the remaining power, hydro capability and
32 transmission capacity are available for sale to others both within the
33 Northwest and outside of it. While NERC/WECC requirements mean that BPA must
34 operate the system reliably, there is no statute or directive that allows BPA

² *Portland General Electric Company et al v BPA Power Administrator*, 501 F3d
1009 at 1026, (9th Circuit Court of Appeals, 2007).

1 to operate its system to the benefit of one class of customers to the
2 detriment of others. BPA must balance the competing needs of all its
3 customers.

4 BPA developed its OMP document³ to address a scenario that BPA believed
5 was unique to it—during certain times of the year, energy production exceeded
6 load. The initial OMP approach established protocols that were intended to
7 balance load and resources by substituting BPA's own federal generation for
8 the generation of wind generators, essentially inserting itself in the middle
9 of bilateral agreements between wind generators and their customers. Those
10 generators complained that BPA's action did not meet FERC requirements for
11 comparability. BPA filed its compliance tariff using a cost allocation
12 method that assigned the costs equally to both power and transmission
13 customers in response to allegations that the OMP policy lacked
14 comparability. It was filed as a policy document and not in a rate case.

15 FERC has made no determination as to whether BPA's approach is
16 acceptable, whether costs can be allocated as BPA stated, whether the terms
17 and conditions for BPA's use of the contracts of others is acceptable or
18 whether the compliance filing is sufficient. It issued an Order⁴ indicating
19 that it would consider the rate and non-rate aspects of the compliance
20 proposal in total to determine if the OMP approach complies with its
21 directives. Several Parties requested rehearing. On June 26, 2013, FERC
22 issued the Order Denying Rehearing⁵ in which FERC noted that the prior Order
23 pointed out that "the wind generators' use of firm transmission service on
24 Bonneville's system during oversupply periods represent[ed] a fraction of the
25 total firm transmission usage during those periods, yet such entities would
26 be allocated half of the displacement costs under Bonneville's intended
27 methodology." FERC also reminded the Parties that "The Commission directed
28 Bonneville to submit a compliance filing under section 211A within 90 days of
29 the issuance of the Compliance Order setting forth a cost allocation
30 methodology that equitably allocates displacement costs to all firm
31 transmission customers." FERC will evaluate whether this revised
32 methodology, along with its rates, terms and conditions under the OMP,
33 ensures comparable transmission service for all resources.

³ Previously called Environmental Redispatch.

⁴ (Docket Nos. EL11-44-004 and EL11-44-005, page 4, paragraph 8).

⁵ Docket Nos. EL11-44-004 and EL11-44-005.

1 BPA's OMP Protocol contains three parts. First, BPA anticipates
2 curtailment of wind production when there is more energy being produced in the
3 Region than load to use it. Second, BPA proposes to provide its own Federal
4 Generation to curtailed customers to meet their contract obligations to their
5 parties. However, this Federal Generation is not "eligible renewable," and
6 the power provided does not have RECs associated with it. Third, curtailed
7 wind generators may request reimbursement of some costs, subject to an audit,
8 but not the cost of obtaining replacement RECs for those lost as a result of
9 the curtailment and substitution of Federal Generation. Costs claimed and
10 accepted by BPA will be paid through a rate assigning recovery for them to
11 the users of the transmission system during the oversupply hours. This
12 includes the wind generators themselves.

13 AS indicated above, BPA initially proposed to allocate and
14 functionalize costs associated with the OMP equally to power and transmission
15 customers. BPA's initial approach was met with objection by a broad spectrum
16 of customers and was rejected by FERC. Now, BPA is proposing to allocate all
17 costs to transmission customers based upon generation within BPA's balancing
18 authority for the duration of the hours in an oversupply event. While it has
19 changed its cost allocation methodology, BPA's essential taking of contracts
20 remains.

21 M-S-R believes that cost causation is the cornerstone of any rate
22 analysis. BPA has not laid out sufficient cost causation in its allocation
23 proposal. It has failed to appropriately anticipate issues with oversupply
24 and operations when it decided to integrate additional generation of any
25 sort. BPA has not provided factual support or modeling to show evidence of
26 how costs are being incurred and how those costs are caused by wind
27 generators.

28 M-S-R believes that BPA's own statutes require that power related costs
29 be allocated to power rates, and that FERC's review, when it occurs, will not
30 support the proposed allocation of rates or the terms and conditions imposed
31 by BPA on some customers. M-S-R further believes that it is an illegal
32 taking to impermissibly insert itself into bilateral contracts with others.
33 M-S-R recognizes other parties may disagree and that resolution of this
34 disagreement could require years of appeals at FERC and in the Ninth Circuit.

35 To avoid this lengthy dispute process, M-S-R has previously
36 proposed a settlement in this docket that M-S-R believes would resolve most
37 parties' concerns. M-S-R did so in recognition of the difficulty these
38 issues present and how long it will take to find a resolution. While the

1 proposed settlement was rejected by the Parties, M-S-R believes that it has
2 sufficient merit that its basic tenants should be accepted by the
3 Administrator as his decision here.

4
5 M-S-R Proposal

6 While M-S-R disagrees with the substance of BPA's rebuttal testimony
7 and believes that it is not supported by substantial evidence on the record,
8 M-S-R suggests that the Administrator resolve the case as follows:

- 9 1. Take every action action to reduce federal generation in the BPA
10 system during times of high water or excess energy. Incorporate
11 into rates only the very minum necessary in terms of costs to
12 ensure that the load resource concerns are met. Further, M-S-R
13 suggests the Administrator consider voluntary curtailments by those
14 in the BPA Balancing Authority.
- 15 2. For this rate period only, use the Renewable Northwest Project's
16 proposal as BPA suggests for allocation of costs, as described in
17 OS-14-E-BPA-03, page 4, lines 4-10.
- 18 3. During the interim period before the next rate case, sponsor
19 workshops to find effective solutions for these operational and
20 financial issues.

21
22 **Conclusion**

23 M-S-R believes that the Region requires a short-term solution, as
24 proposed by the Renewable Northwest Project, to allow time for longer-term,
25 better solutions to be developed and/or negotiated. M-S-R commits to
26 participate in workshops and forums to address these important issues.

27
28 Dates this 28th day of August 2013.

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30
31 /s/ Ann L. Fisher

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33 _____
34 Ann L. Fisher filed on behalf of M-S-R
35 Power Agency.

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