153 FERC ¶ 61,076
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Coalition of Eastside Neighborhoods for Sensible Energy,
Citizens for Sane Eastside Energy,
Larry G. Johnson,
Glenna F. White, and
Steven D. O'Donnell

v. Docket No. EL15-74-000

Puget Sound Energy,
Seattle City Light,
Bonneville Power Administration, and
ColumbiaGrid

ORDER DISMISSING COMPLAINT

(Issued October 21, 2015)

1. In this order, we dismiss a complaint (Complaint) filed by the Coalition of Eastside Neighborhoods for Sensible Energy, Citizens for Sane Eastside Energy, and individuals Larry G. Johnson, Glenna F. White, and Steven D. O'Donnell (collectively, Complainants) against Puget Sound Energy (Puget Sound), Seattle City Light, a department of the City of Seattle (Seattle), Bonneville Power Administration (Bonneville), and ColumbiaGrid (collectively, Respondents).

I. Background

2. Puget Sound, Seattle, and Bonneville are members of ColumbiaGrid, a non-profit membership corporation whose purpose is to coordinate the operation, use, and expansion of the Pacific Northwest transmission system. Currently, however,

Puget Sound is the only Respondent that is an enrolled member in the ColumbiaGrid transmission planning region, established by certain parties to comply with Order No. 1000.[1] Puget Sound is planning to construct a transmission project consisting of approximately 18 miles of electric transmission lines and associated substation upgrades between the Cities of Redmond and Renton in the State of Washington (Energize Eastside Project). Specifically, the Energize Eastside Project will add a 230/115 kV transformer near Puget Sound's Lakeside Substation and rebuild the existing Sammamish-Lakeside-Talbot 115 kV lines to convert them to 230 kV lines. The exact location of the rebuilt 230 kV transmission lines will be determined after the completion of the state Environmental Impact Statement and local land use permitting processes, which are currently underway. The Energize Eastside Project will be located completely within Puget Sound's service territory. Puget Sound is planning to construct the project in order to accommodate projected local load growth that Puget Sound projects will create local transmission capacity deficiencies in the area beginning by the winter of 2017-18.

3. On June 9, 2015, Complainants filed the Complaint pursuant to section 206 of the Federal Power Act (FPA)[2] and Rule 206 of the Commission's Rules of Practice and Procedure.[3] Complainants allege that the Energize Eastside Project was promoted and implemented by Respondents in a manner that violates Order Nos. 890[4] and 1000. Complainants also assert that Respondents have violated Order No. 2000,[5] "contractual

[1] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth.* v. *FERC*, 762 F.3d 41 (D.C. Cir. 2014) (Order No. 1000).

[2] 16 U.S.C. § 824e (2012).

[3] 18 C.F.R. § 385.206 (2015).

[4] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) (Order No. 890).

[5] *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001) (Order No. 2000).

obligations they have entered into with the Commission that incorporate the provisions and policies set forth in those Orders," and the terms of their Open Access Transmission Tariffs (Tariffs).[6]

4. Complainants argue that the Energize Eastside Project is a Bulk Electric System facility, as defined in Order No. 773,[7] based on the Commission's "bright line" test, because it is a 230 kV project.[8] They further argue that because the project meets more than one regional need – it is intended to meet both Puget Sound's local load needs and to provide additional transmission capacity to support 1,500 MW of power flow north to Canada in order to satisfy Bonneville's obligation to deliver power to Canada under the terms of the Columbia River Treaty[9] – it was subject to the requirements of Order No. 1000 and should have gone out to bid to third parties.[10]

5. Complainants argue that, under Order No. 1000, ColumbiaGrid was required to initially determine whether there is a transmission need on the regional system that would require a project such as the Energize Eastside Project. Complainants assert that, if ColumbiaGrid determined that there was such a need, it needed to inform its members and other interested stakeholders, allow them to propose solutions to resolve the transmission need, and then study those proposals and the associated load flow studies. Complainants further argue that, if ColumbiaGrid determined that the preferred solution met the goals of more than one entity, it needed to determine a fair allocation of the costs of the project.[11] Complainants assert that this process was not followed because Puget Sound alone determined that the Energize Eastside Project was necessary and

[6] Complaint at 1-2.

[7] *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012) (Order No. 773).

[8] Complaint at 6.

[9] *Id.*, J. Richard Lauckhart Aff. at P 18.

[10] *Id.* at 2, 6.

[11] *Id.*, J. Richard Lauckhart Aff. at PP 20-22.

conducted the associated load flow studies,[12] and ColumbiaGrid did not determine any regional cost allocation.[13]

6. Complainants conclude that Respondents have violated the regional planning process required by Order Nos. 890 and 1000 because they have violated the "single utility" rule, failed to properly ascertain the regional need for the Energize Eastside Project, failed to conduct their own environmental assessment of the project, and did not conduct industry-standard load flow studies to determine whether the Energize Eastside Project might be duplicative, less efficient, and more costly than better alternatives.[14]

7. In particular, Complainants assert that Order No. 1000's "single utility" rule required the Respondents to study the regional system as if a single utility owned all relevant generating, transmission, and distribution facilities.[15] Complainants argue that Respondents have not complied with this requirement because Puget Sound did not ask ColumbiaGrid to conduct regional power flow studies for the Energize Eastside Project, but instead, conducted inappropriate power flow studies of its own to determine if the project was necessary.[16] Complainants contend that if these studies were performed on a single utility basis, they would have logically looked at using existing Seattle transmission lines to address the transmission capacity deficiency.[17] Complainants note that Seattle allegedly refused to allow Puget Sound to use those lines because Seattle preferred to reserve those lines for its own use to meet its operating needs.[18]

8. Complainants argue that Respondents also circumvented the requirements of Order No. 1000 because ColumbiaGrid did not evaluate the potential negative environmental impacts of the Energize Eastside Project on its own[19] and Respondents

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[12] *Id.*, J. Richard Lauckhart Aff. at P 25.

[13] *Id.*, J. Richard Lauckhart Aff. at P 22.

[14] *Id.* at 2-3.

[15] *Id.*, J. Richard Lauckhart Aff. at P 49.

[16] *Id.*, J. Richard Lauckhart Aff. at P 25.

[17] *Id.* at 7.

[18] *Id.*, J. Richard Lauckhart Aff. at P 47, n.16; Attachment K.

[19] *Id.* at 8.

chose the Energize Eastside Project without giving any consideration to its environmental impacts or considering the environmental impacts of alternatives.[20]

9. Complainants also allege that the load flow studies Puget Sound conducted were flawed. In particular, they argue that the studies should not have included 1,500 MW of firm transmission to Canada because the transmission system has operated for over 50 years without the ability to deliver 1,500 MW to Canada.[21] Complainants contend that the Columbia River Treaty envisioned the construction of a new transmission line in order to facilitate the delivery of power to Canada that was contemplated in the treaty, but that Bonneville and its counterparty to the treaty, the British Columbia Hydro and Power Authority (BC Hydro), chose not to build this line. Complainants argue that, as a result, Bonneville put in place an operating procedure to curtail flows to Canada anytime such flows might cause overloads on transmission lines in western Washington. Thus, Complainants assert that the transmission system has operated without the ability to deliver the 1,500 MW of treaty power to Canada. Complainants argue, therefore, that the load flow studies for the Energize Eastside Project should have been conducted with no flow between Canada and the United States.[22]

10. In addition, Complainants assert that Puget Sound's load flow studies were flawed because they did not include 1,435 MW of output from eight Puget Sound-controlled natural gas generators located in western Washington. Complainants state that a load flow study performed by Utility Systems Efficiencies, Inc. (Utility Systems) for the City of Bellevue included some, but not nearly all, of this output. Complainants argue that this omission creates inappropriate results in the Puget Sound and Utility Systems load flow studies.[23]

11. Complainants also assert that Puget Sound's 2013 Integrated Resource Plan shows that it needs an additional 1,500 MW of generating capacity by 2018 in order to cover estimated peak load and provide an appropriate level of reserves. Complainants argue that Puget Sound has not determined where it will obtain this additional 1,500 MW of supply and that, therefore, Puget Sound will need to run all of its resources to cover peak load in 2018, including the natural gas plants that were excluded from the Puget Sound and Utility Systems load flow studies. Complainants contend that, as a result, the load

[20] *Id.*, J. Richard Lauckhart Aff. at P 75.

[21] *Id.* at 4.

[22] *Id.*, J. Richard Lauckhart Aff. at PP 78-86.

[23] *Id.*, J. Richard Lauckhart Aff. at PP 37-44.

flow studies need to include the natural gas plants that were excluded from the Puget Sound and Utility Systems load flow studies.[24] Complainants also note that Puget Sound's 2013 Integrated Resource Plan did not address the possibility of building additional generating units in the area of the Energize Eastside Project to accomplish the dual objective of contributing to the need for 1,500 MW of additional generating capacity and addressing a potential transmission problem in the area.[25]

12. Complainants describe several alternatives to the Energize Eastside Project that they allege could be put in place at a lower cost and with lower environmental impact than the Energize Eastside Project.[26] Complainants also assert that ColumbiaGrid and its member utilities are not acting in compliance with Order No. 1000 because they have yet to agree on a ColumbiaGrid Planning and Expansion Functional Agreement (Planning Agreement) that brings them into compliance with Order No. 1000. Complainants acknowledge that the Planning Agreement and subsequent amendments have been accepted by the Commission, but they assert that ColumbiaGrid and its member utilities have not agreed on an Order No. 1000-compliant Planning Agreement because Bonneville has not yet made a compliance filing to fully conform its Tariff to the Commission's *pro forma* Tariff, as modified by Order No. 1000.[27]

13. Complainants request that the Commission order ColumbiaGrid to perform transparent and industry-standard load flow studies to determine whether the Energize Eastside Project meets a local transmission need and whether a more efficient, less expensive, and less environmentally destructive alternative exists.[28] Complainants assert that Puget Sound, Bonneville, and Seattle have already committed to have ColumbiaGrid perform such studies in their Order Nos. 890 and 1000 compliance filings and in the Planning Agreement.[29]

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[24] *Id.*, J. Richard Lauckhart Aff. at PP 90-92.

[25] *Id.*, J. Richard Lauckhart Aff. at PP 102-103.

[26] *Id.* at 5; J. Richard Lauckhart Aff. at PP 47, 95-104.

[27] *Id.*, J. Richard Lauckhart Aff. at PP 6-9; 11-15.

[28] *Id.* at 7.

[29] *Id.* at 5.

14. Complainants ask that the Commission order Puget Sound to "cease and desist from any further activity with respect to [the Energize Eastside Project], including seeking permits for it" once Complainants' requested load flow studies "show conclusively there is no local load reliability issue that would justify [the Energize Eastside Project] being built."[30]

15. Complainants further request that the Commission order Seattle and Bonneville to cooperate in restarting the project selection process at the ColumbiaGrid level, cooperate in properly performed load flow studies, and to not engage in any further acts that are subversive of the Order Nos. 890 and 1000 processes.[31]

16. Additionally, Complainants request that the Commission order Puget Sound, Bonneville, and Seattle to provide an Order No. 1000-compliant Planning Agreement. Complainants ask that, if these entities fail to provide an Order No. 1000-compliant Planning Agreement, the Commission direct them to form a Regional Transmission Organization (RTO) or Independent System Operator (ISO) to ensure Order Nos. 890 and 1000 compliance. Finally, Complainants state that, because ColumbiaGrid's method for selecting its board members is not fully compliant with the "independence" requirements set out in Order No. 2000, the selection method should be considered in consolidation with ColumbiaGrid's ongoing Order No. 1000 compliance proceeding in Docket No. ER15-429-000, *et al*.[32]

II. Notice and Responsive Pleadings

17. Notice of the Complaint was published in the *Federal Register*, 80 Fed. Reg. 34,631 (2015), with answers, protests, and interventions due on or before June 29, 2015. Avista Corporation (Avista) filed a timely motion to intervene and comments. Puget Sound and ColumbiaGrid filed a joint motion to dismiss and answer. Bonneville filed a motion to dismiss Bonneville as a Respondent. Seattle filed a motion to dismiss and answer. Powerex Corp. (Powerex) filed a motion to intervene out-of-time.

18. On July 13, 2015, Complainants filed answers and, separately, a motion for order of default against Bonneville. On July 27, 2015, Seattle filed an answer to Complainants' answer. On July 28, 2015, Bonneville filed an answer to Complainants' answer and an answer to Complainants' motion for order of default. On August 11, 2015, Puget Sound

[30] *Id.* at 7.

[31] *Id.* at 8.

[32] *Id.*

submitted supplemental information to its motion to dismiss and answer and Complainants submitted a letter objecting to the inclusion of that supplemental information in the record.

A. Puget Sound and ColumbiaGrid Motion to Dismiss and Answer

19. Puget Sound and ColumbiaGrid argue that the Complaint should be dismissed because Complainants have failed to satisfy the Commission's rules for structuring a complaint, set forth in Rule 206 of the Commission's Rules of Practice and Procedure.[33] Specifically, Puget Sound and ColumbiaGrid assert that the Complaint does not "clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements,"[34] or "explain how the action or inaction violates the applicable statutory standards or regulatory requirements"[35] because the Complaint does not cite any particular portion or provision of Order Nos. 890 or 1000 that Respondents have allegedly violated. Puget Sound and ColumbiaGrid note that Order Nos. 890 and 1000 require the development of an Attachment K to Puget Sound's Tariff that satisfies those orders and thus, Attachment K, not Order Nos. 890 and 1000, defines the planning process that Puget Sound must carry out. Puget Sound and ColumbiaGrid further state that Puget Sound's Attachment K relies on the planning obligations set forth in the Planning Agreement, which was first approved by the Commission in 2007 and is used by ColumbiaGrid to facilitate the coordinated planning of multi-system transmission projects.[36] Puget Sound and ColumbiaGrid argue that the Complaint also does not cite any provision of Attachment K or the Planning Agreement that Respondents have allegedly violated. They assert that the Commission has previously dismissed complaints for failing to comply with these requirements.[37]

20. Puget Sound and ColumbiaGrid also argue that the Complaint fails to set forth the "business, commercial, economic or other issues presented by the action/inaction as such relate to or affect the Complainants,"[38] and to make a "good faith effort to quantify the

[33] Puget Sound and ColumbiaGrid Answer at 7.

[34] 18 C.F.R. § 385.206(b)(1) (2015).

[35] 18 C.F.R. § 385.206(b)(2) (2015).

[36] Puget Sound and ColumbiaGrid Answer at 4, 8.

[37] *Id.* at 7-8 (citing *Citizens Energy Task Force v. Midwest Reliability Org.*, 144 FERC ¶ 61,006, at P 38 (2013)).

[38] *Id.* at 9 (citing 18 C.F.R. § 385.206(b)(3) (2015)).

financial impact or burden (if any) created for the complainant as a result of the action or inaction."[39] Rather, Puget Sound and ColumbiaGrid state that Complainants generally assert that the Energize Eastside Project is "more costly" than their preferred alternatives, but they do not provide any information on the cost of the proposed alternatives. In fact, Puget Sound and ColumbiaGrid contend that Complainants merely assert that unnamed realtors have informed Complainants that their homes (whose number and present value are also unspecified) may decrease in value if the Energize Eastside Project is constructed and then argue, without further support, that local taxes will increase if the project is built.[40]

21. Puget Sound and ColumbiaGrid allege that the Complaint has also failed to indicate "the practical, operational, or other nonfinancial impacts imposed as a result of the action or inaction, including, where applicable, the environmental, safety or reliability impacts of the action or inaction."[41] Puget Sound and ColumbiaGrid assert that the Complaint merely states that the Energize Eastside Project is "environmentally unsound and hazardous" without any support other than noting that the project will be co-located with an existing pipeline and require routine tree-cutting.[42]

22. Puget Sound and ColumbiaGrid also note that Complainants are required to state "the specific relief or remedy requested,"[43] but that some of the relief requested in the Complaint cannot be granted. They explain that Complainants request that the Commission order Puget Sound to cease and desist from any further activity with respect to the Energize Eastside Project, including seeking permits for it; however, transmission construction, siting, and permitting fall within the purview of state and local jurisdictions, so it would be beyond the scope of the Commission's jurisdiction to direct Puget Sound to refrain from seeking state and local permits for the project.[44]

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[39] *Id.* at 9-10 (citing 18 C.F.R. § 385.206(b)(4) (2015)).

[40] *Id.*

[41] *Id.* at 10 (citing 18 C.F.R. § 385.206(b)(5) (2015)).

[42] *Id.*

[43] *Id.* at 11 (citing 18 C.F.R. § 385.206(b)(7) (2015)).

[44] *Id.*

23. In addition, Puget Sound and ColumbiaGrid assert that Complainants do not have standing to bring a complaint regarding Attachment K or the Planning Agreement; Attachment K describes the process by which Puget Sound coordinates with its transmission customers, neighboring transmission providers, affected state authorities, and other stakeholders, and Complainants do not fall within any of those categories because they are merely landowners in the area where the Energize Eastside Project will be built. Similarly, Puget Sound and ColumbiaGrid assert that Complainants are third-party non-signatories to the Planning Agreement and therefore do not have standing to bring a complaint regarding the Planning Agreement.[45]

24. Puget Sound and ColumbiaGrid argue that Complainants' allegations should be dismissed as impermissible collateral attacks on Commission Order Nos. 890, 1000, and 2000. They contend that Complainants' allegation that ColumbiaGrid's method for selecting its board members does not comply with the "independence" requirements set out in Order No. 2000 and Complainants' request that the Commission order Respondents to form an RTO or ISO are not relevant to whether Puget Sound complied with its transmission planning obligations. Puget Sound and ColumbiaGrid argue that, because ColumbiaGrid is not an RTO, the Order No. 2000 "independence" requirements are not applicable. Puget Sound and ColumbiaGrid also assert that Order No. 2000 did not mandate the creation of RTOs, and Order Nos. 890 and 1000 did not impose any specific requirements for the structure in which public utilities must implement the planning provisions that were to be incorporated into Attachment K. Therefore, they argue that Complainants' assertions regarding ColumbiaGrid's method for selecting its board members and their request that the Commission order Respondents to form an RTO or ISO are impermissible collateral attacks on Order Nos. 890, 1000, and 2000.[46]

25. Puget Sound and ColumbiaGrid also contend that Complainants collaterally attack Order Nos. 890 and 1000, and the Commission's orders accepting Puget Sound's compliance filings made pursuant to those orders, when they assert that the Energize Eastside Project should have gone out to bid to third parties and that Puget Sound should be required to abandon the project if new studies show there is no load reliability issue. Puget Sound and ColumbiaGrid assert that there is no requirement in Attachment K of Puget Sound's Tariff or the Planning Agreement that Puget Sound request bids or issue a request for proposals prior to any construction of a transmission facility. They also contend that the inclusion of any project, including the Energize Eastside Project, in a

[45] *Id.* at 11-13.

[46] *Id.* at 13-14.

ColumbiaGrid transmission plan is not a condition precedent to Puget Sound's decision to build a project.[47]

26. Puget Sound and ColumbiaGrid further argue that the Complaint should be dismissed for a lack of jurisdiction as it applies to ColumbiaGrid. They assert that the Commission has found that ColumbiaGrid does not own, operate, or control jurisdictional facilities necessary to qualify it as public utility under the FPA, and, therefore, ColumbiaGrid is not subject to section 206 of the FPA.[48]

27. In answering the Complaint, Puget Sound and ColumbiaGrid argue that, if the Commission considers the substantive issues raised by the Complaint, the Complaint must be rejected because Complainants have not demonstrated that Puget Sound has failed to comply with its Commission-approved transmission planning process contained in Attachment K of the Puget Sound Tariff and the Planning Agreement, nor have they demonstrated that the Respondents have violated Orders Nos. 890 and 1000.[49]

28. In support, Puget Sound and ColumbiaGrid assert that the Energize Eastside Project was originally conceived in 2006 and pre-dates the Order No. 1000 amendments to Attachment K of Puget Sound's Tariff; therefore, the Energize Eastside Project was subject to the Order No. 890 transmission planning requirements, not the Order No. 1000 requirements. They note that the Commission held that the Order No. 1000 requirements "apply to the evaluation or reevaluation of any transmission facility that occurs *after* the effective date of the public utility transmission provider's filing adopting the transmission planning and cost allocation reforms of the pro forma [Tariff] required by this Final Rule."[50] They state that Puget Sound's Order No. 1000 amendments to Attachment K of its Tariff did not take effect until January 1, 2015, and, therefore, that Complainants' allegations regarding supposed non-compliance with Order No. 1000 are inapposite.[51]

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[47] *Id.* at 15-16.

[48] *Id.* at 19.

[49] *Id.* at 19-20.

[50] *Id.* at 20-21 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 65) (emphasis added).

[51] *Id.*

29. Moreover, Puget Sound and ColumbiaGrid argue that Puget Sound complied with its then-applicable Order No. 890 transmission planning requirements for the Energize Eastside Project. They state that, pursuant to Puget Sound's Attachment K that was approved following Order No. 890, Puget Sound was required to develop an annual 10-year plan that identified new transmission facilities and facility replacements or upgrades that it was planning over the next 10 years. They explain that, pursuant to the then-applicable Planning Agreement, Puget Sound was required to advise ColumbiaGrid of any "Single System Projects" that it was planning on its system and submit those proposed projects to ColumbiaGrid. Puget Sound and ColumbiaGrid assert that Puget Sound complied with these requirements.[52]

30. Puget Sound and ColumbiaGrid state that, in accordance with Puget Sound's Order No. 890-compliant Attachment K, Puget Sound identified the Energize Eastside Project in each of its annual 10-year plans from 2009 to 2014, and posted all of those annual plans on its Open Access Same-Time Information System. They explain that Puget Sound notified ColumbiaGrid of the Energize Eastside Project as a Single System Project, as required by the Planning Agreement, and that ColumbiaGrid subsequently included the Energize Eastside Project in its Biennial Transmission Expansion Plans.[53]

31. Puget Sound and ColumbiaGrid argue that, contrary to Complainants' arguments, their studies properly included the 1,500 MW of transmission capacity associated with Bonneville's obligation to return power to Canada under the Columbia River Treaty. They assert that, when studying energy flows on the transmission system, transmission planners study the paths upon which energy flows rather than the contract paths upon which energy is commercially transacted and scheduled. They state that all flows of energy in the Puget Sound region, such as flows related to Bonneville's obligation to deliver power to Canada, affect the flows of energy on parallel transmission facilities like Puget Sound's facilities. Puget Sound and ColumbiaGrid argue that, to ensure transmission system reliability, Puget Sound's and ColumbiaGrid's studies considered a range of possible operating conditions, including one where Bonneville schedules 1,500 MW of energy on its contract path, and the effect those operating conditions have on Puget Sound's underlying transmission facilities. They assert that these assumptions are consistent with prudent utility practice because Bonneville's legal obligation to Canada exists, and it must be accounted for and anticipated in planning studies.[54]

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[52] *Id.* at 21-22.

[53] *Id.* at 27-28.

[54] *Id.* at 6, n.20.

32. Puget Sound and ColumbiaGrid argue that the Energize Eastside Project was properly classified a Single System Project. They state that Puget Sound's then-applicable Attachment K defines a Single System Project as "any modification of a single Transmission System that[:] (i) is for the purpose of meeting a Need that impacts only such single Transmission System; (ii) does not result in Material Adverse Impacts on any transmission system; and (iii) is included as a Single System Project in a Plan."[55] They explain that the Energize Eastside Project meets a "Need" that impacts only a single transmission system. They state that a "Need" is defined to include a projected inability of a transmission owner to serve its network load, native load customer obligations, or other existing long-term firm transmission obligations. Puget Sound and ColumbiaGrid assert that, in reports from 2013 and 2015, Puget Sound identified a need for transmission supply on Puget Sound's system in order to serve Puget Sound customers.[56]

33. Puget Sound and ColumbiaGrid state that Puget Sound introduced the Energize Eastside Project into ColumbiaGrid's existing Puget Sound Area Study Team transmission expansion planning process and the study team adopted the Energize Eastside Project in the team's expansion plan, without any finding of Material Adverse Impacts on any transmission system.[57] Puget Sound and ColumbiaGrid maintain that the Energize Eastside Project was included as a Single System Project in a "Plan." They state that "Plan" is defined as "at any time the then current Biennial Plan, as then revised by any Plan Updates." They assert that ColumbiaGrid explicitly included the Energize Eastside Project as a Single System Project in its most recent 2015 Biennial Plan.[58]

34. Puget Sound and ColumbiaGrid contend that ColumbiaGrid also complied with its remaining transmission planning responsibilities with respect to the Energize Eastside Project. They note that, in accordance with the Planning Agreement, ColumbiaGrid is required to develop a Biennial Plan, which must include those Single System Projects on a transmission system that have been submitted for inclusion in the Biennial Plan. Puget Sound and ColumbiaGrid assert that ColumbiaGrid has complied with this obligation because Puget Sound properly submitted the Energize Eastside Project to ColumbiaGrid

[55] *Id.* at 23 (citing Puget Sound Attachment K § A.51; Planning Agreement § 1.51).

[56] *Id.* at 24-25.

[57] *Id.* at 25-27.

[58] *Id.* at 27.

for consideration, and ColumbiaGrid included the project as a Single System Project in its Biennial Plans.[59]

35. Finally, Puget Sound and ColumbiaGrid argue that, even assuming *arguendo* that the Energize Eastside Project is subject to the Order No. 1000 amendments to the Puget Sound Tariff and the Planning Agreement, the Commission has made clear that Order No. 1000 "do[es] not require that the transmission facilities in a public utility transmission provider's local transmission plan be subject to approval at the regional or interregional level, unless that public utility transmission provider seeks to have any of those facilities selected in the regional transmission plan for purposes of cost allocation."[60] Puget Sound and ColumbiaGrid assert that the Energize Eastside Project is a local load-serving project and that none of the Respondents is seeking to include the project in the regional plan for purposes of cost allocation; therefore, the Energize Eastside Project would not be subject to Order No. 1000's regional approval process.[61]

B. Seattle Motion to Dismiss and Answer

36. Seattle explains that it is a department of the City of Seattle through which the city provides electric utility service. Seattle moves to dismiss the Complaint on the grounds that nothing in Order Nos. 890 or 1000 prevents a utility from building facilities in its service territory that are needed to serve load. Seattle also asserts that Complainants' references to Order No. 2000 are irrelevant to their claims because Order No. 2000 details the requirements applicable to RTOs, and there are no RTOs in the Energize Eastside Project's region.[62]

37. More specifically, Seattle argues that, in Order No. 890, the Commission expressly disavowed any intention to dictate which investments a utility would undertake, finding that "the planning obligations imposed in this Final Rule do not address or dictate which investments identified in a transmission plan should be undertaken by transmission providers."[63] Seattle further notes that Attachment K to the Puget Sound Tariff reflects the same concept, as the Tariff states that it "does not dictate or establish which

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[59] *Id.* at 28-29.

[60] *Id.* at 21 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 65).

[61] *Id.*

[62] Seattle Answer at 2-3.

[63] *Id.* at 7 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 438).

investments identified in a transmission plan should be performed or how such investments should be compensated."[64]

38. Seattle maintains that Order No. 1000 expressly permits incumbent public utility transmission providers to develop and build local transmission facilities outside of the Order No. 1000 process, provided the project is located solely within the public utility's retail distribution service area, and is not proposed or selected in the regional transmission plan for purposes of cost allocation.[65] Seattle further explains that Order No. 1000 defined a "local transmission facility" as "a transmission facility located solely within a public utility transmission provider's retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation."[66]

39. Seattle asserts that the Energize Eastside Project falls within the Commission's definition of a "local transmission facility" since the transmission line is limited in length to 18 miles, the proposed route for the line sits entirely within Puget Sound's combined electric and gas service area, and Puget Sound has not opted to include the project in the ColumbiaGrid regional cost allocation process under Order No. 1000.[67] Seattle argues that, therefore, the Energize Eastside Project is the type of project the Commission made clear can be developed independently by an incumbent utility, without running afoul of Order No. 1000.[68]

40. Seattle further asserts that Complainants' claim that the Energize Eastside Project is a Bulk Electric System facility under the definition adopted in Order No. 773 is irrelevant. Seattle argues that the applicable scope of the Reliability Standards enforced by the North American Electric Reliability Corporation (NERC) has nothing to do with the scope of the transmission planning process under Order No. 1000.[69]

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[64] *Id.* (citing Puget Sound Tariff, Attachment K, Part II).

[65] *Id.* at 1-2.

[66] *Id.* at 7-8 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63).

[67] *Id.*

[68] *Id.* at 9.

[69] *Id.* at 10.

41. Finally, Seattle points out that Order No. 1000 has no direct application to entities like Seattle that fall within the definition of a non-public utility under section 201(f) of the FPA.[70] Seattle explains that it is a non-public utility because it is a department of the City of Seattle and the City of Seattle is a city organized under a Charter authorized by the Washington State Constitution.[71] Seattle asserts that, in Order Nos. 890 and 1000, the Commission expressly declined to take action under section 211A of the FPA[72] to require non-public utilities to participate in the Order Nos. 890 and 1000 processes.[73]

C. Bonneville Motion to Dismiss

42. Bonneville argues that it should be dismissed as a Respondent because the Complaint was filed pursuant to section 206 of the FPA, but the Commission has no jurisdiction over Bonneville pursuant to section 206.[74] Bonneville asserts that the Commission and several U.S. Circuit Courts have held that the Commission lacks jurisdiction over Bonneville pursuant to section 206.[75] Bonneville also notes that it is a party to a Memorandum of Agreement with Seattle and Puget Sound that memorializes the parties' plans to construct certain transmission projects, but that a subsequent letter agreement clarified that Bonneville is not participating in the Energize Eastside Project.[76]

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[70] 16 U.S.C. § 824 (2012).

[71] Seattle Answer at 2, 6, 11.

[72] 16 U.S.C. § 824j-1 (2012).

[73] Seattle Answer at 11 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 192; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 815, 821; Order No. 1000-A, 139 FERC ¶ 61,132 at P 778).

[74] Bonneville Motion to Dismiss at 3-4.

[75] *Id.* at 4 (citing *Avista Corp*., 143 FERC ¶ 61,255, P 2, n.4 (2013) ("[w]e recognize that Bonneville Power is not a public utility under section 201 of the FPA, 16 U.S.C. § 824 (2006), and is not subject to Commission directives made pursuant to FPA section 206;" *Bonneville Power Admin. v. FERC*, 422 F.3d 908, 924 (9th Cir. 2005) (*Bonneville*))).

[76] *Id.* at 2-3.

D. Avista Comments

43. Avista supports the Puget Sound and ColumbiaGrid Answer and reiterates that the Complaint contains no allegations of any violations of any specific provision of Order Nos. 890 and 1000, or of Attachment K to Puget Sound's Tariff.[77] Avista also reiterates that Order No. 1000 planning requirements do not apply to the Energize Eastside Project because the project predates the January 1, 2015 effective date of the Order No. 1000 amendments to Attachment K of Puget Sound's Tariff.[78] Avista further asserts that Complainants' request that the Commission order Puget Sound, Bonneville, and Seattle to file an Order No. 1000-compliant Planning Agreement is moot because the Commission has already conditionally accepted Respondents' Planning Agreement, subject to a further compliance filing that remains pending before the Commission.[79]

E. Complainants Answers and Motion for Order of Default

44. Complainants filed three separate answers to respond to the Puget Sound and ColumbiaGrid Answer, the Seattle Answer, and the Bonneville Motion to Dismiss, as well as a motion for Order of Default against Bonneville. In Complainants' answer to the Puget Sound and ColumbiaGrid Answer, they reiterate that the Energize Eastside Project is not a local load facility because it falls within the Bulk Electric System definition. Complainants also argue that the project should not be considered as a local load facility because its cost will be included in the rate for firm transmission service on the Puget Sound transmission system.[80] Complainants further contend that ColumbiaGrid has agreed to submit itself to the Commission's jurisdiction because it has signed the Planning Agreement and has a Commission-approved rate schedule on file with the Commission.[81] Finally, Complainants reiterate that Puget Sound's load flow studies were flawed because they included 1,500 MW of transmission capacity for Bonneville's delivery of power to Canada.[82]

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[77] Avista Comments at 3-4.

[78] *Id.* at 4.

[79] *Id.* at 5.

[80] Complainants Answer to Puget Sound and ColumbiaGrid Answer at 3-5.

[81] *Id.* at 12.

[82] *Id.* at 13-17.

45. In their answer to the Seattle Answer, Complainants argue that the Energize Eastside Project has been "selected in a regional transmission plan for purposes of cost allocation" because its cost would go into the rate for firm transmission service on the Puget Sound transmission system.[83] Complainants also reiterate that a "single-utility" approach would have identified Puget Sound's use of Seattle's transmission facilities as the solution to meet the need that the Energize Eastside Project is designed to address.[84] Complainants further contend that the Commission has jurisdiction over Seattle pursuant to section 211A of the FPA.[85] In addition, Complainants state that Seattle is subject to sanctions under section 211A because it does not have a Tariff on file with the Commission.[86]

46. In response to the Bonneville Motion to Dismiss, Complainants argue that section 211A of the FPA authorizes the Commission to enforce the requirements of Order No. 890 against even non-public utility transmission providers like Bonneville.[87] Complainants also argue that Bonneville has voluntarily submitted to the Commission's jurisdiction under Order No. 890 in exchange for reciprocity because Bonneville has signed the Planning Agreement and has an Attachment K to its Tariff on file with the Commission.[88]

47. In the motion for Order of Default against Bonneville, Complainants argue that, because Bonneville only moved to dismiss the Complaint and did not answer the Complaint, Bonneville should be considered in default under Rule 213(e) of the Commission's Rules of Practice and Procedure[89] and, as to Bonneville, all relevant facts stated in the Complaint should be deemed admitted.[90]

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[83] Complainants Answer to Seattle Answer at 6.

[84] *Id.* at 11-12.

[85] *Id.* at 13-14.

[86] *Id.* at 3-4.

[87] Complainants Answer to Bonneville Motion to Dismiss at 2, 4-7.

[88] *Id.* at 4, 10.

[89] 18 C.F.R. § 385.213(e) (2015).

[90] Complainants Motion for Order of Default at 1-2.

F. Seattle July 27 Answer

48. Seattle argues that Complainants are incorrect in claiming that Seattle is out of compliance with the Commission's open access policies because it does not have a Tariff on file with the Commission. Seattle asserts that reciprocity does not require Seattle to file its Tariff with the Commission. Seattle explains that it satisfies the reciprocity condition by offering to provide transmission service under the terms of its publicly-available Tariff, but it is not required to file that Tariff with the Commission.[91]

49. Seattle also argues that Complainants are wrong in asserting that there is a basis for proceeding against Seattle under section 211A of the FPA. Seattle asserts that the Complaint was framed as a complaint under section 206, which has no application to Seattle, a non-public utility under section 201(f).[92]

G. Bonneville July 28 Answers

50. Bonneville reiterates that the Complaint was filed under section 206 of the FPA, which does not apply to Bonneville, and that the Complaint fails to allege any violation on the part of Bonneville that falls within the Commission's jurisdiction. In response to Complainants' argument that section 211A authorizes the Commission to enforce the requirements of Order No. 890 against Bonneville, Bonneville argues that Complainants have not made any arguments that fall within the Commission's section 211A authority. Bonneville states that section 211A(b)(2) authorizes the Commission to issue a rule or order requiring an unregulated transmission utility, such as Bonneville, to provide transmission services "on terms and conditions (not relating to rates) that are comparable to those under which the unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential."[93] However, Bonneville argues that Complainants do not make any allegation of non-comparable or discriminatory effects as required by section 211A. Bonneville asserts that, moreover, Complainants are not current or potential transmission customers of Bonneville, and thus could not have been denied any service on Bonneville's system or be treated differently than any other of Bonneville's customers.[94]

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[91] Seattle July 27 Answer at 3-4.

[92] *Id.* at 5.

[93] Bonneville July 28 Answer at 3-4 (citing 16 U.S.C. § 824j-1(b)(2) (2012)).

[94] *Id.* at 4.

51. Bonneville also disputes that it has voluntarily submitted itself to the Commission's jurisdiction. It states that, in *Bonneville*, the U.S. Court of Appeals for the Ninth Circuit rejected an argument that Bonneville had submitted itself to Commission jurisdiction by agreeing to abide by certain tariffs, and found that the Commission cannot exercise jurisdiction beyond what is authorized in the statute, regardless of whether the jurisdiction is exercised without objection or even with the consent of the relevant parties.[95]

52. Bonneville also filed an answer to Complainants' motion for Order of Default. Bonneville states that Rule 213(e) of the Commission's Rules of Practice and Procedure does not require the Commission to find an entity in default for failing to answer a complaint, but instead provides that any person failing to answer a complaint "may" be considered in default and the relevant facts "may" be deemed admitted as to that person. Bonneville argues that it should not be considered in default because the Commission's lack of jurisdiction over Bonneville under section 206 is well settled and, thus, it would be a waste of Bonneville's and the Commission's resources to require Bonneville to answer the Complaint. If the Commission finds that it has jurisdiction over Bonneville in this case, Bonneville requests that the Commission deny the motion for Order of Default and allow Bonneville additional time to file an answer.[96]

H. Subsequent Pleadings

53. On August 11, 2015, Puget Sound filed a letter providing supplemental information to the factual assertions in its answer. On the same day, Complainants filed a letter asking the Commission not to make Puget Sound's letter part of the record.

III. Discussion

A. Procedural Matters

54. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), Avista's timely, unopposed motion to intervene serves to make it a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), the Commission will grant the late-filed motion to intervene of Powerex, given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

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[95] *Bonneville*, 422 F.3d at 924.

[96] Bonneville July 28 Answer to Motion for Order of Default at 3-5.

55. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers in this case because they provided information that assisted us in our decision-making process.

B. Substantive Matters

56. We will dismiss the Complaint with respect to Bonneville, Seattle, and ColumbiaGrid because the Complaint was filed pursuant to section 206 of the FPA, and Bonneville, Seattle, and ColumbiaGrid are not subject to the Commission's section 206 jurisdiction. Section 201 of the FPA specifies the scope of the Commission's jurisdiction under subchapter II of the FPA, which includes section 206. Section 201(f) provides that, "[n]o provision in this subchapter shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State. . . or any agency, authority, or instrumentality of . . . the foregoing . . .unless such provision makes specific reference thereto."[97] Bonneville is a federal power marketing administration within the United States Department of Energy[98] and Seattle is a city organized under a Charter authorized by the Washington State Constitution;[99] section 206 of the FPA does not make any specific reference to include entities such as Bonneville or Seattle. Therefore, Bonneville and Seattle are not subject to the Commission's jurisdiction under section 206 of the FPA. The Commission has also found that ColumbiaGrid does not own, operate or control jurisdictional facilities necessary to qualify it as public utility under the FPA; thus, it is not subject to the Commission's jurisdiction under section 206 of the FPA.[100] Accordingly, we dismiss the Complaint against Bonneville, Seattle, and ColumbiaGrid.

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[97] 16 U.S.C. § 824(f).

[98] *See, e.g.*, Bonneville Motion to Dismiss at 3; *Avista Corp*., 143 FERC ¶ 61,255, at P 2, n.4 (2013) ("We recognize that Bonneville Power is not a public utility under section 201 of the FPA…and is not subject to Commission directives made pursuant to FPA section 206.").

[99] *See* Seattle Answer at 11.

[100] *See ColumbiaGrid*, 119 FERC ¶ 61,007, at PP 16, 27 (2007) ("NIPPC argues that the Commission should find that ColumbiaGrid is subject to the Commission's jurisdiction because ColumbiaGrid will perform certain jurisdictional services… We also disagree with assertions raised by NIPPC regarding the jurisdictional status of ColumbiaGrid… The current Planning Agreement does not cause ColumbiaGrid to own, operate or control jurisdictional facilities").

57. Complainants argue that the Commission has jurisdiction over Bonneville and Seattle in this matter pursuant to section 211A of the FPA.[101] We disagree. Section 211A provides that the Commission may issue a rule or order requiring an unregulated transmitting utility, such as Bonneville or Seattle, to provide transmission services "(1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and (2) on terms and conditions (not relating to rates) that are comparable to those under which the unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential."[102] In Order No. 890, the Commission did not adopt a generic rule implementing section 211A with respect to all non-jurisdictional unregulated transmitting utilities[103] or invoke its authority under section 211A to require such non-jurisdictional entities to participate in the Order No. 890 planning processes, but instead found that it could exercise such authority on a "case-by-case" basis if there is an appropriate record.[104] Complainants have provided no basis for the Commission to exercise its authority under section 211A. The Complaint does not allege that Respondents are providing non-comparable, discriminatory, or preferential transmission services. Moreover, the Complaint does not allege that the Complainants are current or potential transmission customers of any Respondent; therefore, Complainants could not have received non-comparable or discriminatory transmission service from any Respondent, or have been treated differently from any other of Respondents' transmission customers.[105]

58. Complainants also argue that Bonneville, Seattle, and ColumbiaGrid have agreed to submit themselves to the Commission's jurisdiction because they are parties to the Planning Agreement and have tariffs or rate schedules on file with the Commission.[106]

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[101] *See* Complainants Answer to Bonneville Motion to Dismiss at 3-7; Complainants Answer to Seattle Answer at 13-14.

[102] 16 U.S.C. § 824j-1(b).

[103] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 192.

[104] *Id.* P 441.

[105] *See id.* P 192 ("A *potential customer* may file an application with the Commission seeking an order compelling the unregulated transmitting utility to provide transmission service that meets the standards of FPA section 211A.") (emphasis added).

[106] *See, e.g.*, Complainants Answer to Puget Sound and ColumbiaGrid Answer at 12; Complainants Answer to Seattle Answer at 13-15; Complainants Answer to Bonneville Motion to Dismiss at 10.

Complainants assert that it is "commonplace" and "axiomatic" in the law that "a party not otherwise subject to the jurisdiction of a governmental entity can nevertheless agree to submit itself to that jurisdiction."[107] However, courts have found that the Commission cannot exercise jurisdiction or authority that is not authorized by statute, even if the relevant parties voluntarily participated in Commission-approved markets and the parties consent to the jurisdiction.[108]

59. We also will dismiss the Complaint with respect to the remaining Respondent, Puget Sound. Rule 206 of the Commission's Rules of Practice and Procedure provides that a complaint must "[c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements"[109] and "[e]xplain how the action or inaction violates applicable statutory standards or regulatory requirements."[110] We find that the Complaint fails to meet these requirements because the Complaint does not cite any specific provision of any Commission order or regulation, or any specific provision of the Puget Sound Tariff or Planning Agreement, that Respondents have allegedly violated. Instead, Complainants make vague allegations that Respondents have violated Order Nos. 890, 1000, and 2000, as well as the Puget Sound Tariff and Planning Agreement, without citing any specific provision of those orders, the Tariff, or the Planning Agreement that Respondents have allegedly violated. Thus, Complainants have not identified the "applicable statutory standards or regulatory requirements," that Respondents have allegedly violated. We cannot conclude that the Complaint has sufficiently identified the behavior that allegedly violates the applicable standards or requirements, or that it has sufficiently explained how there is such a violation, when Complainants have not even identified the applicable standards or requirements.

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[107] *See, e.g.*, Complainants Answer to Puget Sound and ColumbiaGrid Answer at 12; Complainants Answer to Bonneville Motion to Dismiss at 10.

[108] *See, e.g.*, *Bonneville*, 422 F.3d 908, 924 ("[The Commission] cannot exercise jurisdiction or authority unless authorized by statute, regardless of whether the jurisdiction is exercised without objection or even with the consent of the relevant parties. . .Similarly, [the Commission] cannot expand its statutory authority to reach governmental entities/non-public utilities through § 206(b) simply because such entities voluntarily participated in markets approved by [the Commission] that involved [Commission]-jurisdictional wholesale sales of electric energy in interstate commerce.").

[109] 18 C.F.R. § 385.206(b)(1).

[110] 18 C.F.R. § 385.206(b)(2).

60. The Commission has previously dismissed complaints for failing to comply with these requirements. For example, in a case involving a complaint that alleged a violation of a NERC Reliability Standard, the Commission dismissed the complaint, finding that, "[i]f a complaint regarding an alleged violation of a Reliability Standard is to meet the threshold requirements of Rule 206, then the complaint must, at a minimum, set forth the specific provision of the Reliability Standard that is at issue."[111] The Complaint here similarly fails to provide that minimum level of specificity because it simply makes broad reference to Order Nos. 890, 1000, and 2000, the Puget Sound Tariff, and the Planning Agreement, and does not set forth any specific provision that is at issue.

61. In addition to the Complaint's procedural deficiencies, Complainants have not met their burden of proof under section 206 of the FPA to demonstrate that the Respondents' actions with respect to the Energize Eastside Project have violated any applicable requirement or are otherwise unjust, unreasonable, or unduly discriminatory, or preferential. Rather, contrary to Complainants' vague allegations that the Respondents have violated Order Nos. 890 and 1000, the record before us shows that Puget Sound and the other Respondents have complied with the applicable transmission planning requirements in those orders.

62. We agree with Puget Sound and ColumbiaGrid that the Energize Eastside Project was properly evaluated under the then-applicable Order No. 890 transmission planning requirements. The Commission has stated that Order No. 1000 does "not require that the transmission facilities in a public utility transmission provider's local transmission plan be subject to approval at the regional or interregional level, unless that public utility transmission provider seeks to have any of those facilities selected in the regional transmission plan for purposes of cost allocation."[112] The Commission has further explained that "Order No. 1000 does not prevent an incumbent transmission provider from meeting its reliability needs or service obligations by choosing to build new transmission facilities that are located solely within its retail distribution service territory or footprint and that are not selected in a regional transmission plan for purposes of cost allocation."[113] The record before us shows that the Energize Eastside Project is located completely within Puget Sound's service territory, that it was included in Puget Sound's local transmission plan to meet Puget Sound's reliability needs, and that neither Puget Sound, nor any other eligible party, requested to have the project selected in the

[111] *Citizens Energy Task Force v. Midwest Reliability Org.*, 144 FERC ¶ 61,006, at P 39 (2013).

[112] Order No. 1000-A, 139 FERC ¶ 61,132 at P 190.

[113] *Id.* P 425.

regional transmission plan for purposes of cost allocation;[114] therefore, the project is not subject to the Order No. 1000 regional approval process, and is instead subject to the Order No. 890 transmission planning requirements.

63. Based on the record before us, we find that Puget Sound and the other Respondents complied with their transmission planning responsibilities under Order No. 890 in proposing and evaluating the Energize Eastside Project. As required by the Attachment K of Puget Sound's Tariff that was approved following Order No. 890, Puget Sound identified the Energize Eastside Project in its annual 10-year plans. Puget Sound also notified ColumbiaGrid of the Energize Eastside Project as a Single System Project, as required by the then-applicable Planning Agreement, and ColumbiaGrid subsequently included the Energize Eastside Project in its Biennial Transmission Expansion Plans.[115] We agree with Puget Sound and ColumbiaGrid that the Energize Eastside Project was properly classified a Single System Project because it was designed to address Puget Sound's projected inability to serve its own customers, ColumbiaGrid's Puget Sound Area Study Team did not find any Material Adverse Impacts associated with the project, and ColumbiaGrid included the project as a Single System Project in its most recent 2015 Biennial Plan. Accordingly, we find that the Energize Eastside Project was proposed and evaluated in accordance with the then-applicable transmission planning requirements.

64. Complainants argue that the Energize Eastside Project has been "selected in a regional transmission plan for purposes of cost allocation," and therefore is subject to the Order No. 1000 regional approval process, because its cost would go into the transmission rate for firm transmission service on the Puget Sound transmission system.[116] However, Complainants' argument confuses two separate issues. The regional cost allocation contemplated in Order No. 1000 involves allocating the costs of a transmission facility across a region. Including the cost of the Energize Eastside Project in Puget Sound's rate for firm transmission service on its system affects only Puget Sound's transmission rate and does not mean that the project was "selected in a regional transmission plan for purposes of cost allocation."

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[114] *See, e.g.*, Puget Sound and ColumbiaGrid Answer at 5, 21; Seattle Answer at 9.

[115] Puget Sound and ColumbiaGrid Answer at 27-28.

[116] *See* Complainants Answer to Seattle Answer at 6.

65. Complainants also assert that development of the Energize Eastside Project should have gone out to bid to third parties pursuant to Order No. 1000.[117] However, Complainants are incorrect because Order No. 1000 does not require project developers to be selected using a competitive bidding process[118] and there is no requirement in Puget Sound's Tariff or the Planning Agreement that Puget Sound issue a request for proposals or request bids prior to any construction of a transmission facility.

66. Complainants request that the Commission order Puget Sound "to cease and desist from any further activity with respect to [the Energize Eastside Project], including seeking permits for it."[119] Regardless of Complainants' arguments, we could not grant this requested relief because much of the "activity with respect to" the project, such as transmission siting and permitting, is not subject to the Commission's jurisdiction.

67. Complainants argue that the Energize Eastside Project is not a local load-serving project that is exempt from Order No. 1000 because it is a Bulk Electric System facility, as defined in Order No. 773.[120] This argument is inapposite. The Bulk Electric System definition was developed by NERC for use in determining the scope of NERC Reliability Standards and related obligations. Specifically, the definition of Bulk Electric System includes transmission facilities that are 100 kV or higher, with exceptions, such as local distribution facilities.[121] Order No. 1000 does not require that transmission planning regions use this Bulk Electric System definition to determine whether a transmission project is subject to the Order No. 1000 regional planning process. Instead, Order No. 1000 provides public utilities with the option to "use flexible criteria in lieu of 'bright line' metrics when determining which transmission projects are in the regional

[117] *See, e.g.*, Complaint at 2.

[118] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 259, 321 & n.302 ("[T]he public utility transmission providers in a region may, but are not required to, use competitive solicitation to solicit projects or project developers to meet regional needs…[T]he Commission declines to adopt commenter suggestions to mandate a competitive bidding process for selecting project developers.").

[119] Complaint at 7.

[120] *See, e.g., id.* at 6; Complainants Answer to Puget Sound and ColumbiaGrid Answer at 4-5.

[121] Order No. 773, 141 FERC ¶ 61,236 at PP 45, 52, 56.

transmission plan."[122] Consistent with this option, ColumbiaGrid's regional planning process does not use the voltage of a transmission project as a threshold metric to determine whether the project should be in the regional plan. Nevertheless, the Energize Eastside Project is not subject to the Order No. 1000 regional approval process because it is located completely within Puget Sound's service territory, it was included in Puget Sound's local transmission plan to meet Puget Sound's reliability needs, and neither Puget Sound, nor any other eligible party, requested to have the project selected in the regional transmission plan for purposes of cost allocation. Whether or not the Energize Eastside Project falls within the Bulk Electric System definition does not affect this conclusion.

68. Complainants discuss alleged flaws in the load flow studies that Puget Sound conducted for the Energize Eastside Project. However, Complainants do not demonstrate that the studies violated any applicable transmission planning requirements or were otherwise unjust, unreasonable, or unduly discriminatory or preferential. Complainants do not cite anything that would require Puget Sound to use the study inputs and assumptions that Complainants prefer instead of the inputs and assumptions that Puget Sound used. Complainants state, without citation, that Puget Sound was obligated to ask ColumbiaGrid to conduct power flow studies for the project pursuant to a 2012 Order No. 1000 compliance filing.[123] They also assert that the studies did not comply with the "single utility" rule set forth in Order No. 1000.[124] However, as discussed above, any Order No. 1000 requirements are not applicable to the Energize Eastside Project. Beyond this, Complainants merely assert that Puget Sound's load flow studies were not "industry-standard," produced "tortured results," and used "undisclosed and dubious inputs."[125] Complainants do not explain what the "industry-standard" for such load flow studies is, and do not cite to anything demonstrating that Puget Sound's study inputs and assumptions were flawed beyond Complainants' mere allegations that they are

[122] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 223; Order No. 1000-A, 139 FERC ¶ 61,132 at P 283 (affirming that public utility transmission providers, in consultation with stakeholders, may apply either flexible criteria or bright-line metrics when determining which transmission facilities are in the regional transmission plan).

[123] *See* Complaint, J. Richard Lauckhart Aff. at P 25.

[124] *See id.* at 7, J. Richard Lauckhart Aff. at PP 49-50.

[125] *See id.* at 2-3; J. Richard Lauckhart Aff. at P 25.

flawed.[126] Moreover, Puget Sound has demonstrated that its needs assessments identified a transmission capacity deficiency, that the Energize Eastside Project was included in its annual transmission plans to address the deficiency beginning in 2009, that the project was reviewed by ColumbiaGrid's Puget Sound Area Study Team and not found to have any Material Adverse Impacts, and was included in ColumbiaGrid's Biennial Transmission Plans.[127] Accordingly, we do not believe that Complainants' allegations that Puget Sound's load flow studies were flawed provide any basis for the Commission to grant any of Complainants' requested relief.

69. Complainants also allege that ColumbiaGrid's method for selecting its board members is not fully compliant with the "independence" requirements set out in Order No. 2000. This allegation is inapposite because the Order No. 2000 "independence" requirements apply to RTOs, and ColumbiaGrid is neither an RTO nor ISO.[128] Accordingly, the "independence" requirement of Order No. 2000 does not apply to ColumbiaGrid.

70. Finally, Complainants request that the Commission order Puget Sound, Bonneville, and Seattle to provide the Commission with an Order No. 1000-compliant Planning Agreement, or, in the alternative, order those entities to form an RTO to ensure Order No. 890 and Order No. 1000 compliance.[129] Order No. 2000 encouraged the voluntary formation of RTOs, but did not require entities to form RTOs.[130] Therefore, Order No. 2000 does not support Complainants' argument that the Commission can order Puget Sound, Bonneville, and Seattle to form an RTO or ISO. Additionally, Complainants' request that the Commission order those Respondents to file an Order No. 1000-compliant Planning Agreement is also misplaced. Respondents have already

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[126] *CAlifornians for Renewable Energy, Inc. v. Pac. Gas & Elec. Co.*, 142 FERC ¶ 61,143, at P 18 (2013) ("rather than bald allegations, [complainants] must make an adequate proffer of evidence including pertinent information and analysis to support its claims.") (quoting *Ill. Mun. Elec. Co. v. Cent. Ill. Pub. Serv. Co.*, 76 FERC ¶ 61,084, at 61,482 (1996)).

[127] *See, e.g.*, Puget Sound and ColumbiaGrid Answer at 5, 26-27.

[128] *See, e.g., id.* at 14; Avista Comments at 3, n.5.

[129] *See* Complaint at 8.

[130] Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 30,995 ("we find it appropriate in this instance to adopt an open collaborative process that relies on voluntary regional participation to design RTOs.").

filed the Planning Agreement with the Commission to facilitate compliance with Order No. 1000 and the Commission has conditionally accepted the Planning Agreement, subject to a further compliance filing, which remains pending before the Commission.[131] Any concerns that Complainants have regarding the compliance of Respondents' Planning Agreement with Order No. 1000 are more properly considered in that proceeding. Moreover, Complainants Coalition of Eastside Neighborhoods for Sensible Energy and Citizens for Sane Eastside Energy have filed a motion to intervene and protest in that ongoing proceeding,[132] and have not explained why timely resolution of their concerns regarding Order No. 1000 compliance cannot be achieved in that forum.[133]

71. Given our determinations above, we will deny Complainants' motion for Order of Default against Bonneville. As Bonneville notes, Rule 213 does not require the Commission to find an entity in default for failing to answer a complaint, but provides that the Commission "may" make such a finding.[134] Given that the Commission does not have section 206 jurisdiction over Bonneville in this proceeding, we find that Bonneville is not in default for not answering the Complaint.

[131] *See Avista Corp.*, 151 FERC ¶ 61,127, at P 2 (2015).

[132] Coalition of Eastside Neighborhoods for Sensible Energy, *et al.*, Motion to Intervene and Protest, Docket No. ER15-429-001, *et al.* (filed July 6, 2015).

[133] *See* 18 C.F.R. § 385.206(b)(6) (2015) (providing that a complaint must "[s]tate whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum.").

[134] 18 C.F.R. § 385.213(e) ("[a]ny person failing to answer a complaint *may be* considered in default, and all relevant facts stated in such complaint *may be* deemed admitted.") (emphasis added).

The Commission orders:

(A) The Complaint is hereby dismissed, as discussed in the body of this order.

(B) Complainants' motion for Order of Default is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)