

## **Commission Orders BPA to Provide Comparable Transmission Access**

**December 8, 2011**

On December 7, the Federal Energy Regulatory Commission (Commission) used its authority under Section 211A of the Federal Power Act to direct Bonneville Power Administration (BPA) to submit a revised Open Access Transmission Tariff (OATT) that, according to the Commission, will provide “comparable transmission service that is not unduly discriminatory or preferential.” Section 211A, added to the Federal Power Act by the Energy Policy Act of 2005, grants the Commission the discretion to require unregulated transmission utilities to provide comparable, nondiscriminatory, open access to their transmission systems similar to the requirements imposed on jurisdictional public utilities. The order will have a significant impact on nonjurisdictional transmission providers’ reciprocity OATTs and may influence how these entities comply with the regional planning obligations of Order No. 1000.

The Commission’s order was the result of a complaint filed by a group of wind developers in the Pacific Northwest, alleging that BPA uses its environmental redispatch policy to curtail wind generators in an unduly discriminatory manner. Under the policy, BPA issues dispatch orders to curtail generation and uses the firm transmission rights associated with the wind generation output to deliver federal hydropower to the wind generators’ customers. The environmental redispatch policy also provides that BPA will not pay negative prices during environmental redispatch. BPA unilaterally amended its large generator interconnection agreements to reference the policy, requiring all generators with an interconnection agreement to comply with BPA’s redispatch orders and reduce generation when ordered to do so.

Despite BPA’s contention that challenges to its environmental redispatch policy are within the exclusive jurisdiction of the Ninth Circuit, the Commission determined it was appropriate for it to act under Section 211A because BPA’s environmental redispatch policy significantly diminishes open access to transmission and permits BPA to provide transmission service to others on terms and conditions that were not comparable to those it provides itself. BPA’s ability to order generators to reduce generation interrupts the transmission service obtained by customers in order to deliver federal hydropower from BPA’s system. Additionally, according to the Commission, the environmental redispatch policy harms load-serving entities by curtailing generation from renewable resources that would have been eligible to help satisfy state renewable portfolio standard requirements. As a result, the Commission ordered BPA to file tariff revisions within 90 days addressing the comparability concerns and providing transmission service on terms and conditions that are not unduly discriminatory or preferential.

For further information about the topics discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

**Washington, D.C.**

John D. McGrane  
Glen S. Bernstein  
Steve M. Spina  
Pamela C. Tsang

202.739.5621  
202.739.5994  
202.739.5958  
202.739.5199

[jmcgrane@morganlewis.com](mailto:jmcgrane@morganlewis.com)  
[gbernstein@morganlewis.com](mailto:gbernstein@morganlewis.com)  
[sspina@morganlewis.com](mailto:sspina@morganlewis.com)  
[ptsang@morganlewis.com](mailto:ptsang@morganlewis.com)

**About Morgan, Lewis & Bockius LLP**

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, regulatory, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—nearly 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, Washington, D.C., and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at [www.morganlewis.com](http://www.morganlewis.com).

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states.  
Please note that the prior results discussed in the material do not guarantee similar outcomes.

**© 2011 Morgan, Lewis & Bockius LLP. All Rights Reserved.**