



The Large Public Power Council

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December 20, 2011

Honorable Jeff Bingaman
United States Senate
Hart Senate Office Building, SH-703
Washington, DC 20510-3102

Dear Chairman Bingaman,

I am writing on behalf of the Large Public Power Council (LPPC) to express our concern over a December 7, 2011 order issued by the Federal Energy Regulatory Commission (FERC) and its impact on non-jurisdictional utilities like LPPC members.

LPPC has long been a supporter of open access for transmission service. LPPC members that provide significant transmission service themselves or through a regional transmission organization or independent system operator, and who own and/or operate transmission, have committed to offer open access transmission service under publicly-available open access transmission tariffs (OATTs).

The FERC order directs the Bonneville Power Administration (BPA), a non-jurisdictional utility, to revise its OATT essentially to conform to the FERC *pro forma* OATT – a requirement reserved for jurisdictional utilities. This directive is troubling because while the Energy Policy Act of 2005 (EPAAct 2005) authorized FERC to direct non-jurisdictional utilities to provide transmission service on terms that are comparable and not unduly discriminatory, it is hardly clear that EPAAct 2005 authorizes FERC to regulate non-jurisdictional utilities as it does jurisdictional utilities. Nor does the concern underlying the complaint in the case -- one regarding the difficulty BPA has had managing its hydro system during an unusual season in which water is overabundant -- justify an order effectively subjecting all of BPA's transmission operations to FERC jurisdiction.

Also troubling is the analysis performed by FERC in finding undue discrimination. EPAAct 2005 limited FERC's authority over the terms of transmission service offered by non-jurisdictional utilities by requiring a finding of *undue* discrimination. The FERC order does not appear to consider the differences in facts raised by BPA and others which FERC and the courts have held justify differences in treatment.

LPPC members urge you to request FERC stay its order pending rehearing and to work with other members of Congress to make a strong statement to FERC that its authority over non-jurisdictional entities is limited and that its interpretation of EPAAct 2005 appears neither in line with statutory language nor Congressional intent.

Sincerely,

Brian Moeck
Vice-Chair of Large Public Power Council