

Unauthorized Increase Charge (Transmission) and Failure to Comply

In Order 890-A, The Federal Energy Regulatory Commission established a rebuttable presumption that penalties for unreserved use of transmission up to two times the transmission provider's applicable point to point service rate are just and reasonable. BPA's actual TC-22 rate for hourly firm transmission service is 4.740 mills/kwh. BPA's charge for unauthorized use of transmission (UIC) is:

The lesser of:

1. 100 mills per kilowatt-hour plus the price cap established by FERC for spot market sales of energy in the WECC, or
2. 1000 mills per kilowatt-hour.

On April 1, 2011, FERC set the soft price cap in WECC and CAISO at \$1000/MWh (which is equal to 1000 mills per kWh). Accordingly, BPA's charge for unauthorized use of transmission is \$1000/MWh.

FERC determined that a just and reasonable charge for unauthorized use of transmission was two times the applicable rate. If BPA were to apply FERC's determination of what a just and reasonable charge for unauthorized use of transmission service, then BPA's UIC charge would be 9.480 mills/kwh (which is equal to \$9.480/MWh). Instead, BPA applies a UIC charge of \$1000/MWh. BPA's charge is over 100 times greater than the penalty that FERC determined would be just and reasonable.

NIPPC recognizes that BPA and its transmission customers collectively have an interest in ensuring that no transmission customer schedules more energy to flow than it has secured transmission rights. Nevertheless, NIPPC suggests that BPA's current UIC charge is far more punitive than it needs to be to give customers the incentive they need to keep their schedules within their transmission service reservations. FERC clearly intended that unauthorized use of transmission should be penalized; but BPA's current charges are unnecessarily punitive.

BPA does provide a mechanism through which customers may request a waiver of the UIC penalty. In practice, however, such waivers have proven nearly impossible to secure. The primary reason for the difficulty in securing a waiver is that BPA places the burden on the customer to show good cause for relief including demonstrating that the UIC:

1. Was inadvertent or was the result of an equipment failure or outage that the Transmission Customer could not have reasonably foreseen;
2. Could not have been avoided by the exercise of reasonable care; and

3. Did not result in harm to BPA's transmission system or transmission services, or to any other Transmission Customer.

In order to successfully secure a waiver, the transmission customer must demonstrate each of the three elements above; even though information related to the actual harm to BPA or other customers is wholly within BPA's control. NIPPC has heard that it is very difficult for customers to prove to BPA that an error could have been avoided by the exercise of reasonable care.

In the experience of NIPPC members, UIC charges typically occur in the following scenario. A load within BPA's Balancing Authority Area seeks a supply of energy and capacity from a seller. The seller and buyer both have existing portfolios of transmission rights on BPA's system. Once a deal is struck for the power sale, the buyer and seller may have a short timeline to optimize the transmission service details to support the transaction. Then either the buyer or seller inadvertently fails to accurately identify the existing transmission service that will support the transaction or fails to secure additional transmission service in time. In other words, the unauthorized use of unreserved transmission is not intentional, deliberate or nefarious. It is a result of competent people using standard trading practices who simply run out of time. In these cases, NIPPC suggests that a UIC charge in line with FERC guidance is sufficient. NIPPC also suggests that if BPA believes that a customer is intentionally, or recklessly exceeding its transmission reservation quantities, then BPA can establish a mechanism to establish substantially higher penalties for such bad behavior but where BPA retains the burden of proof to demonstrate that a customer deserves a more punitive charge.

NIPPC suggests that BPA adopt a revised Unauthorized Increase Charge to conform with FERC's guidance. The charge would be two times the applicable tariff rate. BPA could also define a process to levy an enhanced penalty charge that would apply to customers who intentionally or recklessly schedule in excess of their transmission reservations.

Failure to Comply Charge

Currently BPA's charge for a failure to comply with dispatch orders is the greater of:

1. 500 mills/kwh, or
2. 150 percent of an hourly index in the Pacific Northwest

NIPPC questions whether an index rate continues to be appropriate now that BPA has joined the Energy Imbalance Market. NIPPC suggests that BPA adopt a new failure to comply charge of 150 percent of the highest hourly average Load Aggregation Point (LAP) price for BPA as determined by the Market Operation (MO) under Section 29.11(b)(3)(C) of the MO Tariff for the month in which the unauthorized increase occurs – to mirror the language in BPA's proposed UAI charge.

NIPPC notes that it is not clear whether the UAI charge proposed for BP-24 retains the minimum charge of 150 mills/kwh for customers who exceed their energy demand for

power from the Federal system. If so, NIPPC suggests that 150 mills/kwh is also a reasonable floor for both the UIC and FTC charges that BPA imposes on transmission customers.

Generator Interconnection

FERC has proposed significant reforms to Generator Interconnection in RM22-14. The scope of that proposed rule covers many of the same tariff sections that BPA is proposing to revise in this tariff proceeding. NIPPC recommends that BPA staff review the NOPR and conform their proposals in TC-24 to adopt proposals in the draft LGIA proposed by the Commission where those proposals make sense for BPA and its customers. Certainly, NIPPC does not support BPA crafting new language from scratch to include in its LGIA and LGIP where BPA's proposed language differs from FERC's proposal on the same subject.

NIPPC also recommends that BPA begin to consider how it will incorporate the reforms set out in the final rule as closely as possible to the timeline FERC establishes in its final rule. Regulatory lag was a known risk at the time BPA and its customers worked out the BPA transmission tariff revision process. Nevertheless, the Commission's proposed reforms to the interconnection process in RM22-14 and to the transmission planning process in RM21-17 are substantial. Both dockets have proposals that will likely require greater coordination among neighboring transmission providers. Given how significant the reforms are in these rulemaking proceedings, NIPPC encourages BPA to consider how it can use the TC-24 process to adopt as much of the signalled reforms as possible in this tariff revision cycle – especially where the reforms make sense for BPA and the region. BPA can then use subsequent tariff revision cycles to conform its tariff where the final rules deviate from the current proposals.

Alternatively, NIPPC asks BPA to begin planning now to pursue tariff revisions on the compliance timeline set forth in any final rules in RM21-17 and RM-14 instead of simply planning to defer compliance to the next “regularly scheduled” tariff revision process. Committing to move on the same timeline to implement any final rules in RM21-17 and RM22-14, would ensure regional consistency in the transmission planning and interconnection processes.