

sale of electric energy, but no earlier than July 9, 1996.

(ii) For sales of electric energy pursuant to a requirements service agreement executed on or before July 9, 1996, this requirement will not apply unless separately ordered by the Commission. For sales of electric energy pursuant to a bilateral economy energy coordination agreement executed on or before July 9, 1996, this requirement is effective on December 31, 1996. For sales of electric energy pursuant to a bilateral non-economy energy coordination agreement executed on or before July 9, 1996, this requirement will not apply unless separately ordered by the Commission.

(3) Every public utility that owns, controls or operates facilities used for the transmission of electric energy in interstate commerce, and that is a member of a power pool, public utility holding company, or other multi-lateral trading arrangement or agreement that contains transmission rates, terms or conditions, must file a joint pool-wide or system-wide open access transmission pro forma tariff.

(i) For any power pool, public utility holding company or other multi-lateral arrangement or agreement that contains transmission rates, terms or conditions and that is executed after July 9, 1996, this requirement is effective on the date that transactions begin under the arrangement or agreement.

(ii) For any public utility holding company arrangement or agreement that contains transmission rates, terms or conditions and that is executed on or before July 9, 1996, this requirement is effective July 9, 1996, except for the Central and South West System, which must comply no later than December 31, 1996.

(iii) For any power pool or multi-lateral arrangement or agreement other than a public utility holding company arrangement or agreement, that contains transmission rates, terms or conditions and that is executed prior to July 9, 1996, this requirement is effective on December 31, 1996.

(iv) A public utility member of a power pool, public utility holding company or other multi-lateral arrangement or agreement that contains transmission rates, terms or conditions

and that is executed on or before July 9, 1996 must begin to take service under a joint pool-wide or system-wide pro forma tariff for wholesale trades among the pool or system members no later than December 31, 1996.

(d) *Waivers.* A public utility subject to the requirements of this section and Order No. 889, FERC Stats. & Regs. ¶31,037 (Final Rule on Open Access Same-Time Information System and Standards of Conduct) may file a request for waiver of all or part of the requirements of this section, or Part 37 (Open Access Same-Time Information System and Standards of Conduct for Public Utilities), for good cause shown. An application for waiver must be filed either:

(i) No later than July 9, 1996 or

(ii) No later than 60 days prior to the time the public utility would otherwise have to comply with the requirement.

(e) *Non-public utility procedures for tariff reciprocity compliance.* (1) A non-public utility may submit a transmission tariff and a request for declaratory order that its voluntary transmission tariff meets the requirements of Order No. 888 (Final Rule on Open Access and Stranded Costs).

(i) Any submittal and request for declaratory order submitted by a non-public utility will be provided an NJ (non-jurisdictional) docket designation.

(ii) If the submittal is found to be an acceptable transmission tariff, an applicant in a Federal Power Act (FPA) section 211 case against the non-public utility shall have the burden of proof to show why service under the open access tariff is not sufficient and why a section 211 order should be granted.

(2) A non-public utility may file a request for waiver of all or part of the reciprocity conditions contained in a public utility open access tariff, for good cause shown. An application for waiver may be filed at any time.

[Order 888, 61 FR 21693, May 10, 1996]

**§ 35.29 Treatment of special assessments levied under the Atomic Energy Act of 1954, as amended by Title XI of the Energy Policy Act of 1992.**

The costs that public utilities incur relating to special assessments under

the Atomic Energy Act of 1954, as amended by the Energy Policy Act of 1992, are costs that may be reflected in jurisdictional rates. Public utilities seeking to recover the costs incurred relating to special assessments shall comply with the following procedures.

(a) *Fuel adjustment clauses.* In computing the Account 518 cost of nuclear fuel pursuant to § 35.14(a)(6), utilities seeking to recover the costs of special assessments through their fuel adjustment clauses shall:

(1) Deduct any expenses associated with special assessments included in Account 518;

(2) Add to Account 518 one-twelfth of any payments made for special assessments within the 12-month period ending with the current month; and

(3) Deduct from Account 518 one-twelfth of any refunds of payments made for special assessments received within the 12-month period ending with the current month that is received from the Federal government because the public utility has contested a special assessment or overpaid a special assessment.

(b) *Cost of service data requirements.* Public utilities filing rate applications under §§ 35.12 or 35.13 (regardless of whether the utility elects the abbreviated, unadjusted Period I, adjusted Period I, or Period II cost support requirements) must submit cost data that is computed in accordance with the requirements specified in paragraphs (a) (1), (2) and (3) of this section.

(c) *Formula rates.* Public utilities with formula rates on file that provide for the automatic recovery of nuclear fuel costs must reflect the costs of special assessments in accordance with the requirements specified in paragraphs (a) (1), (2) and (3) of this section.

[Order 557, 58 FR 51221, Oct. 1, 1993. Redesignated by Order 888, 61 FR 21692, May 10, 1996]

#### **Subpart D—Procedures and Requirements for Public Utility Sales of Power to Bonneville Power Administration Under Northwest Power Act**

AUTHORITY: Federal Power Act, 16 U.S.C. 792-828c (1976 and Supp. IV 1980) and Pacific Northwest Electric Power Planning and Con-

servation Act, 16 U.S.C. 830-839h (Supp. IV (1980)).

#### **§ 35.30 General provisions.**

(a) *Applicability.* This subpart applies to any sales of electric power subject to the Commission's jurisdiction under Part II of the Federal Power Act from public utilities to the Administrator of the Bonneville Power Administration (BPA) at the average system cost (ASC) of that utility's resources (electric power generation by the utility) pursuant to section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 830-839h. The ASC is determined by BPA in accordance with 18 CFR part 301.

(b) *Effectiveness of rates.* (1) During the period between the date of BPA's determination of ASC and the date of the final order issued by the Commission, the utility may charge the rate based on the ASC determined by BPA, subject to § 35.31(c) of this part.

(2) Except as otherwise provided under this section, the ASC ordered by the Commission will be deemed in effect from the beginning of the relevant exchange period, as defined in § 301.1(b)(95) of this chapter. For any initial exchange period after the Commission approves a new ASC methodology, the ASC will be effective retroactively under this paragraph only if the utility files its new ASC within the time allowed under BPA procedures. Any utility that files a revised ASC with BPA in accordance with this paragraph must promptly file with the Commission a notice of timely filing of the new ASC.

(c) *Filing requirements.* Within 15 business days of the date of issuance of the BPA report on a utility's ASC, the utility must file with the Commission the ASC determined by BPA, the BPA written report, the utility's ASC schedules, material necessary to comply with 18 CFR 35.13(c), and any other material requested by the Commission or its staff.

[Order 337, 48 FR 46976, Oct. 17, 1983, as amended by Order 400, 49 FR 39300, Oct. 5, 1984]