

110 FERC ¶ 61,001
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Bonneville Power Administration

Docket No. NJ04-5-000

ORDER DENYING PETITION FOR DECLARATORY ORDER

(Issued January 4, 2005)

1. Bonneville Power Administration (Bonneville) filed a petition for declaratory order requesting that the Commission find the terms of an unexecuted long-term firm service agreement (Service Agreement) for firm point-to-point transmission service with Westward Energy, LLC (Westward) to be just and reasonable and consistent with or superior to the requirements of Order No. 888.¹ In this order, we find that Bonneville did not properly follow the provisions in its reciprocity open access transmission tariff (OATT) and that Bonneville did not offer a Service Agreement that was consistent with the terms and conditions of its OATT. This order benefits customers because it ensures that Bonneville's OATT is properly implemented.

I. Bonneville's Filing

2. On August 27, 2004, Bonneville submitted an unexecuted long-term Service Agreement for 520 MW of point-to-point transmission service for Westward over Bonneville's transmission system for the period September 1, 2004 to November 1, 2033. Bonneville requests that the Commission find that the Service Agreement is just and reasonable and consistent with or superior to the requirements of Order No. 888.

¹*Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Service by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. and Regs., Regulations Preambles July 1996-December 2000 ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd* in relevant part sub nom. *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd* sub nom. *New York v. FERC*, 535 U.S. 1 (2002).

3. Bonneville explains that it and Westward disagree over certain terms in the Service Agreement, and Westward, consistent with section 15.3 of Bonneville's OATT, has requested that Bonneville file the Service Agreement with the Commission on an unexecuted basis. Bonneville requests that the Commission permit the Service Agreement to go into effect on September 1, 2004, without modification or condition.
4. Bonneville further explains that because it is not a "public utility," it has styled its filing as a petition for declaratory order. Bonneville requests waiver from the requirements of 18 C.F.R. § 381.302(a)(2004) that require Bonneville to pay a filing fee, since as an agency of the United States Department of Energy engaged in the official business of the federal government, Bonneville is exempt from filing fees.²
5. Bonneville states that on January 25, 2001, Westward submitted a long-term firm point-to-point transmission request for 30 years to Bonneville, in addition to a request for generation interconnection into Bonneville's system to accommodate Westward's proposed new 520 MW generator (Summit Project).
6. Bonneville further states that on March 21, 2001, Bonneville and Westward entered into a System Impact Study Agreement under which Westward paid Bonneville \$60,000. Bonneville states that it completed the initial System Impact Study on April 10, 2002 and thereafter began work on a System Facilities Study. Bonneville indicates that it finished an incremental System Facility Study (Summit SFS Report) on May 19, 2004, which it provided to Westward. It states that the Summit SFS Report identified PacifiCorp and Portland General Electric Company (Portland General) as third-party affected systems and pointed out the possible acceleration of the need to replace the Clatsop transformer from the 2008-2009 timeframe to the 2006-2007 timeframe.
7. Bonneville explains that on November 12, 2003, it presented Westward with a conditional transmission agreement that Westward signed and accepted.³
8. Bonneville further explains that it later indicated to Westward that it could not offer 520 MW of transmission to Westward, and that under section 21.1 of Bonneville's OATT⁴ Bonneville was not responsible for making arrangements with PacifiCorp or Portland General with respect to necessary upgrades.

²See 18 C.F.R. §§ 381.108(a) and 381.302 (2004).

³Westward notes in its answer that Bonneville subsequently withdrew the transmission offer due to insufficient available transmission capacity.

⁴*United States Dept. of Energy-Bonneville Power Admin.*, 80 FERC ¶ 61,119 (1997).

9. Bonneville states that it later restudied the transmission request and, as a result of changed assumptions, determined that it could provide Westward with the full 520 MW of transmission on the Bonneville system without the need for any facilities additions or modifications other than the previously noted changes to the Clatsop transformer bank, which requires replacement by 2006-2007 instead of 2008-2009. Bonneville adds that Portland General and PacifiCorp were still designated as third-party affected systems.

10. Bonneville states that in July 2004 it tendered two agreements to Westward for its signature. One was the Service Agreement and the other was a Generation Interconnection Agreement. Bonneville indicates that Westward promptly signed and returned the Generation Interconnection Agreement. Bonneville further states that on July 8, 2004, it gave Westward an addendum to the Summit SFS Report that still identified PacifiCorp as an affected third-party system and required a remedial action scheme for Portland General's system; however, the need for network upgrades on Portland General's system was removed. As a result of the addendum, Bonneville explains that it gave Westward an additional week to determine whether to execute the Service Agreement. Bonneville further explains that on July 28, 2004, Westward returned the Service Agreement unsigned and requested that Bonneville file the unexecuted contract with the Commission pursuant to section 15.3 of Bonneville's OATT.

11. Bonneville argues that it has worked diligently to accommodate Westward's request for transmission service and thus is proposing to commence the requested transmission service at the earliest possible date of September 1, 2004. Bonneville states that the start date should be September 1, 2004 even though the Summit Project is not yet in operation because Westward has maintained its senior position in Bonneville's transmission queue based on its original requested in-service date of November 1, 2003, effectively preventing Bonneville from making capacity offers to lower-queued requests. Bonneville claims that the capacity Westward seeks to reserve is valuable and could be sold by Bonneville to other interested parties. Additionally, Bonneville argues that Westward has not submitted a new request for transmission service corresponding with the project's now-expected 2006 energization date so that the old request must govern.

12. Bonneville maintains that since it is not a jurisdictional facility it does not need to obtain a waiver from the Commission's filing requirements to establish an effective date of less than 60 days after filing. Bonneville further maintains that even if it is required to obtain Commission approval, there is ample authority supporting effective dates that do not comply with Commission requirements for unexecuted contractual filings.

13. Bonneville argues that it is able to provide the full amount of service requested on a firm basis and so there is no justification for Westward trying to claim the effective date should be delayed. Bonneville maintains that the only limitation on its ability to provide

the full amount of transmission service arises in the event that the Summit Project goes into full operation and PacifiCorp and Portland General have not completed needed facilities upgrades and changes. Bonneville argues that since the Summit Project is not scheduled to be operational until mid-2006 at the earliest, Westward has two years to solve the reliability issues with the third-party affected systems. Further, even if Westward is unable to resolve the reliability issues, Bonneville claims it is able to provide the requested service in all situations except during certain outage conditions. Bonneville maintains that this fact alone does not change the character of the service offered. Accordingly, Bonneville claims that Westward must either begin paying for the reservation of the service it requested or release the available transmission capacity to those below it in the queue. Bonneville argues that Commission precedent is quite clear that generator interconnection and transmission reservations are separate processes⁵ and thus the fact that Westward's generation is not yet operational is not grounds for Westward to continue to maintain its transmission reservation indefinitely at no cost until the unit achieves commercial operation.

14. Bonneville claims that under section 21.1 (Responsibility for Third-Party System Additions) of its OATT it is not "responsible for making arrangements for any necessary engineering, permitting or construction of transmission or distribution facilities on the system(s) of any other entity."⁶ Bonneville states that it has nevertheless participated in meetings between PacifiCorp and Westward in an attempt to resolve the reliability issues. However, in the event the reliability issues are not resolved, Bonneville has added Appendix A, Table 1, section 8 to the Service Agreement. As originally proposed by Bonneville on July 2, 2004, section 8 stated that "Westward will work directly with PacifiCorp and Portland General Electric to complete necessary transmission system upgrades on their affected transmission systems by December 30, 2005. Until such time as the necessary upgrades are completed, Westward will be curtailed first, prior to other firm transmission service if constraints develop."⁷

15. In the petition before the Commission, Bonneville has modified section 8 to provide a higher level of detail. In summary, the revised section 8 provides that: (1) Westward will work directly with PacifiCorp to complete necessary transmission

⁵See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 26, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004).

⁶*United States Dept. of Energy-Bonneville Power Admin.*, 80 FERC ¶ 61,119 (1997).

⁷Petition at 13.

system upgrades on their affected transmission system by such time as Westward's Summit Project is energized; (2) Westward will work directly with Portland General to incorporate the Summit Project into Portland General's proposed remedial action scheme; (3) prior to energization of the Summit Project, curtailment of service will be handled on a nondiscriminatory basis to the transactions that effectively relieve the constraint as specified in section 13.6 of Bonneville's OATT. After energization, if constraints develop and the necessary upgrades and remedial action scheme have not been completed and curtailment of Westward's service would relieve such constraints then Westward's service will be curtailed first. After completion of the necessary upgrades and remedial action scheme, curtailments will be made as specified in section 13.6 of Bonneville's OATT. Bonneville states that by adding this more detailed language it simply wants to clarify the consequences to Westward's transmission request should Westward not reach an agreement with PacifiCorp and Portland General. Bonneville argues that such nonconforming curtailment language is necessary to protect the priority rights of existing transmission and interconnection customers on Bonneville's system who would not face curtailment but for the existence of the operating Summit Project and the failure to timely complete the required third-party mitigation. Bonneville submits that this language is consistent with or superior to its requirements under its OATT and should be permitted to go into effect without modification or condition by the Commission.

16. Lastly, Bonneville states that, due to creditworthiness concerns with regard to Westward, Exhibit B to the Service Agreement requires Westward to prepay for transmission service each month by no later than the fifteenth day of the preceding month. Accordingly, Bonneville has notified Westward that its first prepayment was due on August 13, 2004, but, as of the date of this filing, Westward has failed to make such payment. Bonneville states that its filing shall serve as a notice of nonpayment to Westward as required in section 2 of Exhibit B and section 7.3 of the OATT. Further Bonneville reserves the right to take future action permitted under section 2 to Exhibit B and section 7.3 of the OATT to terminate the Service Agreement in the event of Westward's continuing nonpayment.

II. Notice of Filing and Interventions

17. Notice of Bonneville's petition was published in the *Federal Register*, 69 Fed. Reg. 54,665 (2004), with protests and interventions due on or before September 17, 2004. A timely motion to intervene was filed by Portland General. A motion to intervene and protest was filed by Westward. On October 1, 2004, Bonneville filed an answer to Westward's protest, and on October 8, 2004, Westward filed an answer to Bonneville's answer.

III. Westward's Protest

18. Westward requests that the Commission: (1) deny Bonneville's request for a declaratory order; (2) remand the Service Agreement to Bonneville with instructions to resolve with PacifiCorp, Portland General, and Westward the level of mitigation required, the facilities required, the remedial action schemes required, and Westward's pro rata share of the costs of facilities and terms of the remedial action scheme concerning the affected systems before Bonneville may offer Westward firm transmission; (3) declare that with respect to any mitigation obligations that Westward must be treated in the same manner as similarly situated transmission customers and that any curtailment of transmission must be imposed pro rata with other similarly situated transmission customers; and (4) clarify that Bonneville may not terminate Westward's queue rights during the pendency of this dispute before the Commission.

19. Westward states that on August 19, 2002, Bonneville presented Westward with an "Agreement for the Environmental and Transmission System Design for the SW Washington – NW Oregon Reinforcement Project" (Reinforcement Agreement). Westward explains that it was informed that, if it did not execute the Reinforcement Agreement and pay \$490,937, its request for service would be terminated and it would be withdrawn from Bonneville's Long Term OASIS Transmission Service Queue. As a result, Westward explains, it signed the Reinforcement Agreement and paid the fee.

20. Westward claims that at least some of the other potential transmission customers in the Bonneville queue (and perhaps many of them) failed to fund Bonneville's Reinforcement Project study, which Bonneville claimed was mandatory to remain in the queue. Nevertheless, Westward believes that Bonneville did not remove any of the other generating projects from the transmission queue (as it had insisted would be the case). Westward argues that if Bonneville had removed the nonpaying potential customers then Westward would have been the only party eligible to subscribe to the November 12, 2003 offer which provided for firm transmission service without the mitigation requirement that currently appears in section 8 of the Service Agreement. As a result, Westward argues that there is a serious question whether Westward should be required to pay for mitigation on the affected systems at all.

21. Westward also raises a concern with Bonneville's conclusion that there is no longer a need for network upgrades on Portland General's system. Westward states that Bonneville has provided nothing to Westward in writing indicating that Portland General agrees with Bonneville's conclusion that no facility upgrades are required to Portland General's system resulting from transmission to Westward. In fact, Westward points out that when Portland General did its own facilities study Portland General determined that

network upgrades would be required. Westward contends that the unresolved nature of impacts on Portland General as an affected system serves as a potentially large contingent liability to Westward.

22. Westward disputes Bonneville's claim that it has tied up valuable transmission rights thereby depriving Bonneville of revenue. First, Westward argues that it has worked with Bonneville over three and one-half years to perfect its transmission position and to obtain transmission of a quality that would permit Westward to finance its generating project, all the while dealing with Bonneville's own uncertainties about available transmission capacity. As evidence of this, Westward points out that it has diligently funded each of the studies that Bonneville identified as necessary to maintain Westward's place in Bonneville's queue. Second, Westward states that it offered to release its right to transmission to Bonneville until the start-up period preceding the operation date of the Summit Project.

23. Westward argues that Bonneville has imposed two conditions that leave the firmness of Westward's transmission up in the air. First, Westward argues that Bonneville insists that Westward's firm transmission is subject to Westward's obligation to reach agreement with PacifiCorp on facilities that must be installed on PacifiCorp's system. Westward states that the exact nature of the agreement with PacifiCorp is presently unknown. The critical point according to Westward is that Westward's payment obligation to PacifiCorp was undefined at the time that Bonneville insisted Westward sign the Service Agreement or lose its three and one-half year old standing in Bonneville's queue. Second, Westward argues that Bonneville's Service Agreement imposes the same requirement on Westward to reach agreement with Portland General. Westward claims that Bonneville's addendum to the Summit Report, which no longer requires facility upgrades although a remedial scheme is still necessary, really resolves nothing. Westward claims that Bonneville's two conditions on Westward constitute unique conditions that Bonneville does not impose on other firm point-to-point transmission customers.

24. Westward argues that Bonneville's transmission offer is inherently and unlawfully discriminatory. By making Westward the "first-to-be-curtailed" under section 8, Westward states that it is no longer receiving the same firm point-to-point transmission service as others similarly situated who are subject to pro rata curtailment. Under section 13.4 (Service Agreements) of Bonneville's OATT, Bonneville is required to offer a standard form agreement for point-to-point transmission service; by modifying the Service Agreement with section 8, Westward claims that Bonneville has violated section 13.4 and is providing discriminatory transmission service.

25. By offering Westward a contract prior to the resolution of reliability issues on third-party affected systems, Westward argues that Bonneville is in fact offering non-firm transmission service. Westward points out that Bonneville can only claim to be offering firm service when the Summit Project is not operational, *i.e.*, “Bonneville has no trouble providing the requested transmission that it demands that Westward pay for, unless Westward actually seeks to use the transmission it is paying for.”⁸ Westward argues that this has two potential disadvantageous effects. First, it will make it hard for Westward to obtain financing, since the cost of resolving third-party reliability issues is an unknown but potentially large contingency. Second, if Westward signs the Service Agreement then it will have little bargaining power with PacifiCorp and Portland General, because the two affected systems will know that Westward cannot walk away from unreasonable demands given Westward’s fixed \$546,676 monthly payment for transmission service to Bonneville.

26. Westward points out that if it is unable to reach an agreement with the affected systems Bonneville concedes that it could curtail Westward’s transmission. Westward argues that a Bonneville-ordered interruption due to a constraint on an affected system, which would not cause other generators in the same area to have to curtail their generation, clearly does change the character of service offered by Bonneville to Westward. Westward argues that this is contrary to Commission goals stated in Order No. 888⁹ and in the Commission’s *Standards of Conduct for Transmission Providers*.¹⁰

27. Westward argues that Bonneville’s interpretation of section 21.1 under the OATT is flawed. Westward claims that Bonneville asserts that section 21.1 absolves it of responsibility for resolving third-party affected system impacts and by implication allows Bonneville to make firm transmission offers even if unresolved issues on affected systems impact the firmness of the transmission that Bonneville can offer. Westward has three main arguments as to why this is a flawed interpretation. First, Westward contends that the section was clearly intended to apply to circumstances in which the transmission customer requests service on two interconnecting systems. Second, even if the language applies to a request for service from one provider, nothing in the OATT says the provider can compel a customer to take and pay for transmission which the provider due to reliability issues cannot in fact provide. Third, such a reading is inconsistent with the

⁸Protest at 19.

⁹Order No. 888, *supra* note 1.

¹⁰105 FERC ¶ 61,248 (2003).

provider's obligation to provide a good faith cost estimate of interconnection costs, including the costs of mitigation on affected systems under section 19.4 (Facilities Study Procedures).

28. Westward argues that allowing Bonneville to offer less than firm transmission in response to a request for firm transmission would set a dangerous precedent. Westward argues that this will result in providers imposing the obligation to "work out the details" with affected systems on the interconnecting generators or transmission customers which will have negative ramifications. Westward explains that potentially negative ramifications include, but are not limited to, a new transmission customer having to pay for network impacts that may be caused by multiple transmission customers, that may involve resolving pre-existing constraints and that may mean that transmission customers on system A will pay for the impacts to system B caused by system B's own transmission customers. Westward further argues that transmission providers are uniquely able to resolve inadvertent flow disputes amongst themselves, and presumably this is why when the Commission developed Order No. 2003,¹¹ the Commission concluded that "the transmission provider must take steps to integrate the interconnection customer's generating facility into its transmission system including coordinating the interconnection with affected systems – that it would take for its own affiliated generation."¹²

29. Lastly, Westward asks the Commission to clarify that Bonneville is not free to terminate Westward's transmission or queue rights during the pendency of this dispute. It asserts that Bonneville claims the right to terminate the Service Agreement under section 7.3 of its OATT. Westward argues that section 7.3 only applies if the transmission customer wants and elects to take the transmission service provided, pending resolution of the dispute. Here, Westward argues, it has not elected to take the offered less-than-firm transmission service and thus section 7.3 does not apply. Further, should Bonneville seek to invoke the OATT, Westward argues that Bonneville must go through the notice and dispute resolution steps called for in the OATT before it can purport to terminate Westward's rights. Westward also states that Bonneville claims the right to terminate the unexecuted Service Agreement under provisions of that Agreement. Westward maintains that the unsigned Service Agreement can confer no rights to Bonneville.

¹¹Order No. 2003, *supra* note 5.

¹²*Id* at P 108.

IV. Discussion

A. Procedural Matters

30. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

31. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Bonneville or Westward's answers and will, therefore, reject them.

B. Service Agreement

32. As an initial matter, we note that a major feature of the dispute between the parties is the fact that although Westward's Summit Project is not expected to be in service until sometime in mid-2006, Westward has never revised its original request for firm point-to-point transmission service and Bonneville has offered to provide transmission service commencing September 1, 2004. As set forth below we find that Bonneville followed some, but not all, of the provisions in its OATT for addressing Westward's application for firm transmission service.

33. There is no dispute between the parties regarding Westward's filing a completed application for service under section 17 (Procedures for Arranging Firm Point-To-Point Transmission Service) of Bonneville's OATT. Nor is there any claim that the OATT section 19 (Additional Study Procedures For Firm Point-To-Point Transmission Service Requests) provisions for conducting system impact and facility studies and cost reimbursement for such studies were not properly implemented. At this point however, the process broke down.

34. Bonneville's Summit SFS Report completed in May 2004 indicated that it could provide Westward with the full 520 MW of transmission on the Bonneville system without the need for any facility additions to Bonneville's system, but identified the need for upgrades to PacifiCorp's system and the need for Westward to coordinate with Portland General regarding a remedial action scheme for certain line outages that could occur on Portland General's system when the Summit Project commences service. At this point Bonneville offered a service agreement that provided for firm service until the Summit Project was energized and after that date offered a curtailable firm service unless the necessary upgrades and remedial action scheme had been completed.

35. The difficulty with Bonneville's approach is that its OATT does not provide for a curtailable firm transmission service.¹³ Under section 13.4 (Service Agreements) of Bonneville's OATT, Bonneville is required to "offer a standard form Point-to-Point Transmission Service Agreement . . ."¹⁴ There is simply no provision for it to offer curtailable firm transmission service. Moreover, Bonneville's offer of a curtailable firm transmission service to Westward violates section 13.6 (Curtailment of Firm Transmission Service) of its OATT, which specifically provides for non-discriminatory curtailment. By offering a transmission service to only one customer that subjects only that customer to possible curtailment, Bonneville is violating its OATT requirement that it curtail on a non-discriminatory basis. Accordingly, we agree with Westward that Bonneville's offer of a curtailable firm transmission service under its proposed Service Agreement is contrary to the provisions of its OATT and is unduly discriminatory.

36. Rather than taking the approach that it did, Bonneville should have followed the terms and conditions of its OATT in responding to Westward's request for transmission service. As is clear from the pleadings, Bonneville knew that it could only provide Westward the full 520 MW of firm transmission service on the Bonneville system, without the need for transmission upgrades, for the period from September 1, 2004 until the Summit Project was energized. Bonneville also knew that after the Summit Project was energized it would not be able to provide Westward the full 520 MW without upgrades to PacifiCorp's system and the need for Westward to coordinate with Portland General regarding a remedial action scheme for certain line outages that could occur on Portland General's system. Thus, because Bonneville could not provide the full 520 MW of transmission service for the term of service requested by Westward, section 19.7 (Partial Interim Service) of its OATT was applicable and Bonneville was obligated to follow it.

37. Under section 19.7, if there is insufficient available transmission capacity to grant a request for firm point-to-point transmission service, the transmission provider must offer the portion of the requested firm point-to-point transmission service that can be accommodated without addition of any facilities and through redispatch.¹⁵ Section 19.7

¹³We note that Bonneville has not proposed to revise its OATT to permit it to offer curtailable firm transmission service.

¹⁴*United States Dept. of Energy-Bonneville Power Admin.*, 80 FERC ¶ 61,119 (1997).

¹⁵*See, e.g., Morgan Stanley Capital Group v. Illinois Power Co.*, 83 FERC ¶ 61,204 at 61,912 (1998), *modified*, 83 FERC ¶ 61,299 (1998), *reh'g granted*, 93 FERC ¶ 61,081 (2000).

further provides that the transmission provider is not obligated to provide the incremental amount of the requested transmission service that requires the addition of facilities or upgrades to the transmission system until such facilities or upgrades have been placed in service. This same logic applies to facilities or upgrades on third-party systems. Thus, Bonneville properly offered to provide Westward 520 MW for the period from September 1, 2004 to the date the Summit Project was energized.¹⁶ However, Bonneville also should have offered to provide Westward with whatever portion of the 520 MW it could provide on a firm basis after the Summit Project was energized without upgrades to PacifiCorp's system or the need for Westward to coordinate with Portland General regarding a remedial action scheme. At such time as the necessary PacifiCorp upgrades are completed and a Portland General remedial action scheme is implemented, Bonneville should offer Westward an amendment to the service agreement to provide Westward the full 520 MW through November 1, 2033.

38. We also clarify that until such time as Bonneville offers a service agreement to Westward that is consistent with the OATT, as discussed above, Westward must maintain its current position in Bonneville's transmission queue.

39. Accordingly, we conclude that Bonneville did not properly follow the provisions of its OATT in responding to Westward's request for firm point-to-point transmission service and that the terms and conditions of the resulting unexecuted Service Agreement conflict with, and are not consistent with or superior to, the terms and conditions of Bonneville's OATT. Thus, we deny Bonneville's petition for a declaratory order.¹⁷

¹⁶ Westward would have the option of requesting extensions for commencement of service pursuant to section 17.7 (Extensions for Commencement of Service) of Bonneville's OATT. Under this section, Westward could obtain up to five one-year extensions, however, it would have to pay a non-refundable annual reservation fee equal to one-month's charge for firm transmission service and if another eligible customer submits a completed application for firm transmission service and such request can be satisfied only by releasing all or part of Westward's reserved capacity, that capacity would be released unless Westward agreed to pay the firm point-to-point transmission rate for its reserved capacity concurrent with the new service commencement date.

¹⁷We continue to stress the importance of regional planning especially in the climate of uncertainty. A regional view of the load growth, transmission expansion needs, and current and future supply needs combined with a regional cost recovery mechanism could have helped Bonneville better address the issues it faces today.

C. Filing Fees

40. Bonneville petitions for an exemption from the filing fee application to petitions for declaratory orders because, as an agency of the United States Department of Energy, engaged in the official business of the federal government, it is exempt from filing fees.¹⁸ We agree and, accordingly, grant Bonneville's petition for an exemption from the filing fee.

The Commission orders:

(A) Bonneville's request for a declaratory order is hereby denied, as discussed in the body of this order.

(B) Bonneville's petition for an exemption from the filing fee is hereby granted.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

¹⁸See 18 C.F.R. §§ 381.108(a), 381.302 (2004).