

128 FERC ¶ 61,168
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

United States Department of Energy,
Bonneville Power Administration

Docket No. NJ09-4-000

DECLARATORY ORDER

(Issued August 18, 2009)

1. On June 1, 2009, as amended on July 10, 2009, Bonneville Power Administration (Bonneville) filed a petition for declaratory order requesting the Commission find that Bonneville's proposed revisions to its tariff, involving its Network Open Season (Open Season) process and associated Precedent Transmission Service Agreement (Precedent Agreement), substantially conform or are superior to the *pro forma* tariff. In this order, we grant Bonneville's petition for a declaratory order.

I. Background

2. In Order No. 888,¹ the Commission established a safe harbor procedure for the filing of reciprocity tariffs by non-public utilities. Under this procedure, non-public utilities may voluntarily submit to the Commission an open access transmission tariff and petition for declaratory order requesting a finding that the tariff meets the Commission's comparability (non-discrimination) standards. If

¹ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,760 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,281-87, *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).

the Commission finds that the terms and conditions of such a tariff substantially conform or are superior to those in the *pro forma* tariff, the Commission will deem it to be an acceptable reciprocity tariff and will require public utilities to provide open access transmission service upon request to that particular non-public utility.²

3. In Order No. 890,³ the Commission reformed the *pro forma* tariff to better ensure that transmission service is provided on a non-discriminatory basis. Order No. 890 requires that a non-public utility that already has an Order No. 888 reciprocity tariff amend its tariff so that its provisions substantially conform or are superior to the new *pro forma* tariff in Order No. 890 if it wishes to continue to qualify for safe harbor treatment.⁴

4. Bonneville is not a public utility, but rather is a federal power marketing administration within the United States Department of Energy; it is not a public utility subject to sections 205 and 206 of the Federal Power Act (FPA).⁵ After the issuance of Order No. 888, Bonneville sought and obtained a determination by the Commission that it had an acceptable reciprocity tariff.⁶ Subsequently, Bonneville submitted additional filings to ensure that its tariff would continue to qualify for safe harbor status. While Bonneville filed a revised reciprocity tariff to comply

² In Order No. 888-A, the Commission clarified that, for reciprocity, a non-public utility must also comply with the Open Access Same-Time Information System (OASIS) standards of conduct requirements, or obtain a departure from them. *See* Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,286.

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 191.

⁵ 16 U.S.C. §§ 824d, e (2006).

⁶ *See United States Department of Energy – Bonneville Power Administration*, 80 FERC ¶ 61,119 (1997) (finding reciprocity tariff to be acceptable and requiring modifications); *United States Department of Energy – Bonneville Power Administration*, 84 FERC ¶ 61,068 (1998) (finding reciprocity tariff to be acceptable and requiring further modifications); *United States Department of Energy – Bonneville Power Administration*, 86 FERC ¶ 61,278 (1999) (finding reciprocity tariff to be acceptable).

with Order No. 890, the Commission concluded that further revisions are necessary before Bonneville's tariff can be deemed a safe harbor reciprocity tariff.⁷

5. In June 2008, the Commission granted, in part, a petition for declaratory order filed by Bonneville to revise certain provisions of its tariff implementing an Open Season process for transmission service requests, providing a cluster study process for transmission service requests, and establishing a Precedent Agreement that would be used in the Open Season process.⁸ In addition, the Commission granted a one-time waiver of certain existing tariff provisions in order to implement the Open Season process.⁹

6. Under its proposal, Bonneville would conduct an Open Season process annually for all long-term, point-to-point transmission service requests and network integration transmission service requests in the transmission queue at the time of each Open Season. In order for transmission service requests to remain in the transmission service queue, it would require customers to sign a Precedent Agreement for each eligible transmission service request.¹⁰ Bonneville explained that the Open Season process would eliminate the need for multiple transmission studies while realizing the benefits of the cluster study approach.

7. Bonneville subsequently held its first Network Open Season process in June 2008 (2008 Open Season).

⁷ See *Bonneville Power Administration*, 128 FERC ¶ 61,065 (2009).

⁸ *Bonneville Power Administration*, 123 FERC ¶ 61,264, at P 9 (2008) (June 2008 Order).

⁹ Bonneville requested waiver of various provisions in order to conduct the first Open Season process eligible transmission service requests in the transmission queue by April 15, 2008 and before the end of the application window, May 15, 2008. June 2008 Order, 123 FERC ¶ 61,264 at P 17.

¹⁰ A signed Precedent Agreement obligates customers to take the requested transmission service if Bonneville satisfies the following conditions following its cluster study: (1) Bonneville determines that it can provide service for transmission service requests in the cluster at embedded cost rates, and (2) Bonneville decides to build the facilities needed to provide that transmission service, after the completion of a National Environmental Policy Act study on the proposed facilities. June 2008 Order, 123 FERC ¶ 61,264 at P 9.

II. Bonneville's Filing

8. In the instant filing, as amended, Bonneville proposes changes to the Open Season process and Precedent Agreement based on lessons learned from its 2008 Open Season. Bonneville states that it is proposing changes to its tariff and the Precedent Agreement that: modify the timing of certain steps in the Open Season process; provide an additional method for customers to provide security; clarify certain provisions and procedures; require customers to submit information related to source and sink for transmission service requests; and adapt the deferral and competition provisions of its tariff to better fit its Open Season process.

9. Bonneville proposes to conduct its 2009 Open Season starting June 1, 2009, and to allow customers to return signed Precedent Agreements until August 19, 2009.

III. Notice of Filing, Interventions, and Comments

10. Notice of Bonneville's filing was published in the *Federal Register*, 4 Fed. Reg. 27,528 (2009), with interventions and protests due on or before June 29, 2009. The following entities filed timely motions to intervene and comments: Powerex Corporation (Powerex); American Wind Energy Association and Renewable Northwest Project (AWEA/RNP); and Iberdrola Renewables, Inc. (Iberdrola).¹¹ On July 10, 2009, Bonneville filed an answer to the comments and an errata to the Precedent Agreement. Notice of Bonneville's errata to the Precedent Agreement was issued by the Commission, with comments due on or before August 5, 2009. None was filed.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept Bonneville's answer filed in this proceeding because it has provided information that assisted us in our decision-making process.

¹¹ Iberdrola states that it supports and concurs with the comments filed by AWEA/RNP and offers no additional comments.

B. Substantive Matters

13. As discussed further below, we find that Bonneville's proposed tariff modifications addressing its Open Season process and Precedent Agreement substantially conform or are superior to the *pro forma* tariff.

1. Modifications to the Open Season Timelines and Security

14. Bonneville proposes to modify certain aspects of the timeline related to the Open Season process. Specifically, for the 2009 Open Season, Bonneville proposes to require customers to return signed Precedent Agreements and submit a security deposit by August 19, 2009. Bonneville states that this change provides customers additional time to decide whether to participate in the Open Season process. Bonneville states that by having both the agreement and security deposit due on the same date, this revision eliminates the possibility that a customer may return a Precedent Agreement, but fail to provide a security deposit.

15. In addition, Bonneville proposes to extend the deadline for the rolled-in rate determination under the Precedent Agreement from eight months to eleven months. Bonneville states that it learned from the 2008 Open Season process that more time is needed to determine whether to move forward with projects identified in the cluster study and that additional time was necessary to make fully informed decisions by Bonneville and its customers.

16. Bonneville also proposes to revise its tariff to provide that the 120-day timeline for completing the cluster study will not begin until fourteen days after the deadline for returning signed Precedent Agreements. This allows Bonneville time to update the queue. Bonneville explains that, in the 2008 Open Season process, it anticipated that removing transmission service requests and updating the queue after signed Precedent Agreements were received would be done quickly, but, in reality, found that it took two weeks.

17. Bonneville proposes to change the 36-month "NEPA Deadline" in the current Precedent Agreement to a 39-month deadline. Bonneville states that this revision ensures that it will complete National Environmental Policy Act (NEPA) review under the same deadline as the current Precedent Agreement, but recognizes that the internal process necessary to make the decision to build facilities will take some additional time after completion of the NEPA review.

18. Bonneville explains that the 2008 Open Season required customers to provide financial security equal to one year of the requested transmission service. Bonneville notes that, the security could be in the form of a letter of credit, a non-interest bearing cash deposit directly with Bonneville, or a deposit into an escrow account. However, Bonneville notes that certain governmental customers were

not able to use the escrow account option, due to state statutory restrictions and bond covenant provisions. According to Bonneville, these customers expressed concern over their limited security options. Therefore, Bonneville proposes to revise the security options to add prepayment, and to characterize the funds required to secure the Precedent Agreement as “performance assurance.” Bonneville explains that the prepayments will be (1) refunded upon termination of the Precedent Agreement, or (2) applied to the customer’s transmission service bill when service commences, until the prepayment is exhausted. Bonneville explains, further, that any governmental customer providing performance assurance via prepayment must also provide Bonneville with a legal opinion stipulating Bonneville’s rights to the prepaid funds are valid and enforceable.

Commission Determination

19. In the June 2008 Order, the Commission encouraged Bonneville to continue working with the Commission and stakeholders to improve future Open Season processes.¹² In response, Bonneville is proposing several changes to the Open Season process, its timelines, and the Precedent Agreement as a result of its experience with the 2008 Open Season, and in response to concerns expressed by stakeholders. We find that Bonneville’s proposed tariff changes, addressing its Open Season process and Precedent Agreement described above, substantially conform or are superior to the *pro forma* tariff provisions, because they improve upon the 2008 Open Season processes and Precedent Agreement, which the Commission found reasonable in the June 2008 Order.

2. Modifications Clarifying Existing Language and Procedures

20. In its filing, Bonneville proposes modifications to the Precedent Agreement, including: (1) revised definitions of eligible transmission service

¹² June 2008 Order, 123 FERC ¶ 61,264 at P 38, 40.

requests¹³ and direct assignment;¹⁴ (2) revisions to clarify that Bonneville will analyze its ability to provide transmission service without constructing new facilities and will sign Precedent Agreements to provide such service; (3) revisions to clarify that customers with Precedent Agreements are eligible for conditional firm service, but any such service awarded to Precedent Agreement customers will be provided under a separate agreement; and (4) revisions to clarify the separation between the NEPA process and Bonneville's decision to build facilities. Bonneville also proposes to offer customers with transmission service requests that are eligible for the 2009 Open Season the option to opt-out of the Open Season and have Bonneville study and process the transmission service request individually based on the *pro forma* tariff process.

¹³ Bonneville proposes to define "Eligible [Transmission Service Request]" ("Eligible TSR") as:

a network TSR in the OASIS queue by 5:00 pm PDT on the date established in a notice from Bonneville pursuant to [tariff] section 19.10, except that a TSR is not an Eligible TSR if any of the following applies: (i) the TSR is associated with an effective [Precedent Agreement], or (ii) Bonneville has determined, as of the start of the [Open Season] window stated in such notice, that it is able to provide Transmission Service for the TSR using existing system infrastructure, or (iii) the Customer requests, consistent with instructions in a notice from Bonneville, that the TSR be excluded from the [Open Season].

Bonneville tariff Attachment O, Network Open Season Precedent Transmission Service Agreement, section 2(f).

¹⁴ Bonneville proposes to define "Direct Assignment" or "Direct Assignment Facilities" as:

facilities or portions of facilities that are constructed by Bonneville that directly benefit the Customer, and that are either: (i) not integrated with the Integrated Network, as defined in Bonneville's General Rate Schedule Provisions, or (ii) not supporting the reliability or efficiency of the Integrated Network for the general benefit of the users of such system. The costs of such facilities may be proportionately directly assigned to the Customer.

Bonneville tariff Attachment O, Network Open Season Precedent Transmission Service Agreement, section 2(d).

Comments

21. Powerex challenges Bonneville's revised Precedent Agreement definition of "Eligible Transmission Service Requests," which Powerex believes may exclude transmission service requests that were determined to be priced incrementally following the 2008 Open Season. Powerex argues that 2008 Open Season transmission service requests for projects that Bonneville proposes to price incrementally should be re-evaluated as part of the 2009 Open Season cluster studies.

22. Powerex points out that Bonneville's revised definition of "Direct Assignment Facilities" in the Precedent Agreement differs from the definitions of those terms elsewhere in Bonneville's tariff. Powerex argues that the tariff definitions make clear that directly assigned facilities must be constructed for the sole benefit/use of the customer. On the other hand, Powerex notes, Bonneville's proposed definition appears to allow Bonneville to classify facilities as direct assignment facilities even if they will not be constructed for the sole benefit/use of the customer. Powerex argues, further, that the term "general benefit" used in Bonneville's proposed definition raises questions as to what criteria Bonneville will use for such a determination. Accordingly, Powerex requests the Commission find that the proposed definition of "Direct Assignment Facility" under the Precedent Agreement is not consistent with or superior to the definition contained in the *pro forma* tariff. Powerex also argues that a Precedent Agreement should only be terminated if all of the facilities to be constructed for the associated transmission service request are direct assignment facilities, not just any of the facilities.

23. Powerex points out that Bonneville is proposing to change references in the Precedent Agreement from "Determination of [Available Transfer Capability] Availability" to "Determination of Ability to Provide Transmission Service." Powerex states that, during stakeholder discussions, Bonneville explained that this modification would be proposed to reflect a broader evaluation of available transfer capability for flowgates as well as sub-grid issues. According to Powerex, Bonneville's methodology to calculate available transfer capability should already incorporate evaluation of sub-grid issues. Powerex argues that Bonneville should be required to continue using "Determination of [Available Transfer Capability] Availability" or, in the alternative, be required to specify the sub-grid issues it will be able to address under the modified reference that would not already be part of its evaluation of available transfer capability. Powerex argues, further, that, in the event Bonneville uses its discretion to grant service when posted available transfer capability is not sufficient, it must do so on a non-discriminatory basis, and

commit to log such instances and post the log as required in section 37.6(g)(4) of the Commission's OASIS regulations.¹⁵

24. While AWEA/RNP do not oppose the opt-out provision proposed for the 2009 Open Season, they note that the general policy of removing parties who do not participate in the Open Season from the queue should be considered a fundamental component of the Open Season process. AWEA/RNP state they will work with Bonneville to make sure the opt-out policy is only used under limited circumstances.

Bonneville's Answer

25. In response to Powerex's concern that projects from the 2008 Open Season that Bonneville proposed to price incrementally will be excluded from the 2009 Open Season, Bonneville explains that transmission service requests that were determined to be priced incrementally will be eligible for participation in subsequent Open Seasons.

26. Bonneville argues that its intent in revising its definition of "Direct Assignment" in the proposed Precedent Agreement was to reflect Commission policy on direct assignment. Bonneville notes that, pursuant to section 1.11 of its tariff, facilities that are constructed for the sole use or benefit of a transmission customer requesting transmission service may be directly assigned to the transmission customer in accordance with Commission policy. Bonneville explains that a transmission service request that is responsible for directly assigned costs is not removed from the queue; it retains its original position. Further, in situations where a transmission service request requires new facilities that are directly assigned and other new network facilities that pass the embedded cost rate determination, Bonneville explains that the customer may agree to pay the costs of the directly assigned facilities and the embedded cost rate for service over the network facilities, and proceed to take service. However, Bonneville notes, customers are not obligated to do so under their Precedent Agreements.

27. Bonneville explains that it is not proposing to change the process to evaluate transmission service requests, and that the proposed language change from "Determination of [Available Transfer Capability] Availability" to "Determination of Ability to Provide Transmission Service" is only to more accurately describe Bonneville's current practices and policies. Bonneville contends that the proposed change clarifies the process, because in some instances a request for transmission service cannot be granted because sub-grid issues are identified and must be resolved before Bonneville can offer service, even though

¹⁵ 18 C.F.R. § 37.6(g)(4) (2009).

the initial evaluation indicates that transfer capability is available. Further, in response to Powerex's request that Bonneville specify the sub-grid issues considered when evaluating transmission service requests, Bonneville states that it will post a list on its OASIS of sub-grid issues that are impeding its ability to provide service. Bonneville commits to post the first such list by September 30, 2009.

28. Moreover, Bonneville asserts that, if it uses discretion to grant service when posted available transfer capability is not sufficient, it will do so on a non-discriminatory basis. Bonneville points out that it already posts uses of discretion to the extent required by the Commission's regulations.

29. In response to AWEA/RNP's concern about the opt-out provision, Bonneville explains that it included an opt-out provision in its Order No. 890 reciprocity tariff, and that it has implemented that provision in the proposed Precedent Agreement and in the Open Season process business practice. Bonneville states that it is willing to work with AWEA/RNP and others to ensure that the opt-out is used in appropriate circumstances.

Commission Determination

30. We find that Bonneville's revised definitions and modified references under the Precedent Agreement substantially conform or are superior to the *pro forma* tariff. Under the Precedent Agreement, Bonneville may directly assign those facilities that directly benefit the customer. We note, in response to Powerex concerns regarding sub-grid issues that affect transmission service requests, Bonneville commits to post these issues on OASIS.

31. We also find that Bonneville's other proposed Precedent Agreement revisions substantially conform or are superior to the *pro forma* tariff, clarifying the terms and processes of the Open Season and cluster study in ways that improve Bonneville's ability to provide service. We also note that Bonneville clarified in its answer that transmission service requests priced incrementally following the 2008 Open Season may participate in the 2009 Open Season, which would result in their reevaluation as part of the 2009 cluster study. We note that Bonneville is willing to work with stakeholders to ensure the opt-out provision is used in appropriate circumstances.

3. New Planning Information

32. Bonneville proposes to add Exhibit B (Customer Information Required for Cluster Studies) to the Precedent Agreement, which would require Open Season participants to provide information related to source and sink for each transmission service request to indicate how the requested transmission service

will be used. Bonneville further explains that this information is needed to guide the 2009 Open Season cluster study to better identify the system reinforcements that may be necessary to support the requested service.

33. Bonneville notes that the information requested in proposed Exhibit B of the Precedent Agreement is consistent with the information required from customers under section 17.2(iv) (Completed Applications – Point-to-Point Transmission Service) and section 29.2 (Completed Applications – Network Integration Transmission Service) of its tariff regarding the submittal of source and sink information.

Comments

34. Powerex states that it will not be possible for some customers to provide source and sink information. For example, Powerex asserts that customers that sell out of a portfolio of generation resources to a number of customers using point-to-point transmission service can only provide Bonneville with the points on the specific transmission path that the customers wish to use, and not the specific substations for the source and sink. Powerex requests Bonneville revise Exhibit B of the Precedent Agreement to state that customers are only required to provide the source and sink information if the information is available.

35. Powerex also states that it is not clear how the information Bonneville requests in Exhibit B of the Precedent Agreement will interact with Bonneville's Attachment K regional transmission planning process. Accordingly, Powerex requests that the Commission direct Bonneville to provide an explanation of how the Open Season process fits within the *pro forma* tariff Attachment K process.

Bonneville's Answer

36. Bonneville clarifies that Exhibit B does not require specific sink location information unless, or until, it is available, but notes that source information is required. Bonneville argues that if the source and sink information is not available, then it is too soon to ask for a plan of service to build the infrastructure. Bonneville believes that customers participating in the Open Season process will have specific source information. Bonneville also notes that section 17.2(iv) of the tariff provides that a completed point-to-point application should include the "location of generating facility(ies) supplying the capacity and energy and the location of the load ultimately served by the capacity and energy transmitted."

37. Bonneville explains that the information requested in Exhibit B is needed to support the Open Season cluster study process, which leads to a decision whether service over proposed new facilities may be offered at embedded cost rates, and, thus, that information is not linked with its tariff Attachment K.

Commission Determination

38. As Bonneville explains, the source and sink information related to transmission service requests is important for the Open Season cluster study process to determine what requests can be fulfilled with existing or new infrastructure and at embedded or incremental cost rates. We agree that customers participating in the Open Season process should have specific source information available; however, we expect that, if the requirements of Exhibit B prove unreasonable in practice for Open Season customers, Bonneville will address any such issues with its stakeholders. Thus, we find that Bonneville's proposed Precedent Agreement Exhibit B substantially conforms or is superior to the *pro forma* tariff, because with the source and sink information Bonneville can perform a better cluster study of the Open Season requests and better identify those facilities, if any, that need to be built and what service can be provided at embedded cost rates.

4. Competitions

39. Currently, under Bonneville's tariff section 17.7 (Extensions for Commencement of Service), a transmission customer may obtain up to five one-year extensions for commencement of transmission service by paying a non-refundable reservation fee equal to one-month's charge for transmission for each one-year extension. If during any extension of the commencement of service any eligible customer submits a new completed application for firm transmission service and such request can only be satisfied by releasing all or part of the deferring transmission customer's reserved capacity, a deferral competition arises. Under a deferral competition: (1) the deferring transmission customer may release its reserved capacity to the new competing customer and have the deferring customer's transmission service request removed from the queue; or (2) the deferring customer may agree to begin paying the firm point-to-point transmission service rate concurrent with the service commencement date of the new competing request. The customer with the new competing request may choose to compete and take the capacity if it is released by the deferring customer or the competing customer may choose to not compete and instead have its request removed from the queue.

40. Bonneville proposes to refine the competition provisions for transmission service requests associated with Precedent Agreements, by adding section 4(e) to the Precedent Agreement. Proposed section 4(e)(1) of the Precedent Agreement provides that if a request associated with a Precedent Agreement is identified as a new competing request and the deferring customer (i.e. the customer that currently has the capacity reserved that is necessary to fulfill the new competing request) chooses to release its reserved capacity, the new competing customer with the Precedent Agreement must commence service on its requested service

commencement date and may not request any future commencement of service extensions. This provision varies from Bonneville's tariff section 17.7, because it requires that when a new competing request that is subject to a Precedent Agreement is identified, the new competing customer must compete (as a result of its commitment under the Precedent Agreement) and commence service if the deferring customer releases the capacity, instead of having the option of choosing not to compete and being removed from the queue, as customer's with requests that are not subject to Precedent Agreements would have. Bonneville explains that by signing a Precedent Agreement, customers are committing to take service apart from any deferral competitions that may arise. Therefore, Bonneville states, it is consistent with the obligations of the Precedent Agreement to: (1) require new competing customers with Precedent Agreements to compete if they are found to be a new competing request against a deferring customer; and (2) require new competing customers with Precedent Agreements to commence service if they prevail in a deferral competition.

41. In section 4(e)(2) of the Precedent Agreement, Bonneville proposes an additional competition provision, which provides that if a customer with a Precedent Agreement requests to defer its service commencement date and a new competing request is identified, then the Precedent Agreement (deferring) customer must commence service on the date requested by the new competing customer. This varies from tariff section 17.7, because the deferring customer (i.e., the customer with the Precedent Agreement) must compete and take service, due to its obligations under the Precedent Agreement, and does not have a choice to release its reserved capacity to the new competing customer. Bonneville explains that otherwise allowing a Precedent Agreement customer to release its reserved capacity pursuant to a deferral competition would be inconsistent with the customer's obligations under the Precedent Agreement.

42. Bonneville further asserts that revised section 4(e) of the Precedent Agreement substantially conforms with, or is superior to, the *pro forma* tariff, and that, by adding this section, it is attempting to reconcile tariff section 17.7 with the principles underlying the Open Season process. Bonneville states that the purpose of tariff section 17.7 is to allow customers flexibility in determining the initial date for bringing new generation online while, at the same time, providing Bonneville with the opportunity to mitigate cost of deferrals through reservation fees and competitions. Bonneville states that section 4(e) of the Precedent Agreement eliminates the possibility that requests for service, associated with Precedent Agreements, can be removed from the queue as a result of a deferral competition under tariff section 17.7.

Comments

43. AWEA/RNP do not support Bonneville's proposal regarding competitions where a customer holds a Precedent Agreement that commits it to take service and match any challenging transmission service request's in-service date.

AWEA/RNP argue that this proposal does not allow the Precedent Agreement customer the choice of releasing its capacity, as an alternative to advancing its start of service date. AWEA/RNP also argue that Bonneville's proposal results in the customer with the competing request losing the ability to claim the reserved capacity, because the Precedent Agreement customer is forced to continue its commitment to it, rather than having the ability to release it to the competitor. According to AWEA/RNP, Bonneville's proposal will force a customer to start paying for transmission service that it cannot use if the transmission provider has delayed the interconnection, or has not yet constructed facilities required for the interconnection.

44. Powerex contends that a customer that does not hold a Precedent Agreement will not be aware that the competition rules differ from section 17.7 of Bonneville's tariff when the competition over capacity involves a Precedent Agreement customer. Powerex recommends that Bonneville be required to modify section 17.7 of its tariff to specify the different competition rules that will apply if the competition involves a Precedent Agreement customer.

Bonneville's Answer

45. Bonneville explains that, in the case of a competition, the deferring customer's new commencement of service date is always later than the date the customer originally requested, and agreed to in the Precedent Agreement, resulting in the customer still gaining some benefit from deferral rights. Bonneville further clarifies that the commencement of service date originally requested by a customer is never advanced; rather, proposed Precedent Agreement section 4(e)(2) creates the potential for the length of deferrals to be restricted or reduced in the event of a competing request.

46. With regard to AWEA/RNP's concern about customers with Precedent Agreements not having the opportunity to release capacity in the event of a competing request, Bonneville offers that the deferring customer may always default, which would result in foregoing its performance assurance, but the capacity would be released to the customer with the new competing request, which is similar to tariff section 17.7, as applied to customers without Precedent Agreements.

47. Bonneville states that it will continue to have a dialogue with customers to determine if other feasible modifications can be made to mitigate the financial

impact of deferrals on Bonneville and its customers. Further, Bonneville states that, should a different solution than currently proposed in Precedent Agreement section 4(e) be reached in discussions for the 2010 Open Season, Bonneville will attempt to make that alternative available to 2009 Open Season participants to the extent practicable.

48. Finally, in response to Powerex's request that Bonneville's tariff section 17.7 be revised to explain the Open Season rules for the sake of competing customers that do not have a Precedent Agreement, Bonneville states that it will work with stakeholders to determine what tariff revisions, if any, are necessary to clarify tariff section 17.7.

Commission Determination

49. We find that Bonneville's revisions to section 4(e) of the Precedent Agreement enforce the commitments of Open Season participants to take service, and thus substantially conform or are superior to the *pro forma* tariff. We note, however, that Bonneville has committed to continue working with stakeholders to discuss other feasible modifications to address deferrals, as well as to discuss any necessary revisions to tariff section 17.7 to make customers without Precedent Agreements aware of the competition provisions in section 4(e) of the Precedent Agreement.

5. Embedded Cost Rate Determination

50. Section 5(b) of the Precedent Agreement provides that Bonneville shall evaluate the projected cost and benefits of proposed expansion facilities consistent with its Commercial Infrastructure Financing Proposal to determine in its discretion whether transmission service can reasonably be provided at embedded cost rates.¹⁶

Comments

51. AWEA/RNP request that Bonneville include among the factors considered during the Open Season Process, the valuation of the geographic diversity of variable generation in making transmission-planning decisions.

52. Powerex states that, at a January 1, 2009 Open Season meeting, Bonneville provided its customers with a list of criteria used in the embedded cost rate analysis for the 2008 Open Season. However, Powerex asserts, Bonneville did not provide information about the weighting given to the criteria, which were used to

¹⁶ We note that Bonneville did not propose any substantive revisions to this section in the instant proceeding.

determine which transmission projects went forward at embedded cost rates versus incremental cost rates. Powerex requests the Commission direct Bonneville to provide a matrix for each project analyzed during the 2009 Open Season that reflects the weighting of each of the criteria.

Bonneville's Answer

53. In response to AWEA/RNP, Bonneville states that it already considers the value of wind diversity through its use of the Commercial Infrastructure Financing Proposal, as it did in making its embedded cost rate determination for the 2008 Open Season.

54. Bonneville notes that Powerex does not challenge Bonneville's decision on what projects move forward at embedded cost rates, but rather Powerex appears to seek additional information. Bonneville states that it will attempt to provide additional detail in future Open Season embedded cost rate decision documents, including details regarding the wind diversity analysis.

Commission Determination

55. We find that section 5(b) of the Precedent Agreement informs customers of the basis for determining if a project qualifies for embedded cost rates, and thus substantially conforms or is superior to the *pro forma* tariff. Further, we note that Bonneville clarified that it considers the value of wind diversity in its decision-making process and that it will work to provide more details of its analysis and decisions in the future, as requested by Powerex. We expect that Bonneville will make such information available, when feasible, and thus decline Powerex's request to direct Bonneville to provide a matrix for each project analyzed during the 2009 Open Season.

6. Other

56. Bonneville notes that, in the June 2008 Order, the Commission encouraged Bonneville to work with the Commission and stakeholders to tailor future Open Season processes to expand Bonneville's intertie capacity.¹⁷ Bonneville explains that, in response to the June 2008 Order, it has begun to scope the process that will be used to conduct an open season for intertie capacity. Bonneville explains, further, that such an intertie open season will require more coordination with other entities than its current Open Season process, because existing interties are often jointly-owned, and an intertie connects different transmission providers' systems.

¹⁷ See June 2008 Order, 123 FERC ¶ 61,264 at P 38, 40.

Bonneville states that, although it is in the early stages of its scoping effort, it hopes to conduct an intertie open season in 2010.

57. Bonneville notes that the Commission's June 2008 Order also encouraged it to integrate new renewable resources into its transmission service.¹⁸ Bonneville argues that the results of the 2008 Open Season demonstrate that the design of the Open Season process encourages the integration of new renewable resources. Bonneville points out that, following the 2008 Open Season, it was able to offer 1,089 MW of transmission service associated with new wind generation. Bonneville also notes that it decided to move ahead with construction or NEPA review of proposed new transmission facilities that will allow it to provide an additional 2,575 MW of transmission service at embedded cost rates to transmission service requests associated with new wind generation.

58. We recognize the success of Bonneville's 2008 Open Season, and the revisions to the Open Season process and Precedent Agreement proposed herein should improve the processes going forward. We encourage Bonneville to continue its efforts to improve the Open Season process including the incorporation of intertie capacity as Bonneville has committed to do. We likewise encourage Bonneville to continue to work with its stakeholders as it further refines its Open Season process.

C. Filing Fee Waiver

59. Bonneville requests a waiver of the filing fee for petitions for declaratory orders.¹⁹ Bonneville explains that it is a federal power marketing administration, and, thus, is exempt from such fees.

60. Bonneville petitions for an exemption from the filing fee based on its non-jurisdictional status. As we stated in Order No. 888-A, "[the Commission's] regulations specifically exempt states, municipalities, and anyone who is engaged in the official business of the Federal Government from filing fees."²⁰ Because Bonneville is an agency of the United States Department of Energy engaged in the official business of the Federal government, we will grant Bonneville's request for waiver of the filing fee.

¹⁸ *Id.* P 38.

¹⁹ *See* 18 C.F.R. § 381.108 (2009).

²⁰ Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,288-89 (citing *South Carolina Public Service Authority*, 75 FERC ¶ 61,209, at 61,694-95 (1996) (citation omitted)).

The Commission orders:

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

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.