135 FERC ¶ 61,023
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

United States Department of Energy – Bonneville Power Administration — Docket No. NJ09-1-001

ORDER DENYING REHEARING

(Issued April 12, 2011)

1. On July 15, 2009, the Commission issued an order[1] addressing a petition by the Bonneville Power Administration (Bonneville) seeking a declaratory order by the Commission finding that certain deviations and revisions to Bonneville's Open Access Transmission Tariff (tariff) comply with the directives in Order No. 890[2] and that its tariff qualifies as an acceptable reciprocity tariff. The Declaratory Order granted Bonneville's petition, in part, subject to further modification of its tariff. In addition, the Declaratory Order concluded that, because Bonneville's tariff was still incomplete, it did not yet substantially conform to the Order No. 890 *pro forma* Open Access Transmission Tariff (OATT) and, therefore, the Commission denied Bonneville's request for safe harbor reciprocity status.

2. Bonneville filed a request for rehearing requesting that the Commission reconsider its determination that Bonneville needed to adopt certain provisions in order to obtain reciprocity status. In this order, we deny rehearing.

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[1] *United States Department of Energy –Bonneville Power Administration*, 128 FERC ¶ 61,057 (2009) (Declaratory Order).

[2] *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), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

Background

3. On October 3, 2008, Bonneville filed a petition for a declaratory order in Docket No. NJ09-1-000.[3] Bonneville's petition stated that it was a non-jurisdictional utility with an approved reciprocity tariff on file with the Commission and that it was making its filing primarily to conform its reciprocity tariff to the *pro forma* tariff included in Order No. 890. In its petition, Bonneville requested approval of certain deviations from Order No. 890 because such deviations substantially conform or are superior to the Order No. 890 *pro forma* OATT. In addition, Bonneville added and deleted certain other provisions to conform to the *pro forma* OATT.

4. In the Declaratory Order, the Commission found, among other things, that Bonneville did not fully comply with Order No. 890 because its tariff did not contain all of the provisions of the Order No. 890 *pro forma* OATT.[4] As relevant here, the Commission directed Bonneville to submit a compliance filing to address three provisions of its reciprocity tariff. First, in response to Bonneville's request to delay implementation of Order No. 890's requirements for implementing conditional firm service based on system conditions, the Commission stated that Bonneville should "further revise its tariff to offer conditional firm service identifying the system conditions

[3] Bonneville is a federal power marketing agency within the United States Department of Energy. The Commission has previously determined that Bonneville is not a public utility within the meaning of sections 201, 205, and 206 of the Federal Power Act, 16 U.S.C. §§ 824, 824d, 824e (2006). *See, e.g.*, Declaratory Order, 128 FERC ¶ 61,057 at P 2.

[4] Order No. 890 also adopted a separate *pro forma* tariff schedule 9 for generator imbalance service, to formalize generator imbalance provisions and standardize treatment of imbalance provisions that exist in various interconnection agreements. Bonneville omitted generator imbalance provisions from its tariff because of operational issues due to the influx of wind energy on its system requiring further study and stakeholder process. The Commission found that Bonneville's tariff did not yet meet the safe harbor reciprocity requirements, given the absence of a standardized generator imbalance service offered through its tariff. Therefore, the Commission explained that Bonneville should submit a compliance filing incorporating standardized generator imbalance provisions, consistent with Order No. 890, to qualify for safe harbor status. As of the date of this order, Bonneville has not yet made such a compliance filing.

when conditional curtailment may apply, consistent with the Order No. 890 *pro forma* tariff."[5]

5. Second, based on concerns over the need to upgrade its software functionality prior to implementing a new billing system, and the uncertainty surrounding lifting of the price cap for transmission capacity reassignments, Bonneville proposed to omit making revisions to section 23.1 of its tariff (under which the transmission provider charges or credits the reseller for the difference between the price reflected in the reseller's service agreement with the transmission provider and the price reflected in the reseller's service agreement with the assignee). The Commission found this omission made Bonneville's tariff incomplete and that Bonneville could not satisfy the safe harbor reciprocity requirements without modifying its tariff to include the transmission capacity reassignment provisions of section 23.1 of Order No. 890's *pro forma* OATT.[6]

6. Third, in Order No. 890, the Commission required transmission providers that provide "no earlier than" time frames for submission of transmission requests to treat all requests received within a specified time period as having been received simultaneously (simultaneous window process).[7] Bonneville asserted that it was not able to implement a simultaneous window process because, to accomplish this, it needed to first modify certain software. Specifically, Bonneville indicated that it had access to software that supports the Mid-Continent Area Power Pool (MAPP) simultaneous window process, but that it needed to customize and test the software to ensure compatibility with its own systems.[8] The Commission found that Bonneville would not meet the safe harbor reciprocity requirements until its simultaneous window process is ready for

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[5] Declaratory Order, 128 FERC ¶ 61,057 at P 20. The Commission concluded that Bonneville's proposed deviations from the Order No. 890 *pro forma* tariff for conditional firm service using a specified number of curtailable hours per year substantially conform with, or are superior to the Order No. 890 *pro forma* tariff. Bonneville sought a brief delay in implementing the service, and the Commission stated that Bonneville should communicate its timeline for offering conditional firm service based on a specified number of curtailable hours per year to its customers in a notice posted on OASIS, within 30 days of the date of the order.

[6] *Id.* P 24.

[7] *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1419.

[8] Bonneville asserted that it would develop the simultaneous window process as soon as possible.

implementation and it has shown the Commission that its process substantially conforms, or is superior to the Order No. 890 *pro forma* tariff.[9]

Bonneville's Rehearing Request

7. On rehearing, Bonneville asked the Commission to reconsider its decision that Bonneville must include the three provisions outlined above in its tariff to obtain reciprocity status. Bonneville argued that it should be allowed to forego these provisions because they would require a substantial financial investment in systems and software and Bonneville already has a number of significant systems projects on hold as it undertakes its highest-priority tasks, that include most prominently a variety of initiatives to enable the reliable integration of wind generation into Bonneville's transmission system. Based on preliminary discussions with its customers since the issuance of the Commission's order, Bonneville also represented that the region sees significant costs and uncertain benefits in the adoption of the provisions in question.

8. In addition, in its rehearing request, Bonneville stated that it will conduct further discussions with its customers regarding reciprocity and the costs and benefits of adding the above-discussed provisions to its tariff. Bonneville asked for an opportunity to request that the Commission convene a conference to discuss certain issues regarding reciprocity prior to ruling on this request for rehearing.[10]

9. In a notice issued on December 20, 2010, the Commission granted Bonneville until January 31, 2011, to take one of the following actions: (1) file a tariff that conforms with the Commission's requirements for reciprocity; (2) ask the Commission to convene a conference for the purposes stated in Bonneville's request for rehearing; or (3) ask the Commission to rule on Bonneville's request for rehearing without convening a conference. On January 28, 2011, Bonneville submitted its response, informing the Commission that it should rule on its pending rehearing without convening a technical conference. Since that date, comments have been filed by various persons, which are split among those seeking and those opposing the convening by the Commission of a technical conference. None of these comments address the merits of Bonneville's rehearing request.

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[9] Declaratory Order, 128 FERC ¶ 61,057 at P 44.

[10] Bonneville reiterated this argument in a motion it filed on November 23, 2010. We also note that four entities oppose this request.

Discussion

10. Bonneville argues that implementing the three tariff provisions at issue here, as a condition of obtaining reciprocity status, would create costs that it would prefer to avoid or delay, given competing demands on its time and money. It further argues that it does not believe that incurring these particular costs would result in commensurate benefits to its customers. Bonneville therefore requests that the Commission grant its request for safe harbor status, absent further modification to its tariff.

11. Bonneville's amended tariff omits provisions required by Order No. 890. The Commission finds that these tariff provisions are an integral part of open access transmission service and a tariff lacking these provisions cannot substantially conform with, or be superior to, the Order No. 890 *pro forma* tariff provisions. We note that Bonneville's original petition suggested that it needed additional time to implement these provisions; however, on rehearing, Bonneville now focuses on the costs of adopting these provisions, arguing that these costs may not be commensurate with the benefits. But Bonneville has provided no estimate of the costs to implement the "simultaneous window process" and the revisions to sections 23.1 and 15.4 of its tariff, or how they may exceed the benefits. Consequently, the Commission denies rehearing and rejects the argument that Bonneville is entitled to safe harbor reciprocity status absent further modification to its tariff to comply with the requirements of Order No. 890. As the Commission explained in *Bonneville Power Administration*, 123 FERC ¶ 61,264, at P 27 (2008) (footnotes omitted),

> Bonneville must amend its tariff so that its provisions substantially conform to or are superior to the new *pro forma* OATT in Order No. 890 if it wishes to qualify for safe harbor treatment. Until it has amended its tariff in such a manner, we find, it does not qualify for such safe harbor treatment.[11]

12. We recognize the voluntary nature of Bonneville's filing as well as Bonneville's non-public utility status. We also recognize that Bonneville has already made a number of revisions to its tariff, with the intention of satisfying the requirements for safe harbor treatment. In addition, we recognize that Bonneville has important responsibilities under its enabling statutes that it cannot ignore. However, the current iteration of Bonneville's tariff does not yet meet the requirements to qualify for safe harbor reciprocity status and Bonneville has not demonstrated that its revised tariff substantially conforms to or is superior to the *pro forma* OATT adopted in Order No. 890. To meet these requirements,

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[11] *Accord Southwest Transmission Cooperative, Inc.*, 118 FERC ¶ 61,121, at P 12, n.10 (2007).

Bonneville must revise its OATT as specified in our earlier order. We also see no need to convene a formal technical conference on these matters at this time.

The Commission orders:

Bonneville's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.