

122 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

United States Department of Energy -
Bonneville Power Administration

Docket No. EF07-2021-000

ORDER CONFIRMING AND APPROVING RATES
ON A FINAL BASIS

(Issued February 21, 2008)

1. In this order, we confirm and approve the Bonneville Power Administration's (Bonneville) proposed 2008 Transmission and Ancillary Services rates (2008 transmission rates) on a final basis. In addition, we dismiss Bonneville's request for a finding that certain revised rates satisfy the Commission's comparability standards applicable to non-public utilities under the reciprocity conditions of Order No. 888.¹

Background

2. On May 22, 2007, Bonneville, in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act),² and Subpart B of Part 300 of the Commission's regulations,³ filed with the Commission its proposed 2008

¹ See *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 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 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).

² 16 U.S.C. §§ 839e(a)(2), 839e(i)(6) (2000).

³ 18 C.F.R. Part 300 (2007).

transmission rates.⁴ On September 20, 2007, the Commission granted interim approval of the proposed rates effective October 1, 2007.⁵

3. Bonneville also seeks a finding by the Commission that the proposed 2008 transmission rates associated with service provided under its open access transmission tariff (OATT)⁶ satisfy the Commission's comparability standards for non-public utilities under the reciprocity conditions of Order No. 888.⁷

Interventions and Comments

4. Timely motions to intervene were filed by Avista Corporation, PacifiCorp, Portland General Electric Company, Idaho Power Company, Industrial Customers of Northwest Utilities, Powerex Corp., Public Power Council, and Puget Sound Energy, Inc., raising no substantive issues.

5. In addition, the Electric Power Supply Association (EPSA) and the Northwest and Intermountain Power Producers Coalition (NIPPC) filed a joint motion to intervene and protest. LS Power Associates, L.P. (LS Power) filed a timely motion to intervene and protest. EPSA, NIPPC and LS Power challenge Bonneville's plan to no longer compensate unaffiliated generators within its control area for generation-supplied reactive power service as unduly discriminatory and in violation of Commission policy. Bonneville filed an answer in response to the protests.

⁴ The proposed transmission rate schedules for which Bonneville seeks approval for the two year period ending September 30, 2009 include: FPT-08.1 (Formula Power Transmission); FPT-08.3 (Formula Power Transmission); IR-08 (Integration of Resources); NT-08 (Network Integration); PTP-08 (Point-to-Point Firm Transmission); IS-08 (Southern Intertie Transmission); IM-08 (Montana Intertie Transmission); UFT-08 (Use-of-Facilities Transmission); AF-08 (Advance Funding); TGT-08 (Townsend-Garrison Transmission); IE-08 (Eastern Intertie); ACS-08 (Ancillary Services and Control Area Services); and GRSPs (General Rate Schedule Provisions for Transmission and Ancillary Services).

⁵ *United States Department of Energy – Bonneville Power Administration*, 120 FERC ¶ 61,240 (2007).

⁶ The proposed rate schedules associated with Bonneville's OATT are: Network Integration (NT-08), Point-to-Point Firm Transmission (PTP-08), Southern Intertie (IS-08), Montana Intertie (IM-08), Use-of-Facilities Transmission (UFT-08), Advance Funding (AF-08), Ancillary Services and Control Area Services (ACS-08), and GRSPs.

⁷ *See supra* note 1.

6. In its order granting interim approval, in addition to addressing the interventions, the Commission afforded the parties an additional opportunity to comment on final confirmation and approval of Bonneville's proposed rates.⁸ None were filed.

Discussion

Standard of Review

7. Under the Northwest Power Act, the Commission's review of Bonneville's transmission rates is limited to determining whether Bonneville's proposed rates meet the three specific requirements of section 7(a)(2):

- (A) they must be sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs;
- (B) they must be based upon the Administrator's total system costs; and
- (C) insofar as transmission rates are concerned, they must equitably allocate the costs of the Federal transmission system between Federal and non-Federal power.⁹

8. Unlike the Commission's statutory authority under the FPA, the Commission's authority under section 7(a)(2) of the Northwest Power Act does not include the power to modify the rates. The responsibility for developing rates in the first instance is vested with Bonneville's Administrator. The rates are then submitted to the Commission for approval or disapproval. In this regard, the Commission's role can be viewed as an appellate one: to affirm or remand the rates submitted to it for review.¹⁰ The governing statute and case law do not provide the Commission latitude to review Bonneville's rates in the same manner as the Federal Power Act (FPA)¹¹ provides for public utilities. If

⁸ See 120 FERC ¶ 61,240, at P 10.

⁹ See 16 U.S.C. § 839e(a)(2) (2000).

¹⁰ See, e.g., *United States Department of Energy - Bonneville Power Administration*, 67 FERC ¶ 61,351, at 62,216-17 (1994); see also, e.g., *Aluminum Company of America v. Bonneville Power Administration*, 903 F.2d 585, 592-93 (9th Cir. 1989).

¹¹ 16 U.S.C. §§ 824 *et seq.* (2000).

Bonneville has satisfied the standards of the Northwest Power Act,¹² the Commission is required to confirm and approve these rates.¹³

Review and Approval of Proposed Rates

9. With the foregoing principles in mind, we confirm and approve Bonneville's proposed transmission rates on a final basis.

10. While section 7(a) of the Northwest Power Act requires only that the Federal investment be repaid sometime within a reasonable number of years, traditionally we have considered the repayment period as 50 years. In addition, we have required that some reasonable intermediate level of repayment should exist to ensure that repayment will occur by the end of the fiftieth year.

11. The traditional measure of the adequacy of Bonneville's revenues has been the so-called power repayment study. Bonneville's repayment studies indicate that the future revenues collected under the proposed rates will be sufficient to recover the Administrator's total system costs of, in this case, transmitting the power and energy, including the recovery of the remaining federal investment, with interest, over the remaining repayment period. Our review of Bonneville's repayment studies thus indicates that its rates are consistent with sections 7(a)(2)(A) and (B) of the Northwest Power Act.¹⁴ Section 7(a)(2)(C) of the Northwest Power Act requires that the costs of Bonneville's transmission system be equitably allocated between Federal users of the system (Bonneville's power customers) and non-Federal users (transmission customers).

¹² 16 U.S.C. §§ 839e(a)(2), 839e(i)(6) (2000). Bonneville must also comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

¹³ *Central Lincoln Peoples' Utility District v. Johnson*, 735 F.2d 1101, 1110 (9th Cir. 1984) (holding that the Northwest Power Act "remove[s] FERC from actual ratemaking...and limit[s] FERC's role to financial oversight of the regional rates").

¹⁴ We also find that the repayment studies were prepared in a manner consistent with Order No. RA 6120.2, using generally accepted accounting principles, as appropriate, and sound forecasting techniques designed to approximate as closely as possible actual results.

Bonneville instituted a procedure some years ago to implement this requirement, which the Commission has approved, and which Bonneville has applied in this case.¹⁵

Comparability

12. In its filing, Bonneville identifies rates, adjustments, charges and rate provisions for certain rate schedules contained in its General Rate Schedule Provisions for Transmission and Ancillary Service Rates (GRSPs) associated with its open access transmission tariff (OATT) that are charged to its Power Services merchant and to its other transmission customers taking transmission service under its OATT during the rate period at issue in this proceeding. Bonneville requests the Commission to find that these rates satisfy the Commission's comparability standards applicable to non-public utilities pursuant to the reciprocity conditions of Order No. 888.

13. We dismiss Bonneville's request for a comparability finding vis-à-vis Order No. 888 as to its proposed rates. To the extent Bonneville seeks such a finding, it should do so in a separate filing. Our focus in this proceeding is limited. We will not make findings about whether Bonneville's rates satisfy comparability in this proceeding.¹⁶

14. We also note that this filing does not purport to be a filing in compliance with Order Nos. 890 and 890-A.¹⁷ We note, further, that Bonneville must amend its OATT so that its provisions substantially conform to or are superior to the new *pro forma* open access transmission tariff in Order Nos. 890 and 890-A if it wishes to continue to qualify for safe harbor treatment. Until it has amended its OATT in such a manner, it does not qualify for such safe harbor treatment.

¹⁵ See *United States Department of Energy – Bonneville Power Administration*, 39 FERC ¶ 61,078, at 61,209 (1987); *Central Lincoln Peoples' Utility District v. Johnson (Central Lincoln)*, 735 F.2d 1101, 1128 (9th Cir. 1984).

¹⁶ See *United States Department of Energy – Western Area Power Administration*, 85 FERC ¶ 61,273, at 62,095, 62,098 (1998), *reh'g denied*, 99 FERC ¶ 61,055, at 61,233-34 (2002); see also *Southwest Transmission Cooperative, Inc.*, 122 FERC ¶ 61,001 (2008) (*Southwest*); *United States Department of Energy – Bonneville Power Administration*, 114 FERC ¶ 61,237 (2006). We have previously explained that the review standard for safe harbor reciprocity transmission tariff rates is that the non-public utility (here, Bonneville) must provide sufficient information for us to conclude that the rates charged to other customers are comparable to the rates it charges itself. *Southwest*, 122 FERC ¶ 61,001 at P 5 & n.6.

¹⁷ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007).

Intervenors' Protests

15. EPSA, NIPPC and LS Power challenge Bonneville's plan to no longer compensate unaffiliated generators within its control area for generation-supplied reactive power service. They challenge the Commission's approach to compensating generators for the provision of reactive power.¹⁸ They urge the Commission to put the burden on utilities to establish that they themselves are not receiving compensation that would trigger payment obligations to merchant generators. They argue that the Commission's reactive power service policy requires continued compensation for merchant generators; because Bonneville will pay its own generators for reactive power, Bonneville must also pay non-Bonneville generators. They request the Commission either to disapprove Bonneville's filed rates as they relate to the transfer of generation-supplied reactive power costs, or confirm that, until such time as Bonneville's own generation no longer receives compensation, Bonneville is required to compensate non-Bonneville generation.

16. The Commission finds that intervenors raise arguments that challenge policy decisions that are beyond the scope of this proceeding and that more appropriately should be raised in the context of other proceedings.¹⁹ As noted above, the Commission's role in this proceeding is limited.

¹⁸ See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

¹⁹ In fact, issues concerning Bonneville payments to merchant generators for reactive power were addressed in *Bonneville Power Administration v. Puget Sound Energy, Inc.*, 120 FERC ¶ 61,211 (2007), *reh'g pending*, an order issued subsequent to the protests filed in this proceeding.

The Commission orders:

Bonneville's proposed 2008 transmission rates are hereby confirmed and approved on a final basis effective October 1, 2008 through September 30, 2009, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.