

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Avista Corporation (formerly, Washington
Water Power Company)

Docket Nos. OA97-21-000
OA97-21-001

Public Utility District No. 1 of Chelan
County, Washington

Public Utility District No. 1 of Douglas
County, Washington

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued December 5, 2005)

1. On October 30, 1996, the Avista Corporation (formerly Washington Water Power Company), the Public Utility District No. 1 of Chelan County, Washington, and the Public Utility District No. 1 of Douglas County, Washington (collectively, Petitioners) filed a petition for declaratory order determining that the Pacific Northwest Coordination Agreement (PNCA) is not subject to the requirements of Order No. 888¹ or, in the alternative, requesting an order granting waiver of all the requirements imposed by Order No. 888. As discussed below, we grant the petition, based on our finding that the PNCA is not subject to the requirements of Order No. 888.

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. and Regs., Regulations Preambles, January 1991-June 1996 ¶ 31,036 at 31,654, 31,729-30 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. and Regs., Regulations Preambles, July 1996-December 2001 ¶ 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. 2002), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

Background

2. Petitioners state that the PNCA is not a coordination agreement as defined by the Commission in Order No. 888.² Petitioners state that the PNCA coordinates the use of water in order to efficiently and effectively optimize available flows for power generation and to accommodate non-power purposes. Petitioners state that these non-power purposes include water requirements for flood control, erosion control, fish and wildlife interests, irrigation, protection of Native American assets, transportation, recreation and other multipurpose uses, which are observed in the annual planning process under the PNCA.

3. Under the terms of the PNCA, the United States Army Corps of Engineers, each non-federal party,³ the Bonneville Power Administrator, and the United States Bureau of Reclamation each appoint a representative and an alternate to a Coordinating Group which implements the terms of the PNCA. The Coordinating Group coordinates each projects use of water to maximize use of water for power purposes while also accommodating non-power uses. The Coordinating Group is responsible for coordinating the planning and operation of over one hundred hydroelectric resources owned and operated in the Pacific Northwest.

Notice of Filing

4. Notice of Petitioner's October 30, 1996 filing was published in the *Federal Register*, 61 Fed. Reg. 58,504 (1996), with comments, interventions, and protests due on

² In Order No. 888, the Commission defined coordination agreements as "all power sales agreements, except requirements service agreements." Order No. 888 at ¶ 31,666 n.178. In addition, for purposes of implementing non-discriminatory, open access requirements of Order No. 888, the Commission divided bilateral coordination agreements into two general categories: (1) economy energy coordination agreements are contracts and service schedules thereunder that provide for trading of electric energy on an "if, as, and when available" basis, but do not require either the seller or buyer to engage in a particular transaction; and (2) non-economy energy coordination agreements are any non-requirements service agreements, except economy energy coordination agreements. *Id.*

³ Additional parties to the PNCA include the City of Eugene, Oregon; City of Seattle, Washington; City of Tacoma, Washington; Public Utility Districts No. 1 of Chelan County, Pend Oreille County, Douglas County, Cowlitz County, and Snohomish County, Washington; Public Utility District No. 2 of Grant County, Washington; Puget Sound Power & Light Company; Portland General Electric Company; PacifiCorp; the Washington Water Power Company; the Montana Power Company; and Colockum Transmission Company.

or before November 21, 1996. Puget Sound Power & Light Company, Portland General Electric Company, Member Systems of the New York Power Pool, the Coalition for a Competitive Electric Market, Electric Clearinghouse, Inc., Hydro-Quebec, U.S. Generating Company, and PanEnergy Trading and Market Services, L.L.C. filed motions to intervene.

5. On February 29, 2000, the Commission issued a basket order stating that, due to the passage of time since Petitioners filed in response to the requirements of Order Nos. 888 and 888-A, it believed that the protesters' concerns may have become moot.⁴ Thus, the Commission directed certain public utilities, including Petitioners, to consult with the intervenors and protesters in their respective cases concerning any continuing disputes, and to file a report with the Commission regarding those consultations. On May 1, 2000, Petitioners complied with that order and restated their request that the Commission grant their petition for declaratory order.

6. Notice of Petitioners' May 1, 2000 compliance filing was published in the *Federal Register*, 65 Fed. Reg. 31,160 (2000), with comments, interventions, and protests due on or before June 8, 2000. None were filed.

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

Discussion

8. In Order No. 888, the Commission required that all bilateral economy energy coordination contracts executed on or before July 9, 1996 be modified to require unbundling of any economy energy transaction occurring after December 31, 1996.⁵ Order No. 888 did not impose any such requirements on non-economy energy coordination agreements.

9. We find that the PNCA is not an economy energy coordination agreement as defined in Order No. 888. The PNCA does not provide for the trading of energy on an "as available" basis at the discretion of the buyer and seller. Instead, operations are coordinated under the direction of the Coordinating Group. Therefore, we grant Petitioners petition for declaratory order and find that the PNCA is not subject to the unbundling requirements of Order No. 888.

⁴ *Allegheny Power Services Company*, 90 FERC ¶ 61,224 (2000).

⁵ Order No. 888 at ¶ 31,729-30.

The Commission orders:

Petitioners' petition for declaratory order is hereby granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.