

154 FERC ¶ 61,077
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Bonneville Power Administration

Docket No. EF15-9-000

ORDER CONFIRMING AND APPROVING RATES ON A FINAL BASIS

(Issued February 2, 2016)

1. In this order, we confirm and approve the Bonneville Power Administration's (Bonneville) proposed 2016 wholesale power and transmission rates on a final basis.

I. Background

2. On July 29, 2015, Bonneville filed a request for interim and final approval of its wholesale power¹ and transmission² rates in accordance with the Pacific Northwest

¹ The proposed wholesale power rates for which Bonneville seeks approval for the period October 1, 2015 through September 30, 2017, include: Priority Firm Power Rate (PF-16); New Resource Firm Power Rate (NR-16); Industrial Firm Power Rate (IP-16); Firm Power Products and Services Rate (FPS-16); and Power General Rate Schedule Provisions (GRSPs).

² The proposed transmission rates for which Bonneville seeks approval for the period October 1, 2015 through September 30, 2017, include: Formula Power Transmission Rate (FPT-16.1); Formula Power Transmission Rate (FPT-16.3); Integration of Resources Rate (IR-16); Network Integration Rate (NT-16); Point-to-Point Rate (PTP-16); Southern Intertie Rate (IS-16); Montana Intertie Rate (IM-16); Use-of-Facilities Transmission Rate (UFT-16); Advance Funding Rate (AF-16); Ancillary Services and Control Area Services Rates (ACS-16); Townsend-Garrison Transmission Rate (TGT-16); WECC and Peak Service Rate (PW-16); Oversupply Rate (OS-16); Eastern Intertie Rate (IE-16); and Transmission General Rate Schedule Provisions (GRSP).

Electric Power Planning and Conservation Act (Northwest Power Act)³ and Part 300 of the Commission's regulations.⁴ Bonneville projected that the filed rates will produce average annual power revenues of \$2.861 billion, and average annual revenues from transmission and ancillary services rates of \$1.085 billion. Bonneville asserted that this level of annual revenues is sufficient to recover its costs for the 2016-2017 rate approval period, while providing cash flow to ensure at least a 95 percent probability of making all payments to the United States Treasury in full and on time for each year of the rate period. As relevant here, Bonneville's proposed transmission Oversupply Rate OS-16 includes Oversupply Management Proposal (OMP) costs that are incurred when Bonneville has excess power from hydroelectric projects and must pay others to use the excess power, in order for Bonneville to meet its fish- and wildlife-protection obligations.

3. Numerous parties filed motions to intervene.⁵ Iberdrola filed a protest, and Avista, Portland General, Puget Sound Energy, and PacifiCorp (collectively Joint Commenters) filed joint comments in opposition.⁶ On September 17, 2015, the Commission granted interim approval of Bonneville's rates for the period of October 1, 2015, through September 30, 2017, and provided an opportunity for additional comments.⁷ No additional comments were received. On September 18, 2015, Bonneville filed an answer to the Iberdrola Protest and the Joint Comments.

³ 16 U.S.C. § 839e (2012).

⁴ 18 C.F.R. pt. 300 (2015).

⁵ Motions to intervene were filed by Avista Corporation (Avista), Portland General Electric Company (Portland General), Puget Sound Energy, Inc. (Puget Sound Energy), Pacificorp, Turlock Irrigation District, Calpine Corporation, Public Power Council, Industrial Customers of Northwest Utilities, Northwest Requirements Utilities, Public Power Council, Iberdrola Renewables, LLC (Iberdrola), Idaho Power Company, M-S-R Public Power Agency, Caithness Shepherds Flat LLC, Modesto Irrigation District, Pacific Northwest Generating Cooperative, Western Public Agencies Group, and Powerex Corporation.

⁶ Iberdrola Aug. 28, 2015 Protest (Iberdrola Protest); Avista, Portland General, Puget Sound Energy, and PacifiCorp Aug. 28, 2015 Comments (Joint Comments).

⁷ *Bonneville Power Admin.*, 152 FERC ¶ 61,201 (2015).

II. Protest and Comments

4. Iberdrola and Joint Commenters opposed Bonneville's proposed OS-16 rate. These parties argued that OMP costs should be allocated to Bonneville's power rates rather than its transmission rates because OMP costs are caused by Bonneville's fish and wildlife obligations and Bonneville's inability to use excess power.⁸ Iberdrola also argued that if Bonneville wishes to extend the use of the OS-16 rate, including the OMP costs, for the 2015-17 rate approval period, it should submit those rates to the Commission for review and approval under Federal Power Act (FPA) section 211A⁹ in the complaint proceeding brought by Iberdrola and others against Bonneville in Docket No. EL11-44.¹⁰

5. In its answer, Bonneville emphasizes that the Commission's jurisdiction to review Bonneville's rates is limited to the standards set forth in the Northwest Power Act,¹¹ and the standards in the Northwest Power Act do not allow the Commission to modify rates. Bonneville also asserts that the Commission has previously found that oversupply costs are transmission costs, and that in the previous instance the parties advanced the same reasoning they advance here in opposing the earlier, similar OS-14 rate,¹² which the Commission approved.¹³ Bonneville also contends that it is not required to file its OS-16

⁸ Iberdrola Protest at 4-6; Joint Comments at 7-14.

⁹ 16 U.S.C. § 824j-1(f) (2012).

¹⁰ Iberdrola Protest at 7-8. In the complaint proceeding in Docket No. EL11-44, the Commission found that Bonneville's Environmental Redispatch Policy resulted in non-comparable treatment of certain generating resources under FPA section 211A. Therefore the Commission directed Bonneville to submit revisions to its open access transmission tariff that provided for transmission service under terms and conditions that were comparable to those under which Bonneville provides transmission service to itself and that were not unduly discriminatory or preferential. *See, e.g., Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, 149 FERC ¶ 61,044 (2014) (2014 Order). On compliance Bonneville proposed the OMP, which set forth the terms and conditions for displacing and compensating generation during periods of oversupply.

¹¹ Bonneville Answer at 3-4.

¹² *Id.* at 6 (citing Iberdrola Protest at 5-7; Joint Comments at 7-14).

¹³ *Bonneville Power Admin.*, 149 FERC ¶ 61,043 (2014) (OS-14 Rate Order).

rate for review and approval under FPA section 211A.¹⁴ Bonneville acknowledges, however, that the Commission retains authority under section 211A, whether or not Bonneville files its rates in Docket No. EL11-44, because section 211A gives the Commission authority to issue a rule or order requiring unregulated transmitting utilities, such as Bonneville, to provide comparable rates.¹⁵

III. Discussion

A. Procedural Matters

6. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁶ prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept Bonneville's answer because it has provided information that assisted us in our decision-making process.

B. Standard of Review

7. Under the Northwest Power Act, the Commission's review of Bonneville's regional power and transmission rates is limited to determining whether Bonneville's proposed rates meet the three specific requirements of section 7(a)(2) of the Northwest Power Act:¹⁷

(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 Bonneville's other costs;

(B) they must be based upon Bonneville's total system costs; and

¹⁴ Bonneville Answer at 6-7 (citing 2014 Order, 149 FERC ¶ 61,044 at P 40, in which the Commission invoked its authority under FPA section 211A).

¹⁵ 16 U.S.C. § 824j-1(b)(1) (2012).

¹⁶ 18 C.F.R. § 385.213(a)(2) (2015).

¹⁷ 16 U.S.C. § 839e(a)(2) (2012). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

(C) insofar as transmission rates are concerned, they must equitably allocate the costs of the federal transmission system between federal and non-federal power.

8. Commission review of Bonneville's non-regional, non-firm rates also is limited. Review is restricted to determining whether such rates meet the requirements of section 7(k) of the Northwest Power Act,¹⁸ which requires that the rates comply with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act. Taken together, those statutes require that Bonneville's non-regional, non-firm rates:

(A) recover the cost of generation and transmission of such electric energy, including the amortization of investments in the power projects within a reasonable period;

(B) encourage the most widespread use of Bonneville power; and

(C) provide the lowest possible rates to consumers consistent with sound business principles.

9. Unlike the Commission's statutory authority under the FPA, the Commission's authority under sections 7(a) and 7(k) 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.¹⁹

C. Analysis

10. With the foregoing principles in mind, we will approve on a final basis Bonneville's proposed rates. Based upon Bonneville's filings with the Commission, including the power repayment studies, we find that the revenues expected to be collected under the proposed rates will be sufficient to recover Bonneville's total system costs,

¹⁸ 16 U.S.C. § 839e(k) (2012).

¹⁹ See, e.g., *U.S. Dept. of Energy - Bonneville Power Admin.*, 67 FERC ¶ 61,351, at 62,216-17 (1994); see also, e.g., *Aluminum Co. of America v. Bonneville Power Admin.*, 903 F.2d 585, 592-93 (9th Cir. 1989).

including recovery of the remaining federal investment with interest, over the repayment period.

11. 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.

12. The traditional measure of the adequacy of Bonneville's revenues has been the power repayment study. Bonneville's power repayment studies indicates that the revenues expected to be collected under the proposed rates will be sufficient to recover Bonneville's total system costs, including the recovery of the remaining federal investment, with interest, over the repayment period.

13. In sum, our review of Bonneville's power repayment studies indicates that its proposed rates are consistent with sections 7(a)(2)(A) and (B) of the Northwest Power Act.

14. We disagree with the argument in the Iberdrola Protest and the Joint Comments that OMP costs should be allocated to Bonneville's power rates rather than its transmission rates. The same question has been raised before and addressed before,²⁰ and was also raised and addressed in the context of the prior OS-14 rate,²¹ thus warranting our again finding that Bonneville's proposed OS-16 rate is the same as the OS-14 rate, resulting in these oversupply costs being transmission costs.

15. Also, as noted above, the Commission's authority under sections 7(a) and 7(k) 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. In the instant filing, the Administrator has certified that the rate schedule is consistent with applicable laws.²² We are satisfied that the Administrator's certification in conjunction with Bonneville's other rate schedules demonstrate that the proposed OS-16 rate is consistent with section 7(a)(2)(A) and (B) of the Northwest

²⁰ 2014 Order, 149 FERC ¶ 61,044 at P 40, *appeal denied sub nom. Northwest Requirements Utilities v. FERC*, No. 13-70391 (9th Cir. 2015).

²¹ OS-14 Rate Order, 149 FERC ¶ 61,043 at P 25.

²² Bonneville Record of Decision at 105-106.

Power Act. 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). Bonneville instituted a procedure some years ago to implement this requirement, which the Commission has approved, and which Bonneville has applied in this case.²³

16. In addition, as to whether Bonneville must file the OS-16 rate for FPA section 211A review and approval, as Iberdrola has asserted, that issue is beyond the scope of this proceeding. The Commission's review here is limited to the question of whether the proposed rate is consistent with the standards set forth in the Northwest Power Act, and we find that it is.

The Commission orders:

Bonneville's proposed wholesale power and transmission rates are hereby confirmed and approved on a final basis for the period October 1, 2015, through September 30, 2017.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²³ See *U.S. Dept. of Energy – Bonneville Power Admin.*, 122 FERC ¶ 61,143, at P 11 (2008); see also *U.S. Dept. of Energy – Bonneville Power Admin.*, 39 FERC ¶ 61,078, at 61,209 (1987); *Central Lincoln Peoples' Utility District v. Johnson*, 735 F.2d 1101, 1128 (9th Cir. 1984).