

120 FERC ¶ 61,211
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Bonneville Power Administration

v.

Docket No. EL07-65-000

Puget Sound Energy, Inc.
Hermiston Power Partnership
Chehalis Power Generating, L.P.
PPM Energy, Inc.
TransAlta Centralia Generation, L.L.C.

ORDER ON COMPLAINT

(Issued September 4, 2007)

1. On May 30, 2007, the Bonneville Power Administration (BPA) filed a complaint pursuant to section 206 of the Federal Power Act (FPA) against Puget Sound Energy, Inc. (Puget), Hermiston Power Partnership (Hermiston), Chehalis Power Generating, L.P. (Chehalis), PPM Energy, Inc. (PPM), and TransAlta Centralia Generation, L.L.C. (TransAlta) (collectively, the IPPs). In the complaint, BPA requests the Commission to issue an order finding that the IPPs' rate schedules for reactive power are no longer just and reasonable and that the rates contained in them for reactive power service to BPA should be reduced to zero, effective October 1, 2007.¹ For the reasons set forth below, we will grant the relief requested in the complaint.

¹ While BPA requests the IPPs' rates for reactive power service *in general* be reduced to zero, BPA points out that it "will remain obligated to compensate the IPPs if BPA requests that they provide reactive service outside of the dead band." BPA Complaint at 2, n.1. BPA's language refers to the distinction between a generator's providing reactive power as an ordinary component of real power within an established power factor range, or "within the deadband" and a generator's providing reactive power outside of an established power factor range, or "outside the deadband." The "within the deadband" compensation is what BPA intends to cease paying its merchant affiliate, and seeks to also cease paying to the IPPs. Since the IPPs each have one rate for all reactive power service, BPA's position is that their entire reactive power rate schedules must be reduced to zero.

I. Background

2. BPA is a federal agency within the U.S. Department of Energy that operates an electric transmission system in the Pacific Northwest. While BPA is not a public utility subject to the Commission's jurisdiction under the FPA, it has a reciprocity open access transmission tariff on file with the Commission.

3. Pursuant to a multi-party settlement agreement in 2005,² the IPPs (except PPM) filed reactive power service rate schedules with the Commission. In the settlement agreement, BPA agreed to pay the IPPs for reactive power service pursuant to such rate schedules. Also in the settlement agreement, BPA and the IPPs agreed to a moratorium on such rates so that no changes to them would be allowed before October 1, 2007, with the exception of annual updates to the service factor. There was further litigation at the Commission over the amount of the rates, some of which is not resolved.³ BPA and PPM separately negotiated a rate for reactive power service, which was accepted for filing by the Commission.⁴

4. On April 23, 2007, BPA's Administrator issued a Record of Decision in the administrative proceeding establishing BPA's transmission and ancillary services rates for the period October 1, 2007 through September 30, 2009.⁵ In that document, the BPA Administrator approved the proposal of BPA's Transmission Services organization to no longer compensate its merchant affiliate Power Services organization for Reactive Supply and Voltage Control from Generation Sources Service within the deadband, effective October 1, 2007.

II. Complaint

5. In its complaint, BPA states that in Order No. 888, the Commission described two methods for supplying reactive power: (1) by installing facilities as part of the transmission system, and (2) by using generating facilities. BPA states that the costs of reactive power for installed transmission facilities are part of the cost of basic transmission service, whereas the costs of reactive power using generating facilities are part of a separate ancillary service that must be unbundled from basic transmission

² *TransAlta Centralia Generation, L.L.C.*, 111 FERC ¶ 61,087 (2005).

³ *Chehalis Power Generating, L.P.*, 118 FERC ¶ 63,009 (2007) (initial decision).

⁴ *PPM Energy, Inc.*, Docket No. ER05-1518-000 (Nov. 17, 2005) (unpublished letter order).

⁵ *U.S. Department of Energy, Bonneville Power Administration*, Docket No. EF07-2021-000 (2007).

service. BPA states that the Commission subsequently clarified that a generator producing or absorbing reactive power within a deadband is not providing an ancillary service; in fact, it is providing no service at all.⁶

6. BPA notes, however, that the Commission has recognized, in accordance with its general policy of non-discriminatory treatment, an exception to the rule that inside the deadband reactive power service need not receive compensation: when a utility compensates its own merchant for the provision of inside the deadband reactive power service, it must compensate other interconnected generators for inside the deadband reactive power service.⁷ This Commission precedent is the basis for BPA's settlement agreements with the IPPs described herein.

7. BPA states that since it will no longer compensate its merchant affiliate Power Services organization for Reactive Supply and Voltage Control from Generation Sources Service within the deadband effective October 1, 2007, the exception no longer applies and it should no longer be required to compensate interconnected unaffiliated generators for the same service.

III. Notice of Filing and Responsive Pleadings

8. Notice of BPA's filing was published in the Federal Register on June 6, 2007, with answers, interventions and comments due on or before June 19, 2007.⁸ Chehalis and Hermiston (collectively, Chehalis/Hermiston) and PPM filed answers. TransAlta filed an answer and motion to dismiss BPA's complaint.⁹ The Electric Power Supply Association and the Northwest & Intermountain Power Producers Coalition (collectively,

⁶ BPA cites a number of cases in support of this proposition, including *Michigan Electric Transmission Co.*, 96 FERC ¶ 61,214 at 61,906 (2001); *Consumers Energy Co.*, 93 FERC ¶ 61,339 at 62,154 (2000); *Calpine Oneta Power, L.P.*, 116 FERC ¶ 61,282 at P 26 (2006), *reh'g denied*, 119 FERC ¶ 61,177 (2007); *Michigan Electric Transmission Co.*, 97 FERC ¶ 61,187 at 61,852 (2001) and *Arizona Public Service Co.*, 95 FERC ¶ 61,128 at 61,409 (2001).

⁷ BPA Complaint at 12, citing *Calpine Oneta Power, L.P.*, 116 FERC ¶ 61,282 at P 2.

⁸ *U. S. Department of Energy, Bonneville Power Administration*, 72 Fed. Reg. 31,311 (June 6, 2007).

⁹ TransAlta's motion to dismiss presumes BPA's proposal is unduly discriminatory or somehow contrary to Commission policy. As the discussion in this order shows, it is neither, and therefore TransAlta's motion to dismiss is denied.

EPSA/NIPPC) filed a motion for leave to intervene and protest. BPA filed a motion to file a response and a response to the motion to dismiss and to the answers. PPM then filed a motion to reply to BPA's response.

9. The IPPs' overarching objection to BPA's proposal to discontinue payments for reactive power service within the deadband is that BPA's proposal fails to satisfy the Commission's comparability standard. While the IPPs generally accede that the Commission's comparability standard permits BPA to uniformly discontinue paying for within the deadband reactive supply services, they object that BPA generation will still recover some such costs in its unbundled wholesale power rates.

10. PPM and Chehalis/Hermiston state that in order for BPA to comply with the Commission's comparability standard it must forego any type of embedded rate compensation for reactive supply inside the deadband to its affiliate, not just direct payment compensation in the form it was paying to the IPPs. EPSA/NIPPC argues that comparability is compromised when merchant generators must recover within the deadband reactive costs as part of energy market sales of real power, which it asserts is not comparable to a utility's ability to recover these costs in rates. EPSA/NIPPC states that merchant generators, unlike utilities, must contend with the difficulties of the marketplace, and therefore their ability to recover costs is different and more difficult than a utility's inclusion of them in its rate base.

11. TransAlta and Chehalis/Hermiston state that BPA's proposal does not eliminate payments for generator supplied reactive power service within a defined deadband to its own or affiliated generators because BPA's affiliated generators will continue to be compensated for reactive supply service through BPA's proposal to modify existing wholesale power rates to eliminate the revenue credit included in BPA's wholesale power rate.¹⁰ TransAlta states that federal statutes require BPA to recover its costs through its rates,¹¹ and hence, mandate that BPA adjust its Power Services rates to account for the reduced Transmission Services rates. TransAlta explains that BPA's comments in other proceedings support this claim,¹² and would result in discriminatory rates. EPSA/NIPPC

¹⁰ *U. S. Department of Energy, Bonneville Power Administration*, 116 FERC ¶ 61,264 (2006).

¹¹ Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839e (a)(1) (2007).

¹² *U.S. Department of Energy, Bonneville Power Administration's Proposed 2007 Wholesale Power Rates Rate Adjustment*, Docket No. EF06-2011-000 at 2 (2006) (Bonneville Power Administration's Answer to the Protest of PPM Energy, Northwest Independent Power Producers Coalition, TransAlta Centralia Generation LLC, and Calpine Corporation).

adds that no entity should be permitted to adjust a revenue source to obtain reactive power compensation, because this is inconsistent with a Commission staff white paper discussion suggesting directions for the Commission's reactive power policies.¹³

12. Chehalis/Hermiston differentiate BPA's complaint from *Entergy Services, Inc.*, in which the Commission confirmed that it is permissible not to pay for reactive power within the deadband, if such non-payment applies to all suppliers.¹⁴ Chehalis/Hermiston argue that Entergy requested the discontinuation of recovery for all reactive power costs, while BPA's proposal merely shifts the costs from Transmission Services to Power Services for fiscal years 2008 and 2009. Chehalis/Hermiston and EPSA/NIPPC argue that BPA is therefore not eliminating compensation to its own affiliates for reactive power, but is instead rebundling "transmission related" costs with wholesale generation rates in violation of Order No. 888's unbundling requirement.¹⁵ PPM explains that when a transmission provider supplies any ancillary service using generating facilities, the related costs are separate ancillary services that must be unbundled from and recovered separately from its power rates. PPM states that the Commission conditioned its reciprocity obligation under Order No. 888 on BPA's providing the "six ancillary

¹³ EPSA/NIPPC repeatedly refers to the Commission staff white paper in Docket No. AD05-1-000 as support for its position that IPPs are disadvantaged when recovering reactive power service costs. That staff report was intended only to initiate a discussion of regulatory policies affecting reactive power, and did not result in any findings or a Commission order. *Principles for Efficient and Reliable Reactive Power Supply and Consumption*, Docket No. AD05-1-000 (February 4, 2005). See also, *Wisconsin Public Power Inc.*, 117 FERC ¶ 61,274 at P 17 (2006).

¹⁴ 113 FERC ¶ 61,040 (2005).

¹⁵ Chehalis/Hermiston's argument overlooks the evolution of Commission policy since Order No. 888, and amounts to a collateral attack on Order Nos. 2003 and 2003-A in which the Commission specifically addressed the circumstances and manner in which a transmission provider must pay for inside the deadband reactive power services. *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 546 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 416 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171, *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). Order No. 890, moreover, which revised the Commission's OATT requirements, continued the evolution of Commission policy. *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

services in the *pro forma* tariff on an unbundled basis.”¹⁶ PPM argues that BPA’s proposal to recover reactive supply costs by rebundling them into its power rates fails to provide the open access, non-discriminatory transmission service outlined in Order No. 888.

13. As a corollary to the Chehalis/Hermiston position, PPM asserts that reactive power, even from generation sources, is a transmission service, not a generation service, and as such should not be recovered through market-based power sales of real power from IPPs. PPM and TransAlta state that if their rate schedules are terminated, they can only recover such costs if the market price for power permits them to do so. They argue that this is contrary to *Southwest Power Pool, Inc.* in which merchant generators and affiliate generators were free to negotiate alternative compensation through higher power sales rates to “make up the revenue that they previously might have earned through a separate charge for reactive power within the dead band.”¹⁷

14. TransAlta and PPM also argue that BPA’s filing does not satisfy the procedural requirements of section 206 of the Federal Power Act. TransAlta explains that a section 206 filing requires the Commission to, first, find that the existing rates are unlawful, and second, set the lawful rate to be charged. TransAlta states that BPA is incapable of meeting this test because it will recover costs for services acquired from affiliated generators that cannot be acquired on a comparable basis from unaffiliated generators. TransAlta states that this outcome is unacceptable, even though BPA’s rates are not subject to the Commission’s jurisdiction under the FPA, because the Commission must correct discriminatory rates when one of the rates is subject to its jurisdiction.¹⁸ In the context of BPA’s complaint, TransAlta argues that to fulfill this obligation the Commission should leave in place the existing TransAlta jurisdictional rate, and not permit BPA to change it.

15. PPM argues that BPA has not demonstrated that the PPM Rate Schedule should be terminated. PPM states that its rate schedule applies to all reactive power services, not just those within the deadband. PPM argues that because PPM’s rate for reactive service does not contain a separate rate for service provided within the deadband, there is no basis for BPA to claim that compensation under PPM’s Rate Schedule is attributable to service within such deadband. PPM states that the Commission should direct PPM to submit tariff revisions to reflect a rate for those elements of reactive power service that

¹⁶ *United States Department of Energy, Bonneville Power Administration*, 84 FERC ¶ 61,068 at 61,287 (1998).

¹⁷ 119 FERC ¶ 61,199 at P 39 (2007).

¹⁸ *FPC v. Conway Corp.*, 426 U.S. 271 (1976).

remain compensable under the Commission's comparability standards, and should provide that the revised rate will become effective on October 1, 2007.

16. In its response, BPA states that the IPPs misunderstand that its decision for its Transmission Services organization to no longer pay its Power Services organization or any other entity for inside the band reactive power service will treat its Power Services organization comparably, if not identically, to the IPPs. BPA states that the IPPs, moreover, are free to negotiate the rates they receive for real power, including costs for reactive power service within the deadband.

17. Finally, EPSA/NIPPC argues that BPA's complaint arises under the Northwest Power Act, not the FPA.¹⁹ EPSA/NIPPC asserts that therefore, "the Commission is accordingly not bound by Commission precedents arising under the FPA that have declined to compensate generators for the provision of ancillary services within the deadband."²⁰

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept BPA's answer to the motion to dismiss and response, as well as PPM's reply, because they have provided information that assisted us in our decision-making process.

B. Commission Determination

19. The Commission has had a number of opportunities to consider whether and when a generator is entitled to compensation for providing reactive power within an established deadband. As we stated recently, "[t]he Commission's policy is that where a transmission provider does not separately compensate its own or affiliated generators for reactive power service within the dead band, it need not separately compensate non-

¹⁹ Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. at § 839.

²⁰ EPSA/NIPPC Motion at 6, n.12.

affiliated generators for reactive power service within the dead band.”²¹ Comparability entitles a generator to compensation for providing reactive power within the deadband “if, and only if, the Transmission Provider pays its own or affiliated generators for reactive power within the deadband.”²² The Commission’s policy is not new; we confirmed it in Order No. 2003, when we stated that an interconnecting generator “should not be compensated for reactive power when operating its Generating Facility within the established power factor range, since it is only meeting its obligation.”²³

20. BPA and the IPPs recognized that when BPA was paying its merchant affiliate for generation supplied reactive power within the deadband, it was obligated to also pay interconnecting generators for the same service. This is why the parties ultimately entered into the TransAlta settlement. Now, BPA has determined to no longer pay its merchant affiliate for such service as of October 1, 2007, and, as recently confirmed in *E.ON*, it is entitled to likewise stop paying the IPPs.²⁴ Commission policy clearly allows BPA to discontinue paying all its merchants for inside the deadband reactive power service. Given that BPA will discontinue paying its merchant affiliate for within the deadband reactive power service on October 1, 2007, the IPPs’ rates for the same service will become unjust and unreasonable on that date, and therefore must be reduced to zero.

21. The IPPs argue that BPA’s merchant will receive compensation for inside the deadband reactive service in any event, because the costs associated with such service will be included in BPA’s power rates. But this is not a comparability argument, and we have addressed it before. In *SPP*, we noted “that merchant generators are free to

²¹ *E.ON U.S. LLC*, 119 FERC ¶ 61,340 at P 12 (2007).

²² *Southwest Power Pool, Inc.*, 119 FERC ¶ 61,199 at n. 27.

²³ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 546. *See also Michigan Electric Transmission Company*, 96 FERC ¶ 61,214 (2001), *order on reh’g*, 97 FERC ¶ 61,187 at 61,852 (2001) (“Providing reactive power within design limitations is not providing an ancillary service; it is simply ensuring that a generator lives up to its obligations.”)

²⁴ *See supra n.21*; *see also Entergy Services, Inc.*, 113 FERC ¶ 61,040 at P 22 (“[W]here a transmission provider does not compensate its own or affiliated generators for reactive power service within the dead band, it need not compensate non-affiliated generators for reactive power service within the dead band.” Entergy, like BPA, stopped paying its own affiliates for within the deadband reactive power service, thus treating comparably all within the deadband reactive power service providers.)

negotiate rates that they charge their customers for real power that are sufficient to compensate them for any costs that they may incur in producing reactive power within their deadbands, just as affiliated generators may seek to negotiate rates that they charge their customers that are sufficient to compensate them for the costs of any reactive power that they provide within their deadbands.” We further observed that “[i]n this regard, all that the protestors have done is to note that an incumbent utility’s generators may be able to make up the revenue that they previously might have earned through a separate charge for reactive power within the deadband in other ways—such as through higher power sales rates. But merchant generators are no differently situated and their ability to recover such costs has not been compromised. They, equally, may be able to recover the costs for reactive power within the deadband in other ways—such as through higher power sales rates of their own.”²⁵ Some answers have indicated that this is not feasible for IPPs.²⁶ However, since the incremental cost of reactive power service within the deadband is minimal, the infeasibility argument lacks plausibility. The purpose for which generation assets are built (including reactive power capability to maintain voltage levels for generation entering the grid) is to make sales of real power.

22. BPA notes that despite its intention to cease paying for reactive power service within the deadband, it will remain obligated to compensate the IPPs if it requests them to provide reactive power service outside the deadband. While the specifics of compensation for outside the deadband reactive power service are beyond the scope of this proceeding, to the extent that BPA wants to maintain its safe harbor status under the Commission’s open access rules, BPA must either add a rate to its Open Access Transmission Tariff (OATT) for outside the deadband reactive power service, or provide a procedure for the IPPs to follow to allow them to be compensated for providing outside the deadband reactive power service.

23. With regard to EPSA/NIPPC’s argument that this case arises under the Northwest Power Act, the Commission disagrees. BPA’s complaint is brought under section 206 of the FPA to reduce the IPPs’ rates to zero because they are no longer just and reasonable. Moreover, EPSA/NIPPC does not state how or why BPA’s complaint arises under the Northwest Power Act.

²⁵ *Southwest Power Pool*, 119 FERC ¶ 61,199 at P 39.

²⁶ *See, e.g.*, TransAlta Answer at 14-15 (asserting that IPPs are limited by competition when negotiating rates).

The Commission orders:

The relief requested in BPA's complaint is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.
Acting Deputy Secretary.