

125 FERC ¶ 61,132
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. EF06-2011-002

ORDER APPROVING RATES ON AN INTERIM BASIS
AND PROVIDING OPPORTUNITY FOR ADDITIONAL COMMENTS

(Issued October 31, 2008)

1. In this order, we approve the Bonneville Power Administration's (Bonneville) revised wholesale power rates for FY 2009 on an interim basis, pending our further review of its FY 2007-2009 wholesale power rates (WP-07 Rates). We also provide an additional period of time for the parties to file comments on Bonneville's revised wholesale power rates for FY 2009. Bonneville's revised wholesale power rates for FY 2009 are intended to allow Bonneville to recover its costs, and repay the Federal investment in the Federal Columbia River Power System during FY 2009.

Background

2. Bonneville filed its WP-07 Rates with the Commission for confirmation and approval in this proceeding in July 2006. The Commission granted interim approval of those rates on September 21, 2006.¹ Bonneville subsequently filed a motion asking the Commission to stay further review until September 4, 2007 to allow Bonneville to correct errors in its WP-07 Rates. Bonneville made the supplemental filing correcting those errors in May 2007.

3. Before Bonneville could ask the Commission to terminate the stay, on May 3, 2007, the United States Court of Appeals for the Ninth Circuit issued two decisions

¹ *United States Department of Energy – Bonneville Power Administration*, 116 FERC ¶ 61,264 (2006).

remanding Bonneville's FY 2002-2006 wholesale power rates (WP-02 Rates).² One decision overturned Bonneville's 2000 Residential Exchange Program Settlement Agreements with investor-owned utilities.³ The other decision held that Bonneville improperly allocated the costs of the Residential Exchange Program Settlement Agreements in its WP-02 Rates. Bonneville allocated the costs of the Residential Exchange Program Settlement Agreements in its WP-07 Rates, then pending final review and approval before the Commission in this proceeding, in the same manner as it did for the WP-02 Rates at issue in those court proceedings.

4. Following the court's May 3, 2007 decisions, Bonneville requested the Commission, on June 1, 2007, August 31, 2007, and March 4, 2008, to continue to stay final review of the WP-07 Rates at issue in this proceeding to allow Bonneville to conduct hearings under section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act)⁴ in order to respond to the Court's decisions.

5. Bonneville undertook two actions in response to the court's decisions. First, it reestablished the Residential Exchange Program. It held a regional consultation proceeding to establish a revised Average System Cost (ASC) Methodology for the Residential Exchange Program.⁵ Bonneville filed the revised ASC Methodology with the Commission in Docket No. EF08-2011-000, requesting interim approval of the methodology by October 1, 2008.⁶

² *Portland General Electric Co. v. Bonneville Power Administration*, 501 F.3d 1009 (9th Cir. 2007) (regarding Bonneville's 2000 Residential Exchange Program Settlement Agreements); *Golden Northwest Aluminum, Inc. v. Bonneville Power Administration*, 501 F.3d 1037 (9th Cir. 2007) (regarding Bonneville's allocation of Residential Exchange Program settlement costs in its WP-02 Rates).

³ Bonneville's Residential Exchange Program, authorized under section 5(c) of the Northwest Power Act, provides benefits that lower rates for residential and small farm consumers of higher cost utilities, primarily investor-owned utilities. *See* 16 U.S.C. § 839c(c) (2006).

⁴ 16 U.S.C. § 839e(i) (2006).

⁵ *See* 16 U.S.C. § 839c(c)(7) (2006).

⁶ On September 30, 2008, in Docket No. RM08-20-000, the Commission initiated a rulemaking proceeding stating that all motions to intervene, notices of intervention, protests and comments filed in Docket No. EF08-2011-000 will be considered to have been filed, and will be addressed in, the rulemaking proceeding, and issued an interim rule revising Part 301 of the Commission's regulations to incorporate Bonneville's revised ASC Methodology. *See Sales of Electric Power to the Bonneville Power*

(continued...)

6. Second, Bonneville conducted a WP-07 supplemental rate proceeding. The WP-07 supplemental rate proceeding consisted of two parts. In the first part, Bonneville determined how much its preference customers were overcharged through the improper allocation of Residential Exchange Program settlement costs in its WP-02 Rates for the FY 2002-2006 time period and in its WP-07 Rates for the FY 2007-2008 time periods only, and how to return those overpayments to customers.⁷

7. In the second part of the WP-07 supplemental rate proceeding, Bonneville established revised power rates for FY 2009. It is those rates for which Bonneville seeks interim approval from the Commission in this docket.

Bonneville's Supplemental WP-07 Rate Filing

8. In its supplemental WP-07 rate filing, Bonneville requests approval, effective October 1, 2008 through September 30, 2009, of the following proposed wholesale rates: PF-07R (Priority Firm Power Rate), NR-07R (New Resource Firm Power Rate), IP-07R (Industrial Firm Power Rate), and FPS-07R (Firm Power Products and Services Energy Rate). Bonneville states that six financial objectives shaped the WP-07 supplemental rate proceeding. They are: (1) a rate design that meets Bonneville's financial standards, including meeting a 97.5 percent one-year Treasury Payment Probability (which is equivalent to a 95 percent two-year Treasury Payment Probability); (2) the lowest possible rates consistent with sound business principles, including statutory obligations; (3) lower, but adjustable, effective rates rather than higher, but stable, rates; (4) a risk package that includes only those elements Bonneville believes it can rely upon; (5) reserve levels that are not built to unnecessarily high levels; and (6) the allocation of costs and credits to customers based upon product choice to the extent possible.

Administration; Revisions to Average System Cost Methodology, 73 Fed. Reg. 60,105 (Oct. 10, 2008), FERC Stats. & Regs. ¶ 31,278 (2008).

⁷ In calculating the overcharges, Bonneville determined the amount of Residential Exchange Program settlement benefits that were paid to the investor-owned utilities from FY 2002-2008. Bonneville then calculated the benefits the investor-owned utilities would have received under the Residential Exchange Program in the absence of the Residential Exchange Program Settlements. Bonneville determined that the difference will be recovered from the investor-owned utilities through reduced prospective Residential Exchange Program benefits, and returned to preference customers through cash payments for FY 2007-2008, and through billing adjustments for the customers who paid rates in FY 2002-2006.

9. In its filing, Bonneville requests the Commission to grant interim approval of its revised FY 2009 rates, effective October 1, 2008, and final approval of its WP-07 rates. Bonneville also requests the Commission to issue an order by October 31, 2008, or as soon as practicable thereafter, so that it can reflect the revised FY 2009 rates in bills for the first month of the fiscal year. Bonneville asserts that its revised WP-07 supplemental rates will result in rate decreases of approximately 1.5 percent to its preference customers and 7.8 percent to its utility customers participating in the Residential Exchange Program.

Procedural Matters

10. Notice of Bonneville's filing was published in the *Federal Register*, with protests and interventions due on or before October 13, 2008.⁸ Timely motions to intervene, protests and comments were filed by Public Utility District of Snohomish County, Washington, Northwest Requirements Utilities, Portland General Electric Company, Idaho Power Company, Public Power Council, Clatskanie People's Utility District, Pacific Northwest Investor-Owned Utilities,⁹ Puget Sound Energy, Inc., PacifiCorp, Eugene Water and Electric Board, Tillamook Peoples' Utility District, and Avista Corporation. Alcoa Inc. (Alcoa) filed a motion to intervene out of time. Idaho Power Utilities Commission filed a notice of intervention. Bonneville filed an answer in response to protests.

Discussion

Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant Alcoa's motion to intervene out of time in light of its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We

⁸ 73 Fed. Reg. 57,618 (2008). Rule 2007 of the Commission's Rules of Practice and Procedure provides that, when the computation of a time period falls on a legal public holiday, the time period does not end until the close of the Commission's business on the next day. *See* 18 C.F.R. § 385.2007(a)(2) (2008). Comments filed in this proceeding on October 14, 2008, therefore, are timely.

⁹ Pacific Northwest Investor-Owned Utilities consists of the following: Avista Corporation, Portland General Electric Company, Puget Sound Energy Inc., and PacifiCorp.

will accept Bonneville's answer because it has provided information that assisted us in our decision-making process.

Standard of Review

12. Under the Northwest Power Act, the Commission's review of Bonneville's rates is limited to determining whether Bonneville's proposed rates meet the 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.¹⁰

13. 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.¹¹

14. Moreover, review at this interim stage is further limited. In view of the volume and complexity of a Bonneville rate application, such as the one now before the Commission in this filing, and the limited period in advance of the requested effective date in which to review the application,¹² the Commission generally defers resolution of issues on the merits until an order on final confirmation and approval. Thus, proposed rates, if not patently deficient, generally are approved on an interim basis and the parties

¹⁰ See 16 U.S.C. § 839e(a)(2) (2006).

¹¹ See *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).

¹² See 18 C.F.R. § 300.10(a)(3)(ii) (2008).

are afforded an additional opportunity in which to raise issues with regard to Bonneville's filing.¹³

Interim Approval

15. The Commission declines at this time to grant final confirmation and approval of Bonneville's revised wholesale power rates for FY 2009. The Commission's preliminary review nevertheless indicates that Bonneville's revised wholesale power rates appear to meet the statutory standards and the minimum threshold filing requirements of Part 300 of the Commission's regulations.¹⁴ Moreover, the Commission's preliminary review of Bonneville's submittal indicates that it does not contain any patent deficiencies. The proposed rates, therefore, will be approved on an interim basis pending our further review. We note, as well, that no one will be harmed by this decision because interim approval allows Bonneville's rates to go into effect subject to refund with interest; the Commission may order refunds with interest if the Commission later determines in its final decision not to approve the rates.¹⁵ The Commission will address concerns raised by protesters in the final decision.

16. In addition, we will provide an additional period of time for parties to file comments and reply comments on issues related to final confirmation and approval of Bonneville's revised wholesale power rates for FY 2009. This will ensure that the record in this proceeding is complete and fully developed.

The Commission orders:

(A) Interim approval of Bonneville's revised proposed wholesale power rates for FY 2009 is hereby granted, to become effective on October 1, 2008, subject to refund with interest as set forth in 18 C.F.R. § 300.20(c), pending final action and either their approval or disapproval.

¹³ See, e.g., *United States Department of Energy – Bonneville Power Administration*, 64 FERC ¶ 61,375, at 63,606 (1993); *United States Department of Energy – Bonneville Power Administration*, 40 FERC ¶ 61,351, at 62,059-60 (1987).

¹⁴ See, e.g., *United States Department of Energy – Bonneville Power Administration*, 105 FERC ¶ 61,006, at P 13-14 (2003); *United States Department of Energy – Bonneville Power Administration*, 96 FERC ¶ 61,360, at 62,358 (2001).

¹⁵ 18 C.F.R. § 300.20(c) (2008).

(B) Within twenty (20) days of the date of this order, parties who wish to do so may file additional comments regarding final confirmation and approval of Bonneville's revised wholesale power rates for FY 2009. Parties who wish to do so may file reply comments within fourteen (14) days thereafter.

(C) The Secretary shall promptly publish this order in the *Federal Register*.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.