

132 FERC ¶ 61,142
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

United States Department of Energy
Bonneville Power Administration

Docket Nos. NJ08-5-002

Avista Corporation

OA08-25-002

Puget Sound Energy, Inc

OA08-26-002

ORDER GRANTING CLARIFICATION AND DISMISSING REHEARING

(Issued August 17, 2010)

1. In Order No. 890,¹ the Commission reformed the *pro forma* open access transmission tariff (OATT) to, among other things, require transmission providers to conduct coordinated, open and transparent transmission planning consistent with nine transmission planning principles.² Transmission providers were directed to detail this planning process in an attachment (Attachment K) to the transmission providers' respective OATTs. The Commission has reviewed numerous filings by transmission providers addressing proposed tariff amendments to incorporate transmission planning processes and, where necessary, the Commission has required additional filings to bring about compliance with the requirements of Order No. 890.

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009) *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

² The nine principles are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects.

2. In the case of Avista Corporation (Avista), Puget Sound Energy, Inc. (Puget Sound) and Bonneville Power Administration (Bonneville), there have been a series of orders and the filing of Attachment K revisions under their respective OATTs, for the purpose of refining their respective transmission planning processes so that they fully satisfy the nine transmission planning principles, including (with greatest relevance to this proceeding) the principle governing cost allocation for new projects.

3. The Commission's most recent order on this subject,³ issued on July 16, 2009, found, among other things, that further revisions were needed to detail the cost allocation for capacity increase projects.⁴ Additionally, in the same order the Commission found that the parties' Attachment Ks complied with the cost allocation principles of Order No. 890 for local upgrades, existing obligation projects, and requested service projects.⁵ In response to the July 2009 Order, Avista, Puget Sound and Bonneville, together with ColumbiaGrid,⁶ (collectively, the Columbia Grid Parties) jointly filed a request for rehearing seeking clarification and/or rehearing of a statement made by the Commission in its acceptance of the cost allocation methodology for existing obligation projects and requested service projects. In this order, the Commission provides clarification as discussed below.

I. Background

4. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the *pro forma* OATT's lack of specificity as to how customers and other stakeholders should be treated in the transmission planning process. To assure that this specificity would be provided, the Commission required transmission providers to

³ *United States Department of Energy – Bonneville Power Administration*, 128 FERC ¶ 61,065 (2009) (July 2009 Order).

⁴ *See* July 2009 Order, 128 FERC ¶ 61,065 at P 65.

⁵ *Id.* P 63, 64.

⁶ ColumbiaGrid is a non-profit membership corporation created to coordinate transmission planning and network expansion for participating transmission owners in the Pacific Northwest transmission grid through the use of functional agreements offered to its members and other qualified non-member parties. ColumbiaGrid's original Planning and Expansion Functional Agreement (Planning Agreement) was accepted for filing in April 2007. *See ColumbiaGrid*, 119 FERC ¶ 61,007 (2007).

include a description in their Attachment Ks of how their transmission planning processes would satisfy the nine principles delineated in Order No. 890.

5. As to the cost allocation principle, the Commission required transmission providers to address the allocation of costs of new facilities that do not fit under existing rate structures, in their transmission planning process. The Commission did not impose a particular cost allocation method for such projects and, instead, permitted transmission providers and stakeholders to determine the criteria that best fits their own experience and regional needs. The Commission suggested factors to be considered in determining whether a cost allocation methodology is appropriate. First, a cost allocation proposal should fairly assign costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, the cost allocation proposal should provide adequate incentives to construct new transmission. Third, the cost allocation proposal should be generally supported by state authorities and participants across the region. The Commission stressed that each region should address cost allocation issues up front, at least in principle, rather than have them re-litigated each time a project is proposed.⁷ Additionally, in Order No. 890-A, the Commission also made clear that the details of proposed cost allocation methodologies must be clearly defined, as participants seeking to support a new transmission investment need some degree of certainty regarding cost allocation to pursue that investment.⁸

6. In response to Order No. 890, Avista and Puget Sound filed new attachments to their OATTs (Attachment Ks) that the Commission accepted for filing, subject to further compliance filings, in an order issued on July 17, 2008.⁹ This same order also granted Bonneville's petition for a declaratory order and found that Bonneville's Attachment K met Order No. 890's reciprocity requirements, subject to certain modifications.

7. In response to the July 2008 Order, Avista, Puget Sound and Bonneville further modified their respective Attachment Ks to incorporate additional detail from the ColumbiaGrid Planning Agreement to address cost allocation for those projects considered under ColumbiaGrid's transmission planning process.¹⁰ Each Attachment K was modified to reflect ColumbiaGrid's cost allocation methodology for various projects

⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 557-61.

⁸ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

⁹ *United States Dep't of Energy – Bonneville Power Admin.*, 124 FERC ¶ 61,054 (2008) (July 2008 Order).

¹⁰ ColumbiaGrid considers projects affecting more than a single transmission system.

affecting the regional interconnected transmission system.¹¹ Avista, Puget Sound and Bonneville proposed revisions to their respective Attachment Ks to include cost allocation provisions for existing obligation projects,¹² requested service projects,¹³ and capacity increase projects.¹⁴

8. The July 2009 Order accepted the cost allocation methodology used by Avista, Puget Sound and Bonneville for existing obligation projects and requested service projects. The Commission also found that the proposed cost allocation methodology for capacity increase projects under the ColumbiaGrid planning process did not comply with Order No. 890 and directed further compliance filings.¹⁵ Avista, Puget Sound and Bonneville responded by filing the instant request for rehearing and also by submitting further compliance filings to address cost allocation for capacity increase projects. Those compliance filings were accepted for filing.¹⁶

¹¹ ColumbiaGrid provides cost allocation recommendations to facilitate mutual agreement by parties on cost allocation in the study team process.

¹² Existing obligation projects include any modification to be made to the regional interconnected transmission systems that is for the purpose of meeting an identified need.

¹³ Requested service projects include new transmission and interconnection requests where a transmission provider has a completed transmission service request which will require an upgrade that will impact another transmission system, and the customer indicates that it wants to pursue further study.

¹⁴ A capacity increase project is a voluntary modification of the regional interconnected systems undertaken by one or more planning parties for the purpose of increasing capacity. A capacity increase project is not driven by an identified need or request for transmission or interconnection service. Under ColumbiaGrid's transmission planning process, a study team is formed and the respective planning party (Avista, Bonneville or Puget Sound) that submitted the request would assume primary responsibility for leading and performing necessary analytical work.

¹⁵ The Commission concluded that the cost allocation methodology for capacity increase projects continued to lack specificity. *See* July 2009 Order, 124 FERC ¶ 61,054 at P 65.

¹⁶ *See Avista Corp*, unpublished letter order dated March 3, 2010 in Docket No. OA08-25-003; *see also Puget Sound Energy, Inc.*, unpublished letter order dated February 25, 2010 in Docket No. OA08-26-003; *United States Dep't of Energy – Bonneville Power Admin.*, 130 FERC ¶ 61,260 (2010).

9. On August 18, 2009, a joint petition for leave to intervene for the limited purpose of supporting the request for clarification or rehearing by the Columbia Grid Parties was filed by an *ad hoc* group of five governmental utilities who are signatories to the ColumbiaGrid Planning Agreement.¹⁷

II. Discussion

A. Motion to Intervene

10. As a preliminary matter, when late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.¹⁸ PEFA Governmental Signatories has not met this higher burden of justifying its very late intervention. Thus, we will deny its motion to intervene.

B. Request for Clarification and/or Rehearing

11. The request for rehearing focuses on paragraph 64 of the July 2009 Order, where the Commission stated:

For existing obligation projects, ColumbiaGrid can offer, by written agreement to the parties, an equitable sharing of costs based on cost-causation principles. For requested service projects, ColumbiaGrid can offer, by written agreement to the parties, an equitable sharing of costs based on the Transmission Provider's tariff. ColumbiaGrid may also offer an allocation of costs to the Transmission Provider with the identified need. We interpret the Transmission Providers' proposal to mean that costs for these projects are shared equally, unless parties to the study team otherwise agree to a different allocation method.

¹⁷ The joint filers are: Public Utility District No. 1 of Chelan County, Washington; Public Utility District No. 2 of Grant County, Washington; City of Seattle, a municipal corporation of the State of Washington, acting by and through its City Light Department; Public Utility District No. 1 of Snohomish County, Washington; and City of Tacoma, Washington, Department of Public Utilities, Light Division (dba Tacoma Power) (collectively, PEFA Governmental Signatories).

¹⁸ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250 at P 7 (2003).

12. The ColumbiaGrid Parties are concerned with the Commission's interpretation of the parties' proposal, and argue that it is inaccurate -- as the ColumbiaGrid transmission planning process does not *necessarily* result in an equal allocation of costs.¹⁹ The ColumbiaGrid Parties point out that the Commission does not specifically define the term "equally" in the July 2009 Order but they note that standard definitions of equal include (i) having the same quantity, measure, or value as another, (ii) being the same for all members of a group, or (iii) impartial, i.e., just and equitable. The ColumbiaGrid Parties argue that the first two standard definitions are *not* consistent with the plain meaning of the Planning Agreement or the intent of the parties to the agreement. They argue, in contrast, that the third definition above is accurate because the ColumbiaGrid cost allocation methodologies for Existing Obligation Projects and Requested Service Projects are intended to be impartial, just and equitable. The ColumbiaGrid Parties therefore seek clarification that the "are shared equally" is based on the definition above, i.e., impartial, just and equitable.

13. The ColumbiaGrid Parties explain that the definitions of Existing Obligation Projects and Requested Service Projects are critical to understand their associated cost allocation methodologies. Existing Obligation Projects are defined under the Planning Agreement as multi-system projects that address a need on a Transmission Owner or Operating Party System, where "need" is defined under the Planning Agreement as any projected inability of a transmission owner or operator to serve, consistent with the planning criteria, (1) its network load and native load service obligations, if any, as those terms are defined in such transmission owner or operator's OATT, and (2) other existing long-term firm transmission obligations. Requested Service Projects are defined under the Planning Agreement as any modification to be made to the regional interconnected systems that (1) is for the purpose of providing service pursuant to a transmission service or interconnection request made to a transmission owner or operator, and (2) involves more than one transmission system.

14. The ColumbiaGrid Parties state that the methodologies for making cost allocation recommendations for Existing Obligation Projects and Requested Service Projects do not provide for costs to be shared identically among all participants. Thus, they argue that it is not accurate to characterize the two methodologies as simply "equal," unless the Commission only intended to convey its interpretation that they are "impartial, just and equitable." The ColumbiaGrid Parties request that the Commission's interpretation be modified to be consistent with sections 5.4 and 6.4 of the Appendix A of the Planning Agreement.

¹⁹ Rehearing at 5.

15. The ColumbiaGrid Parties also state that, while the cost allocation recommendations take into account a number of considerations, none require an identical allocation of cost among project participants. Instead, the Existing Obligation Projects and Requested Service Project cost allocation methodologies will produce recommendations based upon which party caused the reliability need, requested transmission service or interconnection service. According to the ColumbiaGrid Parties, these considerations are entirely consistent with Commission guidance.²⁰ The ColumbiaGrid Parties argue that, in many circumstances, a cost allocation based only on an identical allocation of costs would not be consistent with a cost allocation based upon considerations of causation and benefit and ignores the actual provisions of the Attachment Ks and the Planning Agreement.

C. Commission Determination

16. The Commission's intention in paragraph 64 of the July 2009 Order was that the sharing of costs for Existing Obligation Projects and Requested Service Projects is to be based on an equitable sharing of costs based on cost-causation principles. In light of the ColumbiaGrid Parties' concerns on this subject, we clarify that an "equal" sharing of costs here is one that is impartial, just and equitable and we re-emphasize that nothing in paragraph 64 of the July 2009 Order precludes the parties from agreeing to a cost allocation for Existing Obligation Projects and Requested Service Projects that does not result in an identical allocation of cost among project participants. We emphasize that the costs must, however, be allocated equitably.

The Commission orders:

The request by the ColumbiaGrid Parties for clarification of the July 2009 Order is hereby granted, as discussed in the body of this order. In light of the Commission's granting of this clarification, the parties' request for rehearing is dismissed as moot.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁰ See Order 890, FERC Stats. & Regs. ¶ 31,241 at P 559.