

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

United States Department of Energy
Bonneville Power Administration

Docket NJ03-3-001

ORDER ACCEPTING COMPLIANCE FILING AND
GRANTING MOTION FOR CLARIFICATION

(Issued February 12, 2004)

1. On November 20, 2003, Bonneville Power Administration (Bonneville) filed revised tariff sheets in compliance with our October 21, 2003 Order.¹ In this order, we will accept Bonneville's compliance filing. In addition, we will grant Bonneville's motion for clarification that its OATT continues to maintain its reciprocity status, and that the effective date for Attachment K is October 1, 2003.

Background

2. On July 7, 2003, Bonneville filed a petition for declaratory order that sought reciprocity approval and requested expedited processing of revisions to its Open Access Transmission Tariff (OATT). Among other things, Bonneville sought to eliminate the right of first refusal and matching provision in its OATT related to short-term firm transmission reservations. According to Bonneville, the anticipated high volume of transmission requests on its system and its decision to manually process reservations rather than develop a working automated reservation system made it impractical to comply with the Commission's pro forma tariff approach for awarding short-term service.

¹ United States Department of Energy - Bonneville Power Administration, 105 FERC ¶ 61,077 (2003) (October 21 Order).

3. Powerex protested Bonneville's petition for declaratory order and the requested amendments to Bonneville's short-term firm reservation process, on grounds that the proposed revision did not conform with, and was in fact inferior to, Commission standards and policies for open access transmission service. The Commission conditioned its reciprocity ruling on Bonneville's submission of a compliance filing conforming its short-term reservation provisions to those contained in the pro forma tariff.

Bonneville's Compliance Filing

4. On November 20, 2003, Bonneville submitted its compliance filing and motion for clarification. Bonneville states that the compliance filing keeps in place pro forma provisions for displacement of shorter-term with longer-term duration transmission requests. Bonneville explains that its compliance filing is its previously approved pro forma tariff with the addition of recently approved Attachments D and K. It adds that the filing corrects some typographical errors noted in Attachment K and indicates an effective date of October 1, 2003 for that attachment. Bonneville also seeks clarification of the October 21, 2003 Order that its OATT, as previously approved by the Commission, and as refiled in this compliance filing, continues to maintain its reciprocity status and that the effective date for Attachment K is October 1, 2003, not the October 1, 2002, provided in the Commission's October 21 Order.

Notice, Interventions and Protests

5. Notice of Bonneville's Compliance Filing and Motion for Clarification was issued on November 26, 2003, 68 Fed. Reg. 67,668 (2003) with comments due on or before December 11, 2003. Powerex Corporation (Powerex) timely filed a protest to Bonneville Compliance Filing and an answer opposing Bonneville's motion for clarification.

6. Powerex objects to Bonneville's compliance filing, and opposes Bonneville's motion seeking clarification that the OATT, approved by the Commission in 2001, if re-implemented in its former state, will by itself be enough to maintain Bonneville's safe harbor reciprocity status. Powerex states that it does not object to Bonneville's continuing to enjoy safe harbor status, but urges that it be conditioned upon: (i) Bonneville's full and prompt compliance with the Commission's OASIS protocols and standards; and (ii) application of the "rule of reason" test to require Bonneville to file all of its business practices and operating procedures that significantly affect terms and conditions of transmission service under the 2001 OATT for reciprocity review.

7. Powerex states that rather than make a proper compliance filing, Bonneville has merely tendered its original 2001 OATT to the Commission, and tersely moved in a three-page pleading for clarification that reinstatement of the 2001 OATT would continue to maintain Bonneville's reciprocity status. Powerex states that Bonneville's compliance

filing does not reflect all of the terms and conditions under which transmission customers must currently reserve and take service on the Bonneville system.

8. Powerex argues that Bonneville attempts to side-step the issues raised in its own petition for declaratory order and in the Commission's October 21, 2003 Order by rolling back the calendar three years, without disclosing to the Commission all of the written and unwritten business practices that have been engrafted on the OATT since that time. Powerex states that these practices, whether taken individually or in aggregate, undeniably modify or affect in a significant way terms and conditions for transmission service under Bonneville's tariff. It maintains that Bonneville's failure to file (or even disclose) such business practices as modifications to the 2001 OATT for reciprocity review clearly violates the Commission's "rule of reason" test. Powerex adds that in many instances, these business practices not only alter express provisions contained in Bonneville's 2001 OATT; they also constitute material deviations from the Commission's standards and policies enumerated in Order Nos. 888, 889, and 638.

Discussion

9. In our October 21 Order, we found that Bonneville's July 7, 2003 petition substantially conformed to the requirements of Order No. 888 for an acceptable reciprocity tariff. However, we conditioned our reciprocity finding on Bonneville's submitting a compliance filing that Bonneville would conform its tariff provisions with respect to the reservation of short-term point-to-point transmission service to that in the Commission's pro forma tariff. The filing submitted by Bonneville on November 20, 2003 mirrors the Commission's pro forma tariff, and is in compliance with our October 21 Order. Accordingly, Bonneville's OATT is an acceptable reciprocity tariff pursuant to the provisions of Order No. 888.

10. Powerex's demand for Bonneville's full and prompt compliance with the Commission's OASIS protocols and standards, and the application of the "rule of reason" test to require Bonneville to file all of its business practices and operating procedures that significantly affect terms and conditions of transmission service under the 2001 OATT for reciprocity review are beyond the scope of this proceeding, which concerns only whether Bonneville's submittal is in compliance with our October 21 Order. If Powerex has concerns with the operation of Bonneville's OATT, it may file a complaint with the Commission pursuant to Section 206 of the Federal Power Act.

11. Finally, we clarify that the effective date of Bonneville's OATT, including Attachment K, is October 1, 2003. Due to a typographical error, our October 21, 2003 order inadvertently provided that the effective date to be October 1, 2002.

The Commission orders:

(A) Bonneville's compliance filing is hereby accepted, for filing, to be effective October 1, 2003, as discussed in the body of this order.

(B) The effective date for Bonneville's OATT, including Attachment K, is October 1, 2003.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.