

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Bonneville Power Administration
PacifiCorp
Idaho Power Company

Docket No. EL05-106-001

ORDER ON CLARIFICATION AND REHEARING

(Issued September 19, 2005)

1. In this order, the Commission responds to requests for clarification or, in the alternative, rehearing of the July 1, 2005 Declaratory Order Providing Guidance Concerning Grid West Proposal.¹

Background

2. In the July 1 Order, the Commission addressed a petition for a declaratory order filed by Bonneville Power Administration (Bonneville), PacifiCorp and Idaho Power Company (collectively, Petitioners) that sought guidance with respect to certain issues that they identified as being critically important to the further development of Grid West, a proposed independent transmission provider. The Commission responded to Petitioners' requests for guidance, which concerned: (1) whether Grid West would have to satisfy the open access requirements of Order No. 888² rather than the requirements

¹ *Bonneville Power Administration, PacifiCorp and Idaho Power Co.*, 112 FERC ¶ 61,012 (2005) (July 1 Order).

² *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in part and rev'd in part sub nom. Transmission Access*

(continued)

for Regional Transmission Organization (RTO) status under Order No. 2000;³ (2) Grid West's governance structure; (3) participating transmission owners' withdrawal rights; (4) Petitioners' request for assurance that, in the future, the Commission would not require Grid West to comply with Order No. 2000 requirements; (5) whether the Commission would accept the application of the *Mobile-Sierra* standard to certain provisions in Grid West's agreements with Bonneville and the other transmission owners; (6) whether to allow participating transmission owners to continue as transmission providers for their pre-existing transmission agreements while new service is made available only through Grid West; (7) Petitioners' request for assurance that Bonneville's participation in Grid West does not provide the Commission with any authority to modify Bonneville's existing transmission agreements; and (8) Petitioners' request that the Commission support implementation, for an indefinite duration, of license plate rates and the application of charges to through-and-out transactions.

3. Requests for clarification or, in the alternative, rehearing of the July 1 Order were filed by PPL Montana, LLC and PPL EnergyPlus, LLC (collectively, PPL Parties), the Public Power Council (PPC) and the Western Public Agencies Group (WPAG).

Discussion

A. Issues Raised By PPL Parties

4. PPL Parties seek clarification or, in the alternative, rehearing of Paragraphs 95-96 of the July 1 Order concerning potential export fees and through-and-out charges. The Petitioners had stated that they were developing proposals regarding the pricing of Grid West services and evaluating the appropriateness of export fees. They requested that the Commission clarify that Grid West's rates for export and throughput (i.e., export fees and

Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

³ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Statutes & Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Statutes & Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,092 (2000), *aff'd sub nom. Public Utility District. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

through-and-out-charges) would not be limited to a transition period (i.e., the Company Rate Period).⁴

5. In the July 1 Order, the Commission stated the following:⁵

95. Applicants state that they seek approval only of the pricing methodology to be employed prospectively or until such time that the Operational Board elects to adopt an alternate rate methodology. They further state that actual rate filings will be submitted before Grid West begins commercial operations. For purposes of this order, we will view this as a request for this Commission to make a determination on the reasonableness of the design of the license plate rate design and export fee.

96. The Commission has previously approved requests for license plate rates in approving RTOs. Petitioners' preference for license plate rates is consistent with other proposals. Consequently, we will accept Applicants' proposal on a generic basis. Regarding the length of the Company Rate Period, we will not impose a maximum duration period but encourage Grid West to set forth principles that should guide the region in developing a pricing proposal that is pragmatic and encourages investment in infrastructure.

6. PPL Parties argue that Petitioners did not ask the Commission to "accept" the export fee, but merely requested that the Commission state that Grid West's rates for exports or throughput would not be limited to the transition period. PPL Parties state that, in approving Petitioners' proposal for license plate rates "on a generic basis," the July 1 Order did not mention an "export fee" or "through-and-out charge," leaving unclear what signal, if any, the Commission intended to provide with respect to such fees and charges. Therefore, PPL Parties request clarification that the July 1 Order's acceptance "on a generic basis" referred only to a license plate rate as compared to a postage stamp rate design, and not to export or import fees or through-and-out charges. They request that the Commission further clarify that it was not pre-judging the issue of charges for through-and-out service or energy that exits or enters Grid West and that the Commission intended to reserve judgment regarding treatment of export, import and through-and-out service until the Commission receives Grid West's actual rate and market design proposal.

⁴ 112 FERC ¶ 61,012 at P 91.

⁵ *Id.* at P 95-96.

7. In addition, even if the Commission clarifies that it did not intend to address the merits of export fees and through-and-out charges in the July 1 Order, PPL Parties request that the Commission encourage Grid West to work with other, interconnected transmission providers to eliminate rate pancaking for Grid West exports, imports and through-and-out service. In support, they cite the Commission's order concerning Entergy Services, Inc.'s (Entergy) proposal for an Independent Coordinator of Transmission, in which the Commission encouraged Entergy and Southwest Power Pool to apply to remove rate pancaking for transmission between the Entergy system and SPP as part of Entergy's section 205 filing.⁶ PPL Parties state that the Commission should state that Grid West and interconnected transmission providers should seek to avoid cost shifts between interconnected systems.

Commission Response

8. Our intent in the July 1 Order was to grant Petitioner's request, *i.e.*, to indicate that we would not limit the implementation of Grid West's export fees and through-and-out charges to the transition period. It was not our intent to determine or otherwise "pre-judge" the appropriateness of export fees and through-and-out charges prior to the submission of a rate filing.

9. PPL Parties' request that we further encourage Grid West to work with other, interconnected transmission providers to eliminate rate pancaking for Grid West exports, imports and through-and-out service is beyond the scope of the Grid West petition for declaratory order and guidance. Nevertheless, we note that the July 1 Order encourages Grid West to set forth principles to guide the region in developing a pricing proposal that is pragmatic.⁷

B. Issues Raised By PPC and WPAG

10. PPC and WPAG seek rehearing or, in the alternative, clarification of Paragraph 32 of the July 1 Order in which the Commission stated the following:⁸

As the intervenors acknowledge, the Commission cannot bind future Commissions. [Footnote omitted.] With respect to whether parties to this proceeding would be bound by the Commission's guidance, we hold here,

⁶ See *Entergy Services, Inc.*, 110 FERC ¶ 61,295 at P 72 (2005).

⁷ 112 FERC ¶ 61,012 at P 96.

⁸ 112 FERC ¶ 61,012 at P 32.

as we held in the *RTO West Rehearing Order*, that if a party to this proceeding has concerns with the guidance that we provide in this order, it should express those concerns on rehearing. They should not wait until Grid West makes its filing to raise issues that they could have raised earlier.

11. PPC and WPAG interpret the July 1 Order as an advisory opinion with no binding effect on the Commission or on any of the parties. However, they express concern that certain of the Commission's responses go beyond preliminary guidance and appear to be binding and precedential, such as: the finding that Grid West's Operational Bylaws satisfy the independence criteria of Order No. 2000; the holding that if a filing is made under section 205 of the Federal Power Act, it will be reviewed under Order No. 888 and not under Order No. 2000; and the holding that the Commission cannot order Bonneville to modify its open access transmission tariff (OATT) or transmission agreements serviced under the OATT. In view of that guidance and the July 1 Order's statement that parties with concerns about the guidance provided in the July 1 Order should express those concerns on rehearing, PPC and WPAG seek clarification with respect to: (1) whether the July 1 Order merely advised the parties of the Commission's position without fixing the rights of the parties; (2) whether the Commission will treat the July 1 Order as binding or precedential on this Commission or future Commissions, and parties in subsequent Grid West filings; (3) whether the parties will be precluded from raising any issues or arguments, to the extent that the filing, facts and circumstances, applicable law or Commission policy differs from that assumed by the petition; and (4) whether the parties in subsequent proceedings on Grid West will be precluded from raising any issue or argument because of any of the Commission's responses in the July 1 Order.

12. PPC and WPAG also contend that the July 1 Order did not provide the assurance needed by transmission-dependent, load-serving entities regarding their pre-existing transmission agreements. WPAG argues that the July 1 Order was silent on the degree to which transmission agreements between Bonneville and its preference power transmission customers will be considered when determining whether the *Mobile-Sierra* standard should be applied to provisions of the transmission agreement between Grid West and Bonneville. It contends that the July 1 Order did not provide guidance on whether provisions of the transmission agreement between Grid West and Bonneville would be allowed to conflict with, or over-ride, the provisions of a pre-existing transmission agreement serviced under Bonneville's OATT between Bonneville and its non-jurisdictional preference power customers. WPAG and PPC ask the Commission to clarify that when it is asked to apply the *Mobile-Sierra* standard to specific provisions of the transmission agreement between Grid West and the transmission owners such as Bonneville, the inquiry will include consideration of the impacts of the proposed *Mobile-Sierra* provisions on pre-existing transmission agreements between preference power transmission-dependent utilities and Bonneville. PPC further requests that the

Commission clarify that Bonneville, and not the Commission, has the authority to interpret Bonneville's contracts with Grid West to determine whether the contract provisions would impermissibly infringe on Bonneville's statutory, contractual and other obligations.

Commission Response

13. The intent of July 1 Order was to advise the parties of the Commission's position in response to the Petitioners' request for guidance concerning their conceptual proposal for Grid West. As an advisory opinion, the July 1 Order is not binding on any party and the guidance therein does not preclude any party from raising any issue in subsequent proceedings when Grid West makes its filing. The Commission's intent was only to encourage parties that presently had concerns about the guidance in the July 1 Order to bring such concerns to the Commission's attention, which would give the Commission the chance to re-evaluate its guidance before the Petitioners continue with the next phase of Grid West development. For example, PPL Parties' request for clarification regarding the export fees and through-and-out charges, which we address above, allowed us to clarify our guidance and avoid potential confusion during the development of Grid West. Further, the principle that the July 1 Order is not binding on the parties and the principle that the Commission cannot bind future Commissions apply to all of the guidance in the July 1 Order.

14. In addition, we clarify that when Grid West makes a filing to apply the *Mobile-Sierra* standard to specific provisions of the transmission agreement between Grid West and the transmission owners such as Bonneville, parties may raise issues concerning the impacts of the proposed *Mobile-Sierra* provisions on pre-existing transmission agreements between preference power transmission-dependent utilities and Bonneville, and we will address those issues at that time. As noted above, PPC also requests further clarification that Bonneville, not the Commission, has authority to interpret whether Bonneville's contracts with Grid West would infringe on Bonneville's statutory, contractual and other obligations. The July 1 Order noted that the Commission has limited jurisdiction over Bonneville as a federal power marketing agency. In response to concerns regarding protection of certain provisions in the agreements between transmission owners and Grid West, the Commission in the July 1 Order encouraged the submission of any particular concerns with regard to Bonneville's obligations and operational responsibilities to be made in subsequent filings. We find ourselves in the same position now. Without knowing the contract provisions of concern to PPC, we find that we cannot provide any greater assurances at this time. We recognize that PPC may be in the same position as the Commission with respect to not knowing what is in the transmission agreements but nonetheless without more information we are unable at this time to grant clarification.

The Commission orders:

The July 1 Order is hereby clarified, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.