

120 FERC ¶ 61,240  
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. EF07-2021-000

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

(Issued September 20, 2007)

1. In this order, we approve the Bonneville Power Administration's (Bonneville) proposed 2008 Transmission and Ancillary Services (2008 Transmission) rates on an interim basis, pending our full review. We also provide an additional period of time for the parties to file comments.

**Background**

2. On May 22, 2007, Bonneville, in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act),<sup>1</sup> and Subpart B of Part 300 of the Commission's regulations,<sup>2</sup> filed with the Commission its proposed 2008 Transmission rates.<sup>3</sup> Bonneville also seeks a finding by the Commission that the proposed 2008 Transmission rates associated with service provided under its open access

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<sup>1</sup> 16 U.S.C. §§ 839e(a)(2), 839e(i)(6) (2000).

<sup>2</sup> 18 C.F.R. Part 300 (2007).

<sup>3</sup> The proposed transmission rate schedules for which Bonneville seeks approval for the two year period ending September 30, 2009 include: FPT-08.1 (Formula Power Transmission); FPT-08.3 (Formula Power Transmission); IR-08 (Integration of Resources); NT-08 (Network Integration); PTP-08 (Point-to-Point Firm Transmission); IS-08 (Southern Intertie Transmission); IM-08 (Montana Intertie Transmission); UFT-08 (Use-of-Facilities Transmission); AF-08 (Advance Funding); TGT-08 (Townsend-Garrison Transmission); IE-08 (Eastern Intertie); ACS-08 (Ancillary Services and Control Areas Services); and GRSPs (General Rate Schedule Provisions for Transmission and Ancillary Services).

transmission tariff (OATT)<sup>4</sup> satisfy the Commission's comparability standards applicable to non-public utilities pursuant to the reciprocity conditions of Order No. 888.<sup>5</sup> Bonneville states that the governing statute and case law do not provide the Commission latitude to review these rates in the same manner as the Federal Power Act (FPA)<sup>6</sup> provides for public utilities. Rather, according to Bonneville, if it has satisfied the standards of the Northwest Power Act,<sup>7</sup> the Commission is required to confirm and approve these rates.<sup>8</sup>

3. Notice of Bonneville's filing was published in the *Federal Register*, with protests and interventions due on or before June 21, 2007.<sup>9</sup> Timely motions to intervene were filed by Avista Corporation, PacifiCorp, Portland General Electric Company, Idaho Power Company, Industrial Customers of Northwest Utilities, Powerex Corp., Public Power Council, and Puget Sound Energy, Inc., raising no substantive issues.

4. In addition, the Electric Power Supply Association (EPSA) and the Northwest and Intermountain Power Producers Coalition (NIPPC) filed a joint motion to intervene and protest. LS Power Associates, L.P. (LS Power) filed a timely motion to intervene and protest. EPSA, NIPPC and LS Power challenge Bonneville's plan to no longer

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<sup>4</sup> The proposed rate schedules associated with Bonneville's OATT are: Network Integration (NT-08), Point-to-Point (PTP-08), Southern Intertie (IS-08), Montana Intertie (IM-08), Use-Of-Facilities (UFT-08), Advance Funding (AF-08), Ancillary Services (ACS-08), and GRSPs.

<sup>5</sup> See *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 relevant part sub nom. Transmission Access 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).

<sup>6</sup> 16 U.S.C. §§ 824 *et seq.* (2000). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

<sup>7</sup> 16 U.S.C. §§ 839e(a)(2), 839e(i)(6) (2000).

<sup>8</sup> *Central Lincoln Peoples' Utility District v. Johnson*, 735 F.2d 1101, 1110 (9<sup>th</sup> Cir. 1984) (holding that the Northwest Power Act "remove[s] FERC from actual ratemaking...and limit[s] FERC's role to financial oversight of the regional rates").

<sup>9</sup> 72 Fed. Reg. 32,633 (2007).

compensate unaffiliated generators within its control area for generation-supplied reactive power service, as unduly discriminatory and in violation of Commission policy. Bonneville filed an answer in response to the protests.

## **Discussion**

### **Procedural Matters**

5. 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 a protest unless otherwise ordered by the decisional authority. We will accept Bonneville's answer because it has provided information that assisted us in our decision-making process.

### **Standard of Review**

6. Under the Northwest Power Act, the Commission's review of Bonneville's transmission rates is limited to determining whether Bonneville's proposed rates meet the three specific 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.<sup>10</sup>

7. 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

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<sup>10</sup> See 16 U.S.C. § 839e(a)(2) (2000).

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.<sup>11</sup>

8. 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,<sup>12</sup> 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 are afforded an additional opportunity in which to raise issues with regard to Bonneville's filing.<sup>13</sup>

### **Interim Approval**

9. The Commission declines at this time to grant final confirmation and approval of Bonneville's proposed 2008 Transmission rates. The Commission's preliminary review nevertheless indicates that Bonneville's 2008 Transmission rates appear to meet the statutory standards and the minimum threshold filing requirements of Part 300 of the Commission's regulations.<sup>14</sup> 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 full review for final approval. 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.<sup>15</sup> The Commission will address concerns raised by protesters in the final decision.

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<sup>11</sup> 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).

<sup>12</sup> See 18 C.F.R. § 300.10(a)(3)(ii) (2007).

<sup>13</sup> 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).

<sup>14</sup> 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).

<sup>15</sup> 18 C.F.R. § 300.20(c) (2007).

10. 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 2008 Transmission rates. This will ensure that the record in this proceeding is complete and fully developed.

The Commission orders:

(A) Interim approval of Bonneville's proposed 2008 Transmission rates is hereby granted, to become effective on October 1, 2007, subject to refund with interest as set forth in section 300.20(c) of the Commission's regulations, 18 C.F.R. § 300.20(c) (2007), pending final action and either approval or disapproval.

(B) Within thirty (30) 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 proposed rates. Parties who wish to do so may file reply comments within twenty (20) 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.,  
Acting Deputy Secretary.