

128 FERC ¶ 61,058
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

United States Department of Energy -
Bonneville Power Administration

Docket Nos. EF06-2011-000
EF06-2011-001
EF06-2011-002

ORDER CONFIRMING AND APPROVING RATES
ON A FINAL BASIS

(Issued July 16, 2009)

1. In this order, we confirm and approve the Bonneville Power Administration's (Bonneville) proposed wholesale power rates,¹ as amended, on a final basis. 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)² provides for Commission review of public utility rates. Rather, if Bonneville has satisfied the standards of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act),³ the Commission is required to confirm and approve these rates.⁴ Here, Bonneville has satisfied the Northwest Power Act's standards.

¹ The proposed wholesale power rates for which Bonneville seeks approval for the period October 1, 2006 through September 30, 2009, include: PF-07 and PF-07R Priority Firm Power Rate, NR-07 and NR-07R New Resource Firm Power Rate, IP-07 and IP-07R Industrial Firm Power Rate, FPS-07 and FPS-07R Firm Power Products and Services Energy Rate, and GTA General Transfer Agreement Delivery Charge in addition to related General Rates Schedule Provisions (GRSPs).

² 16 U.S.C. §§ 824 *et seq.* (2006).

³ 16 U.S.C. §§ 839e(a)(2), 839e(i)(6) (2006).

⁴ *Central Lincoln Peoples' Utility District v. Johnson*, 735 F.2d 1101, 1110 (9th 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").

I. Background

2. On July 28, 2006, Bonneville filed a request for interim and final approval of wholesale power rates in accordance with the Northwest Power Act⁵ and Subpart B of Part 300 of the Commission's regulations.⁶

3. On September 21, 2006, the Commission granted interim approval, and provided an opportunity for additional comments.⁷

4. On December 26, 2006, Bonneville filed errata corrections to its wholesale power rate proposal (Errata Filing). Bonneville stated that it was correcting an omission and certain errors in the calculation of certain figures and tables in the Wholesale Power Rates Development Study Documentation. According to Bonneville, none of the corrections affected Bonneville's overall cost recovery or the level of the wholesale power rates. On March 2, 2007, Bonneville filed a notice of withdrawal of the Errata Filing.

5. On March 2, 2007, June 1, 2007, August 31, 2007, March 4, 2008, and September 4, 2008, Bonneville filed motions to stay further Commission action in this proceeding.

6. On September 26, 2008, Bonneville filed an application for interim and final approval of wholesale power rates for fiscal year 2009. In its filing, Bonneville noted that, after the Commission's September 21 Interim Order approving its wholesale power rates on an interim basis, the United States Court of Appeals for the Ninth Court issued decisions overturning residential exchange program settlement agreements between Bonneville and various investor-owned utilities, and the allocation of the costs associated with the agreements.⁸ Bonneville explained that, in response to the court's decisions, it was revising its fiscal year 2009 wholesale power rates; Bonneville explained that those rates included the same cost allocation error the court identified in its decisions.

⁵ 16 U.S.C. §§ 839e(a)(2), 839e(i)(6) (2006).

⁶ 18 C.F.R. Part 300 (2008).

⁷ *United States Department of Energy – Bonneville Power Administration*, 116 FERC ¶ 61,264 (2006) (September 21 Interim Order).

⁸ Bonneville Power Administration filing at 2 (Sept. 26, 2008) (citing *Portland General Electric v. Bonneville Power Administration*, 501 F.3d 1009 (9th Cir. 2007); *Golden NW Aluminum Co. v. Bonneville Power Administration*, 501 F.3d 1037 (9th Cir. 2007)).

7. On October 31, 2008, the Commission granted interim approval of Bonneville's rates for fiscal year 2009, and provided an opportunity for additional comments.⁹

II. Interventions and Comments

8. Notice of Bonneville's December 26, 2006 Errata Filing was published in the *Federal Register*, 72 Fed. Reg. 2503 (2007), with protests or interventions due on or before January 25, 2007. PacifiCorp filed a timely protest.

9. Avista Corporation, Portland General Electric Company, Idaho Power Company, PacifiCorp, Puget Sound Energy, Inc., Northwest Requirements Utilities,¹⁰ and the Industrial Customers of Northwest Utilities filed timely motions to intervene, raising no substantive issues.

10. In addition, LS Power Associates, LLC (LS Power); the Columbia River Inter-Tribal Fish Commission, the Nez Perce Tribe, and the Yakama Nation (collectively, Tribes); and PPM Energy, Inc., Northwest Independent Power Producers Coalition, TransAlta Centralia Generation, LLC, and Calpine Corporation (collectively, Generators) filed timely motions to intervene and protests. Public Power Council filed an untimely motion to intervene.

11. Bonneville filed an answer in response to Generators' protest. Additionally, Bonneville filed an answer in opposition to both LS Power's motion to intervene and the issues raised in its protest.

12. Public Power Council and Tribes filed additional comments in response to the Commission's September 21, 2006 Interim Order.

13. Notice of Bonneville's September 26, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 57,618 (2008) with protests or interventions due on or before October 3, 2008.

14. Public Utility District No. 1 of Snohomish County, Northwest Requirements Utilities, Portland General Electric Company, Idaho Power Company, Puget Sound

⁹ *United States Department of Energy – Bonneville Power Administration*, 125 FERC ¶ 61,132 (2008).

¹⁰ Northwest Requirements Utilities comprises various municipalities, public utility districts, and cooperatives. It seeks to intervene jointly and also individually on behalf of its members.

Energy, Inc., PacifiCorp, Eugene Water & Electric Board, Tillamook Peoples' Utility District, and Avista Corporation filed timely motions to intervene, raising no substantive issues. Alcoa, Inc. filed a motion to intervene out-of-time.

15. Public Power Council, Idaho Power Company, Clatskanie People's Utility District, the Association of Public Agency Customers, and Pacific Northwest Investor-Owned Utilities¹¹ filed timely motions to intervene with protests and comments. Idaho Public Utilities Commission filed a timely motion to intervene. The Public Utility Commission of Oregon filed a motion to intervene out-of-time.

16. Bonneville filed an answer to the protests and comments.

17. Public Power Council, Pacific Northwest Investor-Owned Utilities, Idaho Power Company, and the Association of Public Agency Customers filed comments in response to the Commission's October 31, 2008 Interim Order. Bonneville, Pacific Northwest Investor-Owned Utilities, and Alcoa, Inc. filed reply comments.

III. Discussion

A. Procedural Matters

18. With the exception of LS Power's motion to intervene, 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 deny LS Power's opposed motion to intervene because it did not participate in the underlying Bonneville section 7(i) rate case.¹² We will grant the motions to intervene out-of-time given the parties' interest in this proceeding, the early stage of this proceeding, and the absence of undue prejudice or delay.

¹¹ Pacific Northwest Investor-Owned Utilities is comprised of Avista Corporation, Portland General Electric Company, Puget Sound Energy, Inc., PacifiCorp, and Idaho Power Company.

¹² The Commission has previously denied intervention by entities that did not participate in the underlying Bonneville section 7(i) proceedings where the rates were developed. *See, e.g., Department of Energy – Bonneville Power Administration*, 27 FERC ¶ 61,251, at 61,474 (1984)(parties should not be allowed to make no case in the section 7(i) proceeding and to then make their case before the Commission); *Department of Energy—Bonneville Power Administration*, 76 FERC ¶ 61,314, at 62,529 (1996) (motion to intervene denied on the basis that the party failed to participate in the section 7(i) proceeding).

19. 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 will accept the answers because they have provided information that assisted us in our decision-making process.

B. Standard of Review

20. Under the Northwest Power Act, the Commission's review of Bonneville's regional power and transmission rates is limited to determining whether Bonneville's proposed rates meet the three specific requirements of section 7(a)(2) of the Northwest Power Act:¹³

- (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 Bonneville's other costs;
- (B) they must be based upon Bonneville'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.

21. Commission review of Bonneville's non-regional, non-firm rates also is limited. Review is restricted to determining whether such rates meet the requirements of section 7(k) of the Northwest Power Act,¹⁴ which requires that they comply with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act (Transmission System Act). Taken together, those statutes require that Bonneville's non-regional, non-firm rates:

- (A) recover the cost of generation and transmission of such electric energy, including the amortization of investments in the power projects within a reasonable period;
- (B) encourage the most widespread use of Bonneville power; and
- (C) provide the lowest possible rates to consumers consistent with sound business principles.

¹³ 16 U.S.C. § 839e(a)(2) (2006). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

¹⁴ 16 U.S.C. § 839e(k) (2006).

22. Unlike the Commission's statutory authority under the FPA, the Commission's authority under sections 7(a) and 7(k) 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.¹⁵

C. Analysis

23. With the foregoing principles in mind, we will approve on a final basis Bonneville's proposed rates, as amended. Based upon Bonneville's filings to the Commission, including the power repayment study, we find that the revenues expected to be collected under the proposed rates will be sufficient to recover Bonneville's total system costs, including recovery of the remaining Federal investment, with interest, over the repayment period.

1. Regional Rates

24. While section 7(a) of the Northwest Power Act requires only that the Federal investment be repaid sometime within a reasonable number of years, traditionally we have considered the repayment period as 50 years. In addition, we have required that some reasonable intermediate level of repayment should exist to ensure that repayment will occur by the end of the fiftieth year.

25. The traditional measure of the adequacy of Bonneville's revenues has been the power repayment study. Bonneville's power repayment study indicates that the revenues expected to be collected under the proposed rates will be sufficient to recover Bonneville's total system costs, including the recovery of the remaining Federal investment, with interest, over the repayment period.

26. In sum, our review of Bonneville's power repayment study indicates that its proposed rates are consistent with sections 7(a)(2)(A) and (B) of the Northwest Power Act.

¹⁵ *E.g., United States Department of Energy - Bonneville Power Administration*, 67 FERC ¶ 61,351, at 62,216-17 (1994); *see also, e.g., Aluminum Co. of America v. Bonneville Power Administration*, 903 F.2d 585, 592-93 (9th Cir. 1989).

2. Out of Region Rates

27. Bonneville maintains that the rates it filed for non-firm sales outside the Pacific Northwest region meet the requirements of section 7(k) of the Northwest Power Act, because the rates are cost-based and are widely available to all potential customers. Our review indicates that Bonneville is correct, and that the proposed rates are consistent with the applicable statutory standards.

3. Rate Design and Rate Procedure Issues

28. Protestors challenge a number of the elements of Bonneville's proposed rates, including but not limited to: (1) Bonneville's assumptions regarding conservation financing; (2) Bonneville's inclusion of the costs of financial payments made to its Direct Service Industrial customers; (3) Bonneville's decision to set off certain balances against benefits under future residential exchange contracts; (4) Bonneville's effort to respond to the court's remand, including Bonneville's inclusion of conservation and renewable discount program payments in response to the court's remand; and (5) Bonneville's decision to allocate section 7(b)(3) costs to surplus and secondary sales. Protestors' arguments are, in fact, challenges to the design of Bonneville's rates, and are therefore beyond the scope of the Commission's jurisdiction.¹⁶ Accordingly, the Commission need not address such issues.

29. Protestors also challenge Bonneville's plan to deny compensation to unaffiliated generators within its control area for generation-supplied reactive power service as unduly discriminatory and in violation of Commission policy. The Commission's authority to review Bonneville's rates does not arise from the FPA, but from the Northwest Power Act and is, as noted above, more limited. Given this more limited authority, Bonneville's decision on how it chooses to design its rates to address reactive power is the kind of decision that is within its discretionary authority and beyond the scope of Commission review.¹⁷

¹⁶ *E.g., United States Department of Energy – Bonneville Power Administration*, 95 FERC ¶ 61,082, at 61,244-45 & n.12 (2001).

¹⁷ *See, e.g., United States Dep't of Energy – Western Area Power Administration (Central Valley Project, California-Oregon Transmission Project, and Pacific Alternating Current Intertie)*, 118 FERC ¶ 61,052, at P 14 (2007), *reh'g denied*, 122 FERC ¶ 61,214 at P 10-11 (2008). *See also United States Department of Energy – Southwestern Power Administration (Jim Woodruff Project)*, 116 FERC ¶ 61,044, at P 10-17 (2006); *United States Department of Energy—Western Area Power*

(continued...)

30. Protestors also challenge the process by which Bonneville determined, and, subsequently, revised its proposed rates. We lack jurisdiction to address protestor's arguments regarding Bonneville's ratemaking procedures.¹⁸ There is no provision in the Northwest Power Act that provides for Commission review of the propriety of Bonneville's ratemaking procedures, and further, such review would be inconsistent with the goals of the Act.¹⁹

The Commission orders:

Bonneville's proposed wholesale power rates are hereby confirmed and approved on a final basis for the periods requested by Bonneville.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Administration (Pacific Northwest-Pacific Southwest Intertie Project), 87 FERC ¶ 61,346, at 62,337 (1999); *cf. United States Department of Energy – Bonneville Power Administration*, 107 FERC ¶ 61,138, at P 25-27 (2004).

Separately, in *Bonneville Power Administration v. Puget Sound Energy, Inc.*, 125 FERC ¶ 61,273 (2008), the Commission recently dealt with the issue of payments to unaffiliated generators for reactive power inside the deadband, finding in Bonneville's favor that Bonneville need no longer make such payments.

¹⁸ *E.g., United States Department of Energy – Bonneville Power Administration*, 28 FERC ¶ 61,078, at 61,146 (1984).

¹⁹ *Id.* (noting that the court in *Central Lincoln People's Utility District v. Johnson*, 735 F.2d 1101, 1115 (9th Cir. 1984), found that Congress intended to provide the Commission with limited review powers in order to avoid delay and streamline the ratemaking review process).