

131 FERC ¶ 61,244
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

U.S. Department of Energy --
Bonneville Power Administration

Docket Nos. EL09-12-000
EL09-12-001

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued June 17, 2010)

1. On November 26, 2008, as amended on January 1, 2009, January 28, 2009, and September 1, 2009, Bonneville Power Administration (Bonneville) submitted a petition for declaratory order regarding its Tiered Rate Methodology, which establishes the rate design Bonneville will apply to the firm power that will be sold to its preference customers subject to new 20-year power contracts beginning in FY 2012-2013, and beyond. In this order, the Commission grants Bonneville's petition for a declaratory order that its new Tiered Rate Methodology should not prevent Bonneville from recovering its costs, and meeting its statutory obligations to make timely payments to the United States Treasury.

I. Background

2. In its filing, Bonneville explains that the primary feature of its new Tiered Rate Methodology is the introduction of a tiered rate design, with rates in one tier (Tier 1) based on generation output and costs attributed to its current Federal Columbia River Power System (Federal System) resources, and rates in the second tier (Tier 2) based on the generation and costs associated with additional resources acquired to supply sales that exceed the current Federal System resources. Bonneville explains, further, that the Tiered Rate Methodology will guide the establishment of future Priority Firm Power rates beginning with the FY 2012-2013 rate period. Bonneville points out that this Tiered Rate Methodology is the result of a regional dialogue with its customers and stakeholders to define Bonneville's power supply and marketing role in the long-term to meet regional and national energy goals.

3. In its filing, Bonneville explains that the Tiered Rate Methodology described in this docket is the new methodology that it will use to establish a new two-tiered Priority Firm Power rates to be applicable to firm requirements power service in the future when those customers' current power sales contracts expire in Fiscal Year 2011. Bonneville

explains, further, that those customers need sufficient lead time to make decisions about whether to develop or otherwise secure resources independently from Bonneville, to serve their load growth in the FY 2012 time period and beyond. Bonneville assures the Commission and those customers that will be affected by this new methodology that, in the meantime, it will continue to operate the Federal System to meet its current customers' loads with firm power without regard to its implementation of this new rate design in the future, i.e., FY 2012-2013 and beyond.

4. Bonneville explains that its new Tiered Rate Methodology does not change its fundamental rate development process. Bonneville explains, further, that the Tiered Rate Methodology does not address its amortization and repayment of the Federal investment in the Federal System, and that it will not alter the cost evaluation period for rates.¹ Bonneville also assures the Commission and those customers that will be affected by this new methodology that, in the meantime, its revenue requirement will continue to establish the level of revenues necessary to recover, in accordance with sound business principles, those customers' costs associated with Bonneville's current acquisition, conservation, and transmission of electric power. Bonneville points out that this new methodology merely addresses the recovery of costs that will be allocated in the future, i.e., FY 2012 and beyond, to those of its customers that will be affected.

5. Bonneville explains that specific rate levels have not yet been established. Bonneville explains that the specific rate levels will be developed consistent with the Tiered Rate Methodology in future rate proceedings conducted under section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act).² Bonneville explains, further, that the Tiered Rate Methodology provides that it will set the power rates on a two-year cycle throughout the term of the 20-year contracts with its Priority Firm Power customers, beginning with the FY 2012-2013 rate period.

6. Bonneville asserts that its proposal to use a two-tier rate design will provide its customers with rate stability and certainty. According to Bonneville, the methodology is an equitable way for Bonneville to share the benefits of the Federal System with existing and new customers. Bonneville states that the methodology will provide customers with price signals that reflect the costs of the products and services needed to serve their loads. Bonneville states, further, the methodology will enable it and its customers to make efficient and cost-effective resource decisions for future energy needs.

¹ The cost evaluation period is the period extending from the last year for which historical information is available, through the next period that Bonneville proposes to put in place immediately following the termination of the current, but soon to expire, period.

² 16 U.S.C. § 839e (2006).

7. Bonneville explains that, while it is striving to provide long-term rate stability, it remains of fundamental importance to ensure timely cost recovery. Bonneville thus explains further that, should it discover that its Tiered Rate Methodology somehow limits Bonneville from fully recovering its costs, sections 12 and 13 of its Tiered Rate Methodology provide criteria and conditions under which it may revise the methodology, and the processes to do so. Specifically, section 12.1 of Bonneville's Tiered Rate Methodology provides that Bonneville reserves the right to revise any part of this methodology if the Administrator determines, in accordance with the applicable procedures provided in section 13, that: (1) Bonneville cannot timely and reasonably recover its costs without revising the methodology; or (2) a revision to the methodology is necessary to effectively comply with a court ruling.

8. Bonneville, therefore, petitions the Commission for a declaratory order that finds that the new Tiered Rate Methodology submitted in this docket will not prohibit Bonneville from recovering, in its wholesale power rates, the costs associated with the acquisition, conservation and transmission of electric power, and from meeting its statutory duty to make payments to the United States Treasury on time and in full.

II. Notices, Interventions, and Protests

9. Notices of Bonneville's filings were published in the *Federal Register*, 73 Fed. Reg. 76,628 (2008), 74 Fed. Reg. 53,228 (2009), and 74 Fed. Reg. 26,850 (2009), with interventions and protests due on or before June 11, 2009. Motions to intervene were filed by Public Power Council, Northwest Requirements Utilities, Yakama Power, Portland General Electric Company, PacifiCorp, Idaho Power Company, Clatskanie People's Utility District, Eugene Water & Electric Board, Avista Corporation, Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc., Industrial Customers of Northwest Utilities, Powerex Corp., and Puget Sound Energy, Inc. Georgia-Pacific, LLC (Georgia-Pacific) filed a motion to intervene and protest.

10. Georgia-Pacific protests Bonneville's petition to the extent it may be construed as a request for approval of rates by the Commission under section 7(a)(2) of the Northwest Power Act.³ Georgia-Pacific points out that Bonneville agrees in its application that the Tiered Rate Methodology is a rate design methodology, and not a request for approval of specific rates. Georgia-Pacific points out, further, that the Commission has consistently held that, under its narrow scope of review under the Northwest Power Act, "the Commission does not address either rate design or cost allocation between customer classes except as they relate to the equitable allocation of transmission costs between Federal and non-Federal users of the Federal transmission system."

³ 16 U.S.C. § 839e(a)(2) (2006).

11. Georgia-Pacific further states that, while Bonneville may request the relief sought in this petition, such a request should not be deemed to be a request for approval of rates. Georgia-Pacific believes that such approval would be required to deem any rates final for purposes of judicial review.

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission Discussion

13. We find that Bonneville's Tiered Rate Methodology, given that it is only a change in Bonneville's rate design methodology and that Bonneville has a statutory obligation to set rates to recover its costs, and also that Bonneville is able to revise it should that prove necessary, should not prevent Bonneville from recovering the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal System over a reasonable period of years, and the other costs and expenses incurred by Bonneville.

14. As Bonneville notes in its filing, and Georgia-Pacific points out in its protest, the petition filed in this docket does not establish specific rates. Those rates will be filed by Bonneville, and addressed by the Commission, in separate future rate filings involving Bonneville's rates for the FY 2012-2013 time period and beyond. The Tiered Rate Methodology only establishes the rate design methodology that Bonneville will apply to the firm power that will be sold, under new 20-year power contracts, to its Priority Firm Power customers that purchase under the Tiered Rate Methodology beginning in the FY 2012-2013 time period, and beyond. As Bonneville notes in its filing, the setting of the actual rates, and the Commission's confirmation and approval of the rate levels will take place through the applicable section 7(i) proceeding beginning with the FY 2012-2013 rate period. Moreover, as Bonneville notes, Bonneville retains the ability to revise the methodology should that prove necessary. The Commission, therefore, grants Bonneville's petition for a declaratory order that its new Tiered Rate Methodology should not prevent Bonneville from recovering its costs and meeting its statutory obligation to make timely payments to the United States Treasury.

The Commission orders:

The Commission hereby grants Bonneville's petition for a declaratory order that its new Tiered Rate Methodology should not prevent Bonneville from recovering its costs and meeting its statutory obligation to make timely payments to the United States Treasury, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.