

149 FERC ¶ 61,043
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Bonneville Power Administration

Docket Nos. EF14-5-000
EF14-5-001

ORDER CONFIRMING AND APPROVING RATE
ON A FINAL BASIS

(Issued October 16, 2014)

1. In this order, we confirm and approve the Bonneville Power Administration's (Bonneville) proposed Oversupply Rate (OS-14 rate) 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 section 205 of the Federal Power Act (FPA)¹ provides for Commission review of public utility rates. Rather, if Bonneville has satisfied the standards of section 7 of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act),² the Commission is required to confirm and approve these rates. Here, Bonneville has satisfied the Northwest Power Act's standards.

I. Background

2. On April 23, 2014, as supplemented on July 9, 2014,³ Bonneville filed a request for confirmation and approval of its proposed OS-14 rate in accordance with the Northwest Power Act⁴ and Part 300 of the Commission's regulations (Bonneville's Filing). According to Bonneville the proposed OS-14 rate is a transmission rate designed to recover all costs incurred under the Oversupply Management Protocol (OMP) from

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 300.14 (2014).

³ Commission Staff had informed Bonneville that it had improperly filed its OS-14 rate schedule. Thus, Bonneville supplemented its filing by resubmitting its OS-14 rate schedule in e-Tariff.

⁴ 16 U.S.C. § 839e (2012).

March 31, 2012, to September 30, 2015, by allocating oversupply costs to generation in Bonneville's balancing authority area scheduled during oversupply event hours. Bonneville asked only for final confirmation and approval and did not seek interim approval.⁵

3. Bonneville explains that it markets power from the federal hydro projects operated by the U.S. Army Corps of Engineers (Corps) and the Bureau of Reclamation in the Pacific Northwest. During spring runoff, water flows can be higher than needed to meet regional electric load and exports. In addition, Bonneville states, water storage and hydro generating capacity at federal dams are limited. Therefore, according to Bonneville, excess water sometimes must be spilled over the dams' spillways (channels to permit the release of excess water). However, high levels of spill can create excessive amounts of total dissolved gas in the water, which can lead to gas bubble trauma that threatens the health of the ecosystem and aquatic life, including fish listed as endangered or threatened under the Endangered Species Act.⁶

4. The States of Washington and Oregon have authority under the Clean Water Act to set total dissolved gas levels. Bonneville must adhere to both the Clean Water Act and the Endangered Species Act. Therefore, the Corps and the Bureau of Reclamation plan Federal Columbia River Power System operations to comply with applicable state and tribal water quality standards and minimize excess total dissolved gas to the extent practicable by limiting the amount of excess spill. For the last several years, spill and water quality constraints were adopted by court order in litigation mandating that spill operations be conducted as set forth in annual spill orders and fish operation plans.⁷

5. To avoid excess spill, Bonneville explains that, historically, it offered to displace non-federal generation with low-cost or free federal hydropower. In recent years, however, Bonneville has integrated 4,500 megawatts of wind generation into the Federal Columbia River Transmission System. Some wind generators receive federal production tax credits and state renewable energy credits. Production tax credits are credits against wind generators' federal income taxes, and renewable energy credits are credits that

⁵ Bonneville Filing at 2.

⁶ Bonneville Filing at 2 (citing Bonneville Power Administration, Bonneville's Interim Environmental Redispatch and Negative Pricing Policies: Administrator's Record of Decision 5- 11 (2011)).

⁷ Bonneville Filing at 2 (citing *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 839 F. Supp. 2d 1117 (D. Or. 2011)).

purchasers of wind generation can use to satisfy their obligations under state law to ensure that a certain percentage of the electricity they sell is produced by renewable resources. Since the generators are granted credits based on the amount of energy they generate, Bonneville states that wind generators have no incentive to curtail their production (accepting federal hydropower in its place to serve its load) and allow Bonneville to mitigate excess spill.⁸

6. In March 2011, Bonneville established an interim environmental redispatch policy under which Bonneville displaced those generators that did not accept offers of free federal hydropower during periods of excess spill. Bonneville substituted free federal hydropower for the displaced generation. On June 13, 2011, wind generators and other parties filed a complaint with the Commission under section 211A of the FPA in Docket No. EL11-44-000. Section 211A authorizes the Commission to order unregulated transmitting utilities (including Bonneville) to offer transmission service on terms and conditions that are comparable to the terms and conditions under which they provide transmission service to themselves and that are not unduly discriminatory or preferential. The complainants argued that Bonneville's policy discriminated against wind generators.⁹ On December 7, 2011, the Commission issued an order finding that Bonneville's environmental redispatch policy violated section 211A and directed Bonneville to file tariff revisions within 90 days that addressed the comparability concerns raised in the proceeding in a manner that provided comparable transmission service that was not unduly discriminatory or preferential.¹⁰

7. On March 6, 2012, in Docket No. EL11-44-002, Bonneville submitted its compliance filing to address the determinations in the December 2011 Order. Bonneville proposed to amend its open access transmission tariff to include the OMP, which set forth the terms and conditions for displacing generation during periods of oversupply for the period between March 31, 2012 and March 30, 2013. Under the OMP, Bonneville proposed to compensate displaced generators for certain costs related to displacement, including (1) production tax credits that the wind generator would have received but for the displacement; (2) lost renewable energy credits unbundled (sold separately) from the sale of energy; and (3) for bundled contracts (sales of renewable energy credits and energy together) executed on or before March 6, 2012, certain losses because of the generators' failure to deliver wind-generated power.¹¹ In the filing, Bonneville also

⁸ Bonneville Filing at 2-3.

⁹ *Id.* at 3.

¹⁰ *Id.*; see *Iberdrola Renewables, Inc. v. Bonneville Power Administration*, 137 FERC ¶ 61,185 (2011) (December 2011 Order).

¹¹ Bonneville March 6, 2012 Compliance Filing in Docket No. EL11-44-002 at 3.

proposed to fund the compensation to displaced generators through transmission reserves, and to seek to recover those funds once a cost allocation methodology was established in a formal rate case conducted pursuant to the Northwest Power Act. Bonneville informed the Commission that it intended to make an initial proposal in the Northwest Power Act rate case to allocate 50 percent of the costs of oversupply to power customers and 50 percent to wind generators.¹²

8. On December 20, 2012, the Commission issued an order conditionally accepting the OMP on an interim basis, subject to Bonneville filing a new cost allocation proposal. The Commission determined that Bonneville failed to demonstrate that its intended 50/50 cost sharing arrangement would place an appropriate and equitable cost burden upon all firm transmission customers. The Commission noted that wind generators' use of firm transmission service on Bonneville's system during oversupply periods represents a fraction of the total firm transmission usage during those periods, yet such entities would be allocated half of the displacement costs under Bonneville's intended methodology. The Commission directed Bonneville to submit a compliance filing under FPA section 211A within 90 days that set forth a cost allocation methodology that equitably allocates displacement costs to all firm transmission customers.¹³ Bonneville requested rehearing on this issue and also requested a stay of the compliance filing deadline to allow Bonneville to complete its rate case. The Commission denied rehearing but extended the deadline for filing the cost allocation methodology to a date 30 days after Bonneville submitted its final Northwest Power Act rate decision to the Commission.¹⁴

9. Bonneville's original OMP expired on March 30, 2013. Therefore, on March 1, 2013, Bonneville filed an updated protocol to be effective from March 31, 2013 through September 30, 2015. On May 23, 2014, Bonneville filed its proposed cost allocation methodology in a compliance filing under section 211A.¹⁵

¹² *Id.* at 26.

¹³ *Iberdrola Renewables, Inc., et al. v. Bonneville Power Administration*, 141 FERC ¶ 61,234, at PP 44-46 (2012) (Compliance Order), *reh'g denied*, 143 FERC ¶ 61,274 (2013) (Compliance Rehearing).

¹⁴ Compliance Rehearing, 143 FERC ¶ 61,274 at PP 24, 37, 40.

¹⁵ The Commission is ruling on these filings in the concurrently-issued order in Docket Nos. EL11-44-006, and EL11-44-007.

10. To date, Bonneville has incurred \$2.7 million in oversupply costs, all in 2012. Bonneville explains that it has paid this amount out of transmission reserves and has carried this amount as a regulatory asset. The proposed OS-14 rate would recover oversupply costs from March 31, 2012 through September 30, 2015.

II. Rate Proposal

11. Bonneville conducted the OS-14 rate proceeding to establish rates to recover costs attributable to Bonneville's OMP. Bonneville states that the scope of the OS-14 rate proceeding included a determination of the costs to be recovered by the rates, functionalization and allocation of the costs, and features of the proposed OS-14 rate schedule. Bonneville states that the only issue in the OS-14 rate case is how to allocate oversupply costs. Bonneville considered four cost allocation alternatives in this rate case: 1) allocate oversupply costs either to all transmission rates or to network rates; 2) allocate oversupply costs to all customers with scheduled use of Bonneville's transmission system during oversupply event hours; 3) allocate oversupply costs to generation in Bonneville's balancing authority area scheduled during oversupply event hours; and 4) allocate oversupply costs to power rates. Bonneville adopted alternative number 3 where it allocates oversupply costs to generators in Bonneville's balancing authority area scheduled during oversupply event hours. Bonneville states that this best aligns with principles of cost causation because the scheduling of generation during oversupply events, as measured by transmission schedules, causes the need to displace generation and hence oversupply costs, and, because the need to displace extends only to generators within Bonneville's balancing authority area. Bonneville asserts that fish and wildlife requirements obligate it to take all reasonable actions to avoid excess total dissolved gas, and Bonneville has determined that the displacement of other generating resources in its balancing authority area, which are resources that Bonneville has operational control over, satisfies this obligation.¹⁶

III. Protests and Comments

12. Notice of the filing was published in the *Federal Register*, 79 Fed. Reg. 25,129 (2014), with protests and interventions due on, or before, May 23, 2014. Timely motions to intervene without comments were filed by NextEra Energy Resources, LLC, Southern California Edison Company, Public Power Council, EDP Renewables North America, LLC, PNGC Power, Public Utility District No. 1 of Snohomish County, Washington, Northwest Requirements Utilities, Puget Sound Energy, Inc., Turlock Irrigation District, Avista Corporation, Modesto Irrigation District, Powerex Corporation, PacifiCorp, Portland General Electric Company, and Alcoa Inc.

¹⁶ Bonneville Filing at 4.

13. Iberdrola Renewables, LLC (Iberdrola), Renewable Northwest, Caithness Shepherds Flat, LLC (Caithness), and in a joint filing, PacifiCorp, Portland General Electric Company, and Puget Sound Energy (IOUs), filed motions to intervene and protests. These parties argue that OMP costs should be allocated to Bonneville's power rates rather than its transmission rates because OMP costs are caused by Bonneville's fish and wildlife obligations, and its inability to sell excess power.¹⁷ Caithness also states this proceeding should be consolidated with the OMP compliance filings in Docket Nos. EL11-44-006 and EL11-44-007, arguing that the rate and non-rate aspects of oversupply should not be considered in separate proceedings and in separate orders.¹⁸

14. M-S-R Public Power Agency (M-S-R) filed a motion to intervene and comments in support of Bonneville's proposed OS-14 rates. M-S-R states that it supports Bonneville's rate filing as an interim solution that equitably allocates the costs of the OMP, both administrative and displacement costs, to all generators in the Bonneville balancing authority area.¹⁹

15. On June 6, 2014, Bonneville filed an answer to the protests and comments by Iberdrola, Renewable Northwest, Caithness and the IOUs. Bonneville asserts that the Commission's jurisdiction to review its rates is limited to the standards set forth in the Northwest Power Act.²⁰ Bonneville also asserts that there would be no oversupply costs if not for the interconnection of wind generation in Bonneville's balancing authority area.²¹ Bonneville explains that, if the wind generators were replaced by generation outside of Bonneville's balancing authority area, Bonneville would have no obligation to displace the generation and would not incur oversupply costs. Bonneville further explains that, by locating in its balancing authority area, wind generators increase Bonneville's obligation to displace generation and increase Bonneville's costs.²² Bonneville also asserts that its proposed OS-14 rates equitably allocate costs between federal and non-federal use of the transmission system.²³ Finally, Bonneville argues that

¹⁷ Iberdrola Protest at 9, 11, 12, 16, 17; Renewable Northwest Protest at 4, 6, 8-10; Caithness Protest at 3-4, 8-9, 11; IOUs Protest at 6-11.

¹⁸ Caithness Protest at 12-16.

¹⁹ M-S-R Comments at 1, 6-8.

²⁰ Bonneville Answer at 3-6.

²¹ *Id.* at 5-7.

²² *Id.* at 6-7.

²³ *Id.* at 7.

the Commission should not consolidate this proceeding under the Northwest Power Act with its compliance filing in Docket No. EL11-44-000 under Section 211A of the FPA because the two proceedings are under different federal acts.²⁴

16. On June 16, 2014, as corrected on June 18, 2014, Iberdrola filed an answer to Bonneville's answer. In its answer, Iberdrola requests that the Commission remand the proposed OS-14 rate back to Bonneville for development of a full and complete administrative record to support Bonneville's proposed rates.²⁵

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014) prohibits an answer to a protest unless otherwise ordered by the decisional authority. In this case, the Commission finds good cause to permit the answers filed in this proceeding because they provide information that has assisted the Commission in its deliberations.

B. Standard of Review

19. 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:²⁶

(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

²⁴ Bonneville Answer at 8.

²⁵ Iberdrola Answer at 8.

²⁶ 16 U.S.C. § 839e(a)(2) (2012). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

(C) insofar as transmission rates are concerned, they must equitably allocate the costs of the federal transmission system between federal and non-federal power.

20. 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,²⁷ which requires that they comply with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River 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.

21. 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.

C. Analysis

22. With the foregoing principles in mind, we will confirm and approve on a final basis Bonneville's proposed OS-14 rate. Based upon Bonneville's filings to the Commission, we find that the revenues expected to be collected under the proposed rate will be sufficient to recover Bonneville's oversupply costs attributable to Bonneville's OMP.

23. Section 7(a)(1) of the Northwest Power Act directs the Administrator to establish, and periodically review and revise, rates for sale and disposition of electric energy and capacity and for transmission of non-federal power.²⁸ In the instant case, Bonneville incurred costs under the OMP starting March 31, 2012 and it has established a rate to recover those costs.

²⁷ 16 U.S.C. § 839e(k) (2012).

²⁸ 16 U.S.C. § 839e(i) (2012).

24. As noted above, 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. In the instant filing, the Administrator has certified that the rate schedule is consistent with applicable laws.²⁹ We are satisfied, in light of the record before us, including the Administrator's certification, that the OS-14 rate and the cost allocation embedded in that rate represent an equitable allocation between federal and non-federal use of the transmission system, and that the Administrator has demonstrated that the proposed OS-14 rate is consistent with section 7(a)(2)(A) and (B) of the Northwest Power Act.

25. With regard to the challenges by Iberdrola, Renewable Northwest, Caithness, and the IOUs to Bonneville's proposed rate, and, particularly the manner in which the costs are proposed to be allocated, i.e. to transmission, and their requests that the Commission remand the rates, we find their arguments are, in fact, challenges to the allocation of transmission costs. We recognize that the comparability requirement of section 211A of the FPA is not a requirement of the Northwest Power Act, however, as the cost allocation satisfies the comparability principle under section 211A of the FPA, this is sufficient to meet the equitable allocation requirements of our review under the Northwest Power Act. Therefore, we find that the OS-14 rate meets the requirements of our review and provides an equitable allocation that satisfies the requirements of the Northwest Power Act.

26. We will not consolidate this rate proceeding with Bonneville's aforementioned compliance filing under FPA section 211A.³⁰ Instead, we agree with Bonneville that, arising as it does under the Northwest Power Act, this rate proceeding concerns only the standards of that act.

²⁹ Bonneville Record of Decision at 55.

³⁰ Our companion order approves the OMP under FPA section 211A, finding that the interconnection of wind resources to Bonneville's transmission grid is directly related to Bonneville incurring oversupply costs and finding that Bonneville's oversupply costs are properly categorized as transmission costs. *Iberdrola Renewables, et al. v. Bonneville Power Administration*, 149 FERC ¶ 61,044 at P 40 (2014).

The Commission orders:

Bonneville's proposed OS-14 rate is hereby confirmed and approved on a final basis for the period of March 31, 2012 through September 30, 2015.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.