

150 FERC ¶ 61,112
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Bonneville Power Administration

Docket No. EF14-5-002

ORDER DENYING REHEARING

(Issued February 19, 2015)

1. On October 16, 2014, the Commission issued an order confirming and approving the Bonneville Power Administration (Bonneville)'s proposed Oversupply Rate (OS-14 rate) on a final basis.¹ In this order, the Commission denies requests for rehearing of the October 2014 Order, as set forth below.

I. Background

2. On March 6, 2012, in Docket No. EL11-44-002, Bonneville proposed to amend its open access transmission tariff to include the Oversupply Management Protocol (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. Bonneville also 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

¹ *Bonneville Power Administration*, 149 FERC ¶ 61,043 (2014) (October 2014 Order).

rate case to allocate 50 percent of the costs of oversupply to power customers and 50 percent to wind generators.

3. 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.²

4. 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, which the Commission accepted in an order issued concurrently with the October 2014 Order relevant here.³

II. October 2014 Order

5. In the October 2014 Order, the Commission confirmed and approved Bonneville's proposed OS-14 rate on a final basis. As detailed in the October 2014 Order, the OS-14 rate is a transmission rate designed to recover all costs incurred under the OMP from March 31, 2012, to September 30, 2015, by allocating oversupply costs to generation in Bonneville's balancing authority area scheduled during oversupply event hours. In confirming and approving the OS-14 rate, the Commission explained that 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

² *Iberdrola Renewables, Inc. 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). 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.

³ See *Iberdrola Renewables, Inc. v. Bonneville Power Administration*, 149 FERC ¶ 61,044 (2014).

three specific requirements of section 7(a)(2) of the Northwest Power Act:⁴ (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.

6. As further noted in the October 2014 Order, 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 Commission explained that 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.

7. Based upon Bonneville's filings to the Commission, the Commission found 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. The Commission noted that 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.⁵ The Commission stated that it was satisfied, in light of the record before it, 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.

8. With regard to challenges to the manner in which the costs were proposed to be allocated, i.e. to transmission, the Commission found that such arguments were in fact challenges to the allocation of transmission costs. The Commission recognized that the comparability requirement of section 211A of the FPA is not a requirement of the Northwest Power Act, but stated, "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."⁶

⁴ 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.

⁵ 16 U.S.C. § 839e(i) (2012).

⁶ October 2014 Order, 149 FERC ¶ 61,043 at P 25.

9. On November 17, 2014, Iberdrola Renewables, LLC (Iberdrola) and Caithness Shepherds Flat, LLC (Caithness)⁷ filed requests for rehearing and/or clarification of the October 2014 Order.

10. On December 1, 2014, Bonneville filed an answer.

III. Discussion

A. Procedural Matters

11. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2014), prohibits answers to a request for rehearing. Therefore, we will reject Bonneville's answer.

B. Requests for Rehearing and Clarification

12. Iberdrola requests that the Commission clarify that the October 2014 Order did not find that Bonneville is permitted to include fish and wildlife costs, or the costs related to excess power, in Bonneville's transmission rates.⁸ Iberdrola adds that, in its protest to Bonneville's Revised OMP Proposal, it had argued that costs incurred by Bonneville under the OMP are actually fish and wildlife costs, or costs related to Bonneville's inability to sell excess power, that should be allocated to power rates under section 7(g) of the Northwest Power Act.

13. Iberdrola also requests rehearing of the Commission's finding that the OS-14 rate is consistent with the equitable allocation standard of the Northwest Power Act, asserting that the Commission did not have a satisfactory basis for this finding.⁹ Iberdrola challenges as insufficient the Commission's finding that, since the cost allocation meets the comparability requirement of section 211A of the FPA, the equitable allocation requirements of Commission review under the Northwest Power Act is satisfied.

⁷ We note that Caithness combined in a single filing its request for rehearing of the October 2014 Order with a request for rehearing of the related order issued in Docket No. EL11-44-008. That portion of Caithness's request for rehearing is being addressed in an order issued concurrently with this one. *Iberdrola Renewables, Inc., et al.*, 150 FERC ¶ 61,113 (2015).

⁸ Iberdrola November 17, 2014 Rehearing Request at 9 (Iberdrola Rehearing Request).

⁹ *Id.* at 10.

14. According to Caithness, the Commission's confirmation and approval of the OS-14 rate is unsupported because there is an earlier contradictory certification by the Bonneville Administrator (Administrator). That certification, according to Caithness, states that all costs arising under Bonneville's fish and wildlife obligations are allocated to power rates, which Caithness asserts contradicts the Administrator's certification here regarding the allocation of OMP costs to transmission rates.¹⁰ Because it alleges that the costs from the fish and wildlife obligations are power-related costs, Caithness, like Iberdrola, also complains that the Commission should have rejected the OS-14 rate under the Northwest Power Act section 7(a)(2)(C) as an inequitable assignment of costs to transmission.¹¹

15. In addition, Iberdrola and Caithness both allege that the October 2014 Order appears to have been based primarily upon the Administrator's certification that the rate is consistent with applicable law. Iberdrola alleges that this finding is arbitrary and capricious, while Caithness asserts that the finding is erroneous.¹²

C. Commission Determination

16. We will deny both Iberdrola's and Caithness' request for rehearing for the reasons discussed below.

17. We reaffirm the Commission's finding that, to the extent that 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. The Northwest Power Act provides that, for transmission rates, those rates must equitably allocate costs between federal and non-federal power. Section 211A of the FPA provides that the rates charged by the unregulated transmitting utility must be comparable to those that it charges itself. The Commission found in the October 2014 Order that a rate charged to other transmission customers that is comparable to the rate that Bonneville charges itself as a transmission customer reflects an equitable allocation of costs; that is, when rates are comparable, costs are equitably allocated among customers. Moreover, Bonneville's rates allocate the oversupply costs to those generators in its balancing authority that scheduled during oversupply event hours. This allocation reflects that it is the generators that schedule in those hours (measured by their transmission schedules) that cause Bonneville to need to displace generation and hence create the oversupply

¹⁰ *Id.* at 7, 10-11.

¹¹ *Id.* at 11-12 (citing *Bonneville*, 26 FERC at 61,375).

¹² *Id.* at 12; *see* Caithness November 17, 2014 Rehearing Request at 3, 5, 10.

costs, and thus it is those generators that should be charged the oversupply costs. This is an equitable means of allocating costs.

18. We are also unpersuaded by challenges to the Commission's consideration of the Administrator's certification. As explained in the October 2014 Order and noted above, 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. The Commission was satisfied, in light of the record before it, 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 demonstrated that the proposed OS-14 rate is consistent with section 7(a)(2)(A) and (B) of the Northwest Power Act.

19. Finally, we find that Iberdrola's pleading, although characterized as a request for clarification, is in fact a request for rehearing of the October 2014 Order, and, specifically, of the Commission's finding that the OS-14 rate meets the requirements of the Northwest Power Act, which we deny.¹³ We reject Iberdrola's claim that Bonneville should have allocated the costs at issue to power, and, similarly, we reject Caithness's assertion that the record includes a contradictory certification proving fish and wildlife costs should be power costs. The allocation of oversupply costs to transmission rather than power is, as we have explained above, an appropriate allocation, as such allocation reflects the fact that it is the generators that schedule in the oversupply hours (as measured by their transmission schedules) that cause Bonneville to need to displace generation and hence create the oversupply costs, and thus it is those generators that should be charged the oversupply costs. Moreover, the certification referred to is a separate determination made by the Administrator under section 4(h)(10)(C) of the Northwest Power Act,¹⁴ which authorizes the Administrator to allocate among its hydroelectric projects and then to request credits against its payments to the U.S. Treasury (and thus reduce its rates) for the costs of measures Bonneville implements to protect, mitigate, and enhance fish and wildlife affected by the development and operation of the Columbia River hydroelectric projects.¹⁵ In applying for credits, the Administrator certifies that the estimate of credits "is completely due to operations and expenses incurred ... to protect, mitigate, and enhance fish and wildlife ... in the

¹³ *See id.*

¹⁴ 16 U.S.C. § 839b(h)(10)(C) (2012).

¹⁵ Administrator's Record of Decision at 41-42 (March 27, 2014).

Columbia River Basin.”¹⁶ Here, however, the record indicates that the Administrator ultimately did not seek such credits because he concluded that the costs do not qualify for credits, because they are not completely due to the Administrator’s statutory mandate to protect, mitigate, and enhance fish and wildlife, but rather are due to the interconnection of wind generation and the need to manage the system during periods of excess spill.¹⁷ We find no reason to challenge the Administrator’s findings in that regard.

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁶ *Id.*

¹⁷ *Id.*