

105 FERC ¶ 61,006
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

United States Department of Energy –
Bonneville Power Administration

Docket No. EF03-2011-000

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

(Issued October 1, 2003)

1. In this order we approve on an interim basis, pending our full review for final approval, the Bonneville Power Administration's (Bonneville) proposed modification to the Safety-Net and Financial-Based Cost Recovery Adjustment Clauses (CRACs), and to the Dividend Distribution Clause, under the 2002 Wholesale Power Rate Schedule General Rate Schedule Provisions (GRSPs). We also provide an additional period of time for the parties to file comments. The proposed rates will allow Bonneville to recover its costs and repay the U.S. Treasury for the Federal investment.

Background

2. On July 29, 2003, Bonneville filed a request for interim and final approval to modify its CRACs and the Dividend Distribution Clause under the 2002 Wholesale Power Rate Schedule General Rate Schedule Provisions (GRSPs), in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act)¹ and Subpart B of Part 300 of the Commission's regulations.² The Commission previously granted final approval of the 2002 GRSPs for a five-year period ending September 30, 2006.³ Bonneville contends that the CRACs allowed BPA to keep rates

¹Sections 7(a) and 7(i)(6) of the Northwest Power Act, 16 U.S.C. §§ 839e(a)(2) and 839e(i)(6) (2000).

²18 C.F.R. Part 300 (2003).

³United States Department of Energy-Bonneville Power Administration, 104 FERC ¶ 61,093 (2003).

low while still addressing any financial shortfalls, rather than instituting higher base rates for the entire rate period.

3. In accordance with the statutory procedure,⁴ Bonneville seeks interim approval of this adjustment effective October 1, 2003, and final approval effective October 1, 2003 through September 30, 2006.

Notice of Filing and Interventions

4. Notice of Bonneville's filing was published in the Federal Register, 68 Fed. Reg. 47,561 (2003), with comments, protests, or motions to intervene due on or before September 3, 2003.

5. Avista Corporation, Generating Public Utilities, Eugene Water & Electric Board, Golden Northwest Aluminum, Inc., PacifiCorp, Portland General Electric, Puget Sound Energy, Inc., and The City of Tacoma, Department of Public Utilities, Light Division, d/b/a Tacoma Power filed timely motions to intervene raising no issues. Northwest Requirements Utilities (NRU) filed a motion to intervene out of time.

6. In addition, Alcoa, Inc., Generating Public Utilities, Industrial Customers of Northwest Utilities, Golden Northwest Aluminum, Inc., Pacific Northwest Generating Cooperative, Public Power Council, and the Columbia River Inter-Tribal Fish Commission, Confederated Tribes of the Umatilla Reservation, and the Yakama Nation (collectively, Protesters) filed timely motions to intervene and protests.

Discussion

Procedural Matters

7. Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notices of intervention and timely, unopposed motions to intervene make the entities that filed them parties to this proceeding. We will grant NRU's untimely, unopposed motion to intervene because: NRU's interests can not be adequately represented by other parties; NRU intervened at an early stage of the proceeding; and no prejudice or additional burden upon existing parties will result from permitting the intervention.

⁴Sections 7(a) and 7(i)(6) of the Northwest Power Act, 16 U.S.C. §§ 839e(a)(2) and 839e(i)(6) (2000).

Standard of Review

8. 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):

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;

they must be based upon the Administrator's total system costs; and

insofar as transmission rates are concerned, they must equitably allocate the costs of the Federal transmission system between Federal and non-Federal power.⁵

9. 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 Act,⁶ 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 Bonneville to design its non-regional, non-firm rates:

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

10. Unlike the Commission's statutory authority under the Federal Power Act, the Commission's authority under Section 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

⁵16 U.S.C. § 839e(a)(2) (2000). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

⁶16 U.S.C. § 839e(k) (2000).

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

11. 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,⁸ the Commission generally defers resolution of issues on the merits of Bonneville's application until the order on final confirmation. Thus, the proposed rates, if not patently deficient, generally are approved on an interim basis and the parties are afforded an additional opportunity to raise issues.⁹

Interim Approval

12. Protesters contend that Bonneville has not shown the need for the rate increase. They argue that the proposed GRSPs will operate to preclude the Commission's statutorily mandated review of future SN CRAC rate adjustments, as required under the Northwest Power Act. They contend that Bonneville has not based the rates on its total system costs, as required by the Northwest Power Act. Protesters also argue, among other things, that (1) Bonneville's application is deficient and fails to comply with the Northwest Power Act, (2) Bonneville failed to file a complete evidentiary record, (3) Bonneville relied on data and information that was not included in the evidentiary record, (4) Bonneville denied the parties in this proceeding due process, and (5) Bonneville submitted materials and a Notice of Filing that do not comply with the Commission's regulations.

13. The Commission's preliminary review indicates that Bonneville's filing appears to meet the minimum threshold filing requirements of Part 300 of the Commission's regulations and the statutory standards. Because the Commission's preliminary review of Bonneville's submittal indicates that they do not contain any patent deficiencies, the proposed modifications 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

⁷E.g., 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) and cases cited therein.

⁸18 C.F.R. § 300.10(a)(3)(ii) (2003).

⁹See, 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).

interim approval allows Bonneville's rates to go into effect subject to refunds with interest if the Commission later determines in its final decision not to approve the rates.¹⁰

14. In addition, we will provide an additional period of time for the parties to file comments and reply comments on all issues related to final confirmation and approval of Bonneville's proposed rates. This will ensure that the record in this proceeding is complete.

The Commission orders:

(A) Protesters' requests to reject Bonneville's filing are hereby denied.

(B) Interim approval of Bonneville's filing is hereby granted, to become effective on October 1, 2003, 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) (2003), pending final action on either its approval or disapproval.

(C) Within thirty (30) days of the date of this order, all parties who wish to do so may file additional comments regarding final confirmation and approval of Bonneville's proposed rates. All parties who wish to do so may file reply comments within twenty (20) days thereafter.

(D) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁰18 C.F.R. § 300.20(c) (2003).