

96 FERC & 61,360
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

United States Department of Energy -
Bonneville Power Administration

Docket Nos. EF00-2012-000
and EF00-2012-001

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

(Issued September 28, 2001)

In this order, we approve the Bonneville Power Administration's (Bonneville) proposed wholesale power rates¹ on an interim basis, pending our full review for final approval. We also provide for an additional period of time for the parties to file comments. The proposed wholesale power rates will allow Bonneville to recover its costs and repay the U.S. Treasury for the Federal investment in the Federal Columbia River Power System.

Background

On July 6, 2000, Bonneville filed a request for interim and final approval of its wholesale power rates in accordance with the Pacific Northwest Electric Power Planning

¹The proposed wholesale power rates schedules that Bonneville seeks approval for the period of October 1, 2001 to September 30, 2006 include: PF-02 Priority Firm Power Rate, RL-02 Residential Load Firm Power Rate, NR-02 New Resource Firm Power Rate, IP-02 Industrial Firm Power Rate, NF-02 Nonfirm Energy Rate.

and Conservation Act (Northwest Power Act)² and Subpart B of Part 300 of the Commission's regulations.³

On August 4, 2000, Bonneville filed a motion to stay the proceedings citing the unprecedented wholesale power price spikes in the west during the summer of 2000. As a result of the price spikes, Bonneville explained, preference power customers were expected to abandon their plans to seek out power supplies from the market and instead purchase significantly more power from Bonneville than originally anticipated. According to Bonneville, the combination of an unanticipated increase in load coupled with higher and more uncertain market prices greatly diminished the prospect that its original proposed wholesale power rates would recover its costs and repay the U.S. Treasury for the Federal investment in the Federal Columbia River Power System.

On June 29, 2001, Bonneville filed a supplemental wholesale power rate filing.⁴ The supplemental wholesale power rate filing adjusts the General Rate Schedule Provisions by replacing the capped single Cost Recovery Adjustment Clause (CRAC) with a three-component CRAC. In addition, the Dividend Distribution Clause has been modified to trigger starting in the second year of the rate period, rather than in the first year.

In the June 29, 2001 filing, Bonneville requests interim and final approval of the wholesale power rates that were originally filed on July 6, 2000, as revised by the supplemental wholesale power rate adjustment. Bonneville seeks approval of its wholesale power rates for the rate period October 1, 2001, through September 30, 2006.

Notice of Filing and Interventions

Notice of Bonneville's July 6, 2000 wholesale power rate filing was published in the Federal Register, 65 Fed. Reg. 44,041 (2000), with comments, protests, or motions to intervene due on or before August 1, 2000. Notice of Bonneville's June 29, 2001 supplemental wholesale power rate adjustment filing was published in the Federal Register, 66 Fed. Reg. 37,664 (2001), with comments, protests, or motions to intervene due on or before August 3, 2001.

²Sections 7(a)(2) and 7(i)(6) of the Northwest Power Act, 16 U.S.C. ' ' 839e(a)(2) and 839e(i)(6) (1994).

³18 C.F.R. Part 300 (2001).

⁴Docket No. EF00-2012-001.

Avista Energy, Inc., Avista Corporation, Industrial Customers of Northwest Utilities, Vanalco, Inc., Idaho Consumer-Owned Utilities Association, Public Power Council, Goldendale Aluminum Company, Northwest Aluminum Company, Reynolds Metals Company, Kaiser Aluminum & Chemical Corporation, Columbia Falls Aluminum Company, Atofina Chemicals, Inc., (collectively, the DSI's), Alcoa Inc., Market Access Coalition, Blue Ridge Environmental Defense League, Columbia River Inter-Tribal Fish Commission, Confederated Tribes of the Umatilla Indian Reservation, Yakama Nation, Enron Power Marketing, Inc., Portland General Electric Company, Idaho Power Company filed timely motions to intervene, raising no substantive issues. The Oregon Public Utility Commission and Washington Utilities and Transportation Commission filed notices of intervention. PPL Montana, Upper Columbia United Tribes, Central Montana Electric Power Cooperative, Inc., Oregon Utility Resource Coordination Association, Shoshone-Bannock Tribes, and Springfield Utility Board, Northwest Requirements Utilities, filed motions to intervene out of time.

In addition, Industrial Customers of Northwest Utilities, Northwest Energy Coalition, Save Our Wild Salmon Coalition, City of Burbank, Puget Sound Energy, Inc., PacifiCorp, and Public Generating Pool (PGP) and the PNGC Group filed timely motions to intervene and protests. The DSI's filed an answer to PGP's and PNGC Group's protest.

Discussion

Procedural Matters

Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.214 (2001), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant the untimely, unopposed motions to intervene of PPL Montana, Upper Columbia United Tribes, Central Montana Electric Power Cooperative, Inc., Oregon Utility Resource Coordination Association, Shoshone-Bannock Tribes, and Springfield Utility Board, Northwest Requirements Utilities. Finally, we will deny the motion by the DSI's for leave to file an answer to a protest and an answer to an answer. We are not persuaded that good cause is present to depart from our general rule that such a pleading is prohibited.⁵

Standard of Review

⁵See 18 C.F.R. ' 385.213(a)(2) (2001).

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):

- (1) 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;
- (2) they must be based upon the Administrator's total system costs; and
- (3) insofar as transmission rates are concerned, they must equitably allocate the costs of the Federal transmission system between Federal and non-Federal power.⁶

Commission review of Bonneville's non-regional, nonfirm rates also is limited. Review is restricted to determining whether such rates meet the requirements of section 7(k) of the Northwest Power Act,⁷ 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, nonfirm 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.

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

⁶16 U.S.C. § 839e(a)(2) (1994). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

⁷16 U.S.C. § 839e(k) (1994).

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.⁸

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,⁹ 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 in which to raise issues with regard to Bonneville's filing.¹⁰

Interim Approval

PGP and the PNGC Group request the Commission to make an early final determination of Bonneville's proposed rates and to reject the proposed rates because the rates are insufficient to assure repayment of the Federal investment. They also contend that Bonneville's proposed rates violate the Bonneville Project Act and the Northwest Power Act, which prohibit the subsidy of Direct Service Industrial customer rates by preference power customers.¹¹

The Commission declines at this time to make an early final determination of Bonneville's proposed rates as requested by PGP and the PNGC Group. The Commission's preliminary review indicates that Bonneville's rate filings appear to meet the minimum threshold filing requirements of Part 300 of the Commission's regulations

⁸E.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.

⁹See 18 C.F.R. ' 300.10(a)(3)(ii) (2001).

¹⁰See, 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).

¹¹See Bonneville Project Act, 16 U.S.C. ' U.S.C. 832c(a) (1994) and Northwest Power Act, 16 U.S.C. ' 839c(a) (1994).

and the statutory standards. Because the Commission's preliminary review of Bonneville's submittals indicates that they do not contain any patent deficiencies, the proposed rates 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 interim approval allows Bonneville's rates to go into effect subject to refund with interest. The Commission may order refunds with interest if the Commission later determines in its final decision not to approve the rates.¹²

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 and fully developed.

The Commission orders:

(A) PGP and the PNGC Group's request to reject Bonneville's request for interim approval of the proposed rates is hereby denied.

(B) Interim approval of Bonneville's proposed wholesale power rates is hereby granted, to become effective on October 1, 2001, 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) (2001), 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)

Linwood A. Watson, Jr.,
Acting Secretary.

¹²18 C.F.R. ' 300.20(c) (2001).