

107 FERC ¶ 61,138
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

United States Department of Energy -
Bonneville Power Administration

Docket No. EF03-2011-000

ORDER CONFIRMING AND APPROVING RATES ON A FINAL BASIS

(Issued May 10, 2004)

1. In this order, we confirm and approve on a final basis the Bonneville Power Administration's (Bonneville) proposed modifications to the Safety-Net and Financial-Based Cost Recovery Adjustment Clauses (SN CRAC and FB CRAC, respectively), and to the Dividend Distribution Clause under its 2002 Wholesale Power Rate Schedule General Rate Schedule Provisions (GRSPs).¹

I. Background

2. By order issued July 21, 2003, the Commission granted final approval of the 2002 GRSPs for a five-year period ending September 30, 2006.² On July 29, 2003, pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act)³ and Subpart B of Part 300 of the Commission's regulations,⁴ Bonneville filed a

¹ The 2002 GRSPs include three CRACs: (1) the Load-Based (LB) CRAC; (2) the FB CRAC; and (3) the SN CRAC. Bonneville describes these elements as follows. The LB CRAC allows an adjustment to the base rates to recover the anticipated augmentation costs to meet load that cannot be recovered with the base rates. The FB CRAC allows a temporary, one-year adjustment to the base rates, in addition to the LB CRAC adjustment, if the Power Business Line Accumulated Net Revenues fall below a preset threshold.

² United States Department of Energy-Bonneville Power Administration, 104 FERC ¶ 61,093 (July 21 Order), order denying reh'g, 105 FERC ¶ 61,068 (2003) (October 17 Order).

³ 16 U.S.C. § 839, et seq. (2000).

request for interim and final approval to modify its SN and FB CRACs and the Dividend Distribution Clause under the 2002 GRSPs.⁵

3. Bonneville states that, together, the SN, LB, and FB CRACs have allowed it to maintain a general approach of keeping base rates low and addressing financial shortfalls, as needed. These tools, according to Bonneville, provide the risk mitigation necessary to establish an acceptable level of United States Treasury payment probability for Bonneville's 2002 power rates.

4. Bonneville contends that the proposed modifications, which will ultimately result in a rate increase, are necessary, because, while Bonneville's revenues were lower than what was forecasted at the end of June 2001, its cost increases were approximately \$1.5 billion higher than what was forecasted for the same time period. Bonneville states that its financial condition continued to deteriorate so that, in February 2003, its Administrator determined that Bonneville had a less than 40 percent probability of making its September 2003 payment to the United States Treasury. Bonneville contends that the proposed modifications are necessary to ensure that rates and revenues would be sufficient to recover costs with a high degree of certainty over the remainder of the rate period.

5. Bonneville further states that the SN CRAC has been modified so that it has variable and contingent components. The FB CRAC thresholds have been modified to match the SN CRAC thresholds, and the Dividend Distribution Clause has been changed so that its implementation coordinates better with another new feature, the SN CRAC rebate.

6. By order issued October 1, 2003, the Commission approved on an interim basis Bonneville's proposed modifications.⁶

II. Interventions and Protests

7. Avista Corporation; Eugene Water & Electric Board; Golden Northwest Aluminum, Inc.; PacifiCorp; Portland General Electric Company; Puget Sound Energy, Inc.; and the City of Tacoma, Department of Public Utilities, Light Division filed timely

⁴ 18 C.F.R. Part 300 (2003).

⁵ On March 2, 2004, Bonneville filed an errata to its proposed modifications.

⁶ United States Department of Energy – Bonneville Power Administration, 105 FERC ¶ 61,006 (2003) (October 1 Order).

motions to intervene raising no issues.

8. In addition, Alcoa, Inc.; Generating Public Utilities (GPU)⁷; Industrial Customers of Northwest Utilities; Golden Northwest Aluminum, Inc. (Golden Northwest); 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, Yakama Nation) filed timely motions to intervene and protests.⁸

9. Northwest Requirements Utilities filed a motion to intervene out of time.

10. In the October 1 Order, the Commission granted Northwest Requirements Utilities' motion for late intervention. We also allowed parties to file additional comments until October 31, 2003 and reply comments 20 days thereafter. Alcoa, Inc. and Industrial Customers of Northwest Utilities timely filed additional protests. GPU and Bonneville timely filed reply comments. On November 24, 2003, Bonneville filed a motion to strike GPU's reply comments.

11. Protesters contend that Bonneville's proposed modifications are unnecessary, because the July 21 Order (issued eight days prior to Bonneville's filing at issue here), approved Bonneville's current rates as sufficient, and because projections regarding Bonneville's adverse financial situation have not materialized. Protestors further argue that the proposed modifications are not based on Bonneville's total system costs. To that end, most protestors argue that the proposed rates will result in an over-recovery, because Bonneville did not include all reasonably achievable cost reductions or revenue increases in its final calculations and ignored financial liquidity and cash tools that could have eliminated the proposed rate increase. Yakama Nation, on the other hand, argues that the proposed modifications will not provide sufficient financial capability for Bonneville to meet its total system costs, including funding for fish and wildlife.⁹ Protestors also maintain that the proposed GRSPs give Bonneville too much discretion to adjust the level of the SN CRAC surcharge in 2003, 2004 and 2005, absent additional Commission

⁷ GPU filed an errata to its protest on October 15, 2003.

⁸ Unless otherwise indicated, all parties that filed protests will be referred to collectively as "Protestors."

⁹ The Yakama Nation further argues that the Commission should conduct an independent evaluation to determine whether Bonneville has accounted for all of its system costs.

review.¹⁰

12. Protestors also find procedural deficiencies with Bonneville's filing. They argue that: (1) in developing the proposed modifications, Bonneville improperly relied on data that was not included in the hearing held pursuant to section 7(i) of the Northwest Power Act (section 7(i) hearing), regarding the proposed modifications¹¹; (2) Bonneville improperly filed with the Commission information that is not included in the evidentiary record from the section 7(i) hearing; (3) Bonneville denied the parties in this proceeding due process; and (4) Bonneville submitted materials and a Notice of Filing that do not comply with the Commission's regulations.¹²

13. Protestors further argue that Commission review of Bonneville's filing is limited to the evidentiary record from the section 7(i) hearing, which, according to Protestors, does not support the proposed modifications. Finally, in comments filed after the October 1 Order, Protestors argue that the Commission's interim approval of the proposed modifications harms Bonneville's customers.

14. In response to the protests, Bonneville primarily argues that Commission review of the proposed modifications is limited. Bonneville states that the Commission lacks jurisdiction to address substantive issues, such as whether the proposed modifications will result in an over-recovery, or procedural issues, such as whether Bonneville developed an adequate evidentiary record. In any case, Bonneville argues that the proposed modifications need not be based solely upon evidence adduced at the section 7(i) hearing. Bonneville similarly maintains that Commission review of the proposed modifications is not limited to consideration of the evidentiary record from the section 7(i) hearing. Bonneville contends that the "Final Study,"¹³ submitted to the Commission in support of the proposed modifications, is properly based upon the total administrative record.

15. In its reply comments, GPU states that Bonneville failed to respond to GPU's argument that the GRSPs would exclude further Commission review of adjustments to

¹⁰ GPU cites Section 2.A. of the GRSPs.

¹¹ See 16 U.S.C. § 839e (regarding procedures for establishing rates).

¹² GPU argues that Bonneville's Notice of Filing should have included the dollar amount of the proposed modifications (or the proposed percent increase or decrease in rates), as well as a brief explanation of the reasons for the proposed modifications.

¹³ The Final Study includes a repayment study, showing cost recovery elements.

the SN CRAC surcharge. GPU further reiterates the arguments in its protest.

16. Bonneville argues that GPU's reply comments respond to Bonneville's initial filing, rather than comments filed after and pursuant to the October 1 Order. Accordingly, Bonneville states that GPU's reply comments constitute untimely initial comments and that, since Bonneville cannot respond to those comments, they should be struck.

17. GPU argues that Commission regulations do not prohibit reply comments from addressing the merits of the filing at issue.¹⁴ In any case, GPU states that its reply comments do pertain to additional comments filed after and pursuant to the October 1 Order, to the extent that GPU's reply comments expound upon arguments raised in those additional comments.¹⁵

III. Discussion

A. Procedural Matters

18. As an initial matter, we reject GPU's claim that Bonneville's Notice of Filing is deficient. We find that Bonneville's Notice of Filing substantially complies with the threshold requirements of the Commission's regulations. Moreover, we find that Bonneville's filing as a whole has provided sufficient support for its proposed rates.¹⁶

19. We will deny Bonneville's motion to strike GPU's reply comments. Commission regulations do not specifically prohibit the nature of GPU's reply comments in this case,¹⁷ and we explicitly permitted, in the October 1 Order, "parties to file comments and

¹⁴ See 18 C.F.R. § 300.21(a) (2003).

¹⁵ Golden Northwest also filed a response to Bonneville's motion to strike. According to Golden Northwest, Bonneville's motion incorrectly notes that only two parties filed a protest in this proceeding. We note that Bonneville's motion actually indicates, correctly, that only two parties filed adverse comments after and pursuant to the October 1 Order.

¹⁶ See 18 C.F.R. § 300.10 (2003). See also, Pacific Gas and Electric Co., 103 FERC ¶ 61,376 at P 14 (2003); PacifiCorp Electric Operations, 54 FERC ¶ 61,296 at 61,852, reh'g denied, 55 FERC ¶ 61,461 at 62,484 (1991). Cf. Southern Company Services, Inc., 92 FERC ¶ 61,167 at 61,565 (2000).

¹⁷ Id.

reply comments on all issues related to final confirmation and approval of Bonneville's proposed rates."¹⁸ Moreover, we do not share Bonneville's concern that it had no opportunity to respond to the arguments in GPU's reply comments, since GPU merely reiterated arguments raised earlier in the protests.

B. Standard of Review

20. In reviewing the proposed modifications, the issue is whether Bonneville has satisfied the standards of the Northwest Power Act;¹⁹ the Federal Power Act²⁰ is inapplicable here. As discussed below, we find that, in accordance with the Northwest Power Act, the proposed modifications will allow Bonneville to recover its costs and repay the United States Treasury for the federal investment.

21. 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.²¹

22. 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,²² 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 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

¹⁸ 105 FERC at P 14.

¹⁹ See 16 U.S.C. §§ 839e(a)(2) and 839e(i)(6) (2000).

²⁰ 16 U.S.C. § 824, *et seq.* (2000).

²¹ 16 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.

²² 16 U.S.C. § 839e(k) (2000).

power; and (3) to provide the lowest possible rates to consumers consistent with sound business principles.

23. 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 Commission for approval or disapproval. In this regard, the Commission's role can be viewed as an appellate one, *i.e.*, to affirm or remand the rates submitted to it for review.²³

C. Commission Determination

24. With the foregoing principles in mind, we will approve on a final basis Bonneville's proposed modifications. As an initial matter, we reject arguments that, in reviewing Bonneville's proposed modifications, we may consider only evidence adduced at the section 7(i) hearing. No provision in the Northwest Power Act limits our review in such a manner. Based upon Bonneville's filing to the Commission, including the Final Study, we find that the revenues expected to be collected under the proposed rates will be sufficient to recover Bonneville's total system costs, including recovery of the remaining Federal investment, with interest, over the repayment period.

25. In taking this action, we emphasize that the Northwest Power Act does limit the extent of our review of the proposed modifications. Protestors' arguments concerning whether the proposed modifications are properly based on Bonneville's "total system costs" are in fact challenges to Bonneville's rate design and are therefore beyond the scope of our jurisdiction.²⁴

²³ *E.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.

²⁴ *See* October 17 Order at P 10. (rejecting the same arguments raised by Yakama Nation in this case). *See also*, Central Lincoln Peoples' Utility District v. Johnson, 735 F.2d 1101 (9th Cir. 1984) (the remedy for substantive questions regarding regional rate design and cost allocation is in the courts); U.S. Department of Energy - Bonneville Power Administration, 32 FERC ¶ 61,014 at 61,057, n.14 (1985) ("[w]hether [Bonneville's] rates could be lower if [Bonneville] had made different management decisions is beyond the scope of our review").

26. We also lack jurisdiction to address arguments regarding Bonneville's ratemaking procedures.²⁵ There is no provision in the Northwest Power Act that requires the Commission to review the propriety of Bonneville's ratemaking procedures, and further, such review would be inconsistent with the goals of the Act.²⁶

27. Finally, we reject arguments that the proposed SN CRAC surcharge provision provides Bonneville with too much discretion, at the expense of Commission review. As noted above, the Commission has limited review of Bonneville's rates under the Northwest Power Act; Bonneville, in contrast, has wide discretion in its rate design. Moreover, in the July 21 Order, the Commission approved on a final basis the 2002 GRSPs, including the earlier SN CRAC surcharge provision. The proposed modification to this surcharge provides Bonneville with no additional discretion.

The Commission orders:

Bonneville's proposed modifications to SN CRAC and FB CRAC and Dividend Distribution Clause under the 2002 GRSPs are hereby confirmed and approved on a final basis for the periods requested by Bonneville.

By the Commission.

(S E A L)

Magalie R. Salas
Secretary

²⁵ U.S. Department of Energy - Bonneville Power Administration, 28 FERC ¶ 61,078 at 61,146 (1984).

²⁶ Id. (noting that the court in *Central Lincoln Peoples' Utility District v. Johnson*, 735 F.2d 1101, 1115 (9th Cir. 1984), found that Congress intended to provide the Commission with limited review powers in order to avoid delay and streamline the ratemaking review process).