



BILLING CODE 6717-01-P
DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission
[Docket EF17-4-000]

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

Bonneville Power Administration;

Order Approving Rates on an Interim Basis
and Providing Opportunity for Additional Comments

1. In this order, we approve on an interim basis Bonneville Power Administration's (Bonneville) proposed 2018-2019 transmission rates for transmission service on the Southern Intertie (IS Rates),¹ pending our further review.² We also provide an additional period of time for parties to file comments.

I. Background

2. On July 31, 2017,³ Bonneville filed a request for interim and final approval of its IS Rates (IS-18) in accordance with section 7 of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act)⁴ and Part 300 of the

¹ The Southern Intertie is a system of transmission lines and substations that transmit power between the Pacific Northwest and California, and is primarily used to export power from the Pacific Northwest and Canada to California. Bonneville Administrator's Final Record of Decision 5.2.2.

² Today, we also approve on an interim basis Bonneville's other transmission rates filed in Docket No. EF17-3-000. *See Bonneville Power Admin.*, 160 FERC ¶ 61,112 (2017).

³ Bonneville submitted errata filings on August 7, 2017, and August 10, 2017 to correct various attachments to the July 31, 2017 Transmittal Letter and to add inadvertently omitted documents to the record.

⁴ 16 U.S.C. 839e (2012).

Commission's regulations.⁵ Bonneville states that, although its rate design is not subject to Commission review, it provides a summary of the hourly rate design change on the Southern Intertie for informational purposes. Bonneville explains that the change is significant, increasing the hourly rates approximately 170 percent, but asserts that the adopted revisions are necessary to address the impact of increased renewable generation in California in combination with seams issues between the transmission system connecting the Pacific Northwest and California.⁶

3. Bonneville projects that the filed rates will produce average annual transmission revenues of \$1.044 billion and annual net revenues of \$4.65 million.⁷ Bonneville asserts that this level of annual revenues is sufficient to recover its costs for the 2018-2019 rate approval period, while providing cash flow to ensure at least a 95 percent probability of making all payments to the United States Treasury in full and on time for each year of the rate period.⁸

II. Notice of Filing

4. Notice of Bonneville's July 31, 2017 filing was published in the *Federal Register*, 82 Fed. Reg. 37,445 (2017),⁹ with protests and interventions due on or before August 30, 2017. Timely motions to intervene were filed by Pacific Northwest Generating Cooperative, Powerex Corporation, Sierra Club and Montana Environmental Information Center, Avista Corporation, Northwest Requirements Utilities, Industrial Customers of Northwest Utilities, NorthWestern Corporation, Western Public Agencies Group, M-S-R Public Power Agency, Snohomish County Public Utility District No. 1, Public Power

⁵ 18 CFR pt. 300 (2017).

⁶ Bonneville July 31, 2017 Transmittal Letter at 2. *See also* Bonneville Administrator's Final Record of Decision § 5.2.2 (explaining the justification for the rate increase in greater detail).

⁷ These values are the totals of all of Bonneville's transmission revenues, inclusive of the transmission rates at issue in Docket No. EF17-3-000. *See* Bonneville August 7, 2017 Transmittal Letter at 2; *Bonneville Power Admin.*, 160 FERC ¶ 61,112 (2017) (approving on an interim basis those transmission rates not associated with the Southern Intertie).

⁸ Bonneville July 31, 2017 Transmittal Letter at 4, 7.

⁹ Notices of Bonneville's errata filings were published in the *Federal Register*, 82 Fed. Reg. 41,014 (2017) and 82 Fed. Reg. 40,151 (2017). The notices of the errata filings retained the August 30, 2017 date by which protests or interventions were due.

Council, Puget Sound Energy Inc., Idaho Power Company, and Avangrid Renewables LLC. Renewable Northwest filed a timely motion to intervene and comments. Sacramento Municipal Utility District, Transmission Agency of Northern California, and Turlock Irrigation District (collectively, Northern California Utilities) filed a timely motion to intervene, protest, objection to the motion for interim rate approval, request for an evidentiary hearing, and alternative request for stay of implementation of hourly transmission rates. On September 15, 2017, Bonneville filed a request for leave to answer and an answer to Northern California Utilities' protest, and on September 19, 2017, Northern California Utilities filed an answer to Bonneville's answer. On September 22, 2017, Bonneville filed an answer to Northern California Utilities' September 19 answer.

5. Northern California Utilities generally object to Bonneville's proposed rate increase for southbound hourly transmission service on the Southern Intertie.¹⁰ Northern California Utilities first argue that interim approval is inappropriate because Bonneville's filing is deficient. Specifically, Northern California Utilities argue that the instant filing is governed by section 7(k) of the Northwest Power Act, which according to the protestors is broader than section 7(a), and Bonneville fails to comply with the applicable statutes.¹¹ They further assert that Bonneville's filing is deficient under the Commission's regulations because its rates fail to adhere to cost-based ratemaking, or alternatively, Bonneville's filing fails to explain why it has departed from cost-based ratemaking standards.¹² In addition, Northern California Utilities argue that any refund condition that the Commission attaches to its order will not protect them because they do not purchase transmission service from Bonneville on the Southern Intertie.¹³ Alternatively, the Northern California Utilities argue that, if the Commission will not summarily reject Bonneville's IS Rate, the Commission should nevertheless stay implementation of the rate.¹⁴

¹⁰ Northern California Utilities Protest at 5-6, 80.

¹¹ *Id.* at 12-15, 23-25.

¹² *Id.* at 16-23.

¹³ *Id.* at 25-27. Northern California Utilities state that they do not directly purchase transmission service from Bonneville, but that they will be harmed nonetheless by the trickle-down effects of the hourly rate increase because they purchase services from resellers that use or base prices on the Southern Intertie, including but not limited to hourly transmission service. *Id.*

¹⁴ *Id.* at 27-51.

6. Northern California Utilities further argue that the Commission should summarily dispose of Bonneville's request for approval because it has failed to carry its burden and provide substantial evidence of its rates being the lowest reasonable rates consistent with sound business principles. Here, Northern California Utilities again assert that section 7(k) of the Northwest Power Act sets the applicable standard and that charging intentionally unaffordable rates is facially in conflict with the statutory provision.¹⁵ Alternatively, Northern California Utilities argue that, if the Commission does not reject the IS Rate filing as deficient or on the merits, it should set those issues for evidentiary hearings under section 7(k) of the Northwest Power Act.¹⁶

7. Renewable Northwest filed comments in both this docket and Docket No. EF17-3-000 requesting that the Commission disapprove Bonneville's proposed Montana Intertie Rate on the basis that it does not "encourage[e] the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles."¹⁷

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2017), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a)(2) (2017), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Bonneville's answer to Northern California Utilities' protest, Northern California Utilities' answer to Bonneville's answer, or Bonneville's answer to Northern California Utilities' answer, and therefore, we reject all answers.

¹⁵ *Id.* at 52-59.

¹⁶ *Id.* at 59-79.

¹⁷ Renewable Northwest Comments at 7 (quoting 16 U.S.C. 838g (2012)). We note that the Montana Intertie Rate is not at issue in this docket, but rather is before the Commission in Docket No. EF17-3-000. *See Bonneville Power Admin.*, 160 FERC ¶ 61,112.

B. Standard of Review

10. Under the Northwest Power Act, the Commission's review of Bonneville's transmission rates is limited to determining whether Bonneville's proposed rates satisfy

the specific requirements of section 7(a)(2) of the Northwest Power Act, including that such rates:

- (A) are 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) are based upon [Bonneville's] total system costs; and
- (C) insofar as transmission rates are concerned, equitably allocate the costs of the Federal transmission system between Federal and non-Federal power utilizing such system.¹⁸

11. Unlike the Commission's statutory authority under the Federal Power Act, the Commission's authority under section 7(a) 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.¹⁹

12. 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 us in this filing, and the limited period in advance of the requested effective date in which to review the application,²⁰ the Commission generally defers resolution of issues on the merits of Bonneville's application until the order on final confirmation. Thus, the

¹⁸ 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.

¹⁹ See, e.g., *Bonneville Power Admin.*, 152 FERC ¶ 61,201, at P 10 (2015) (citing *U.S. Dep't of Energy – Bonneville Power Admin.*, 67 FERC ¶ 61,351, at 62,216-17 (1994); see also *Aluminum Co. of Am. v. Bonneville Power Admin.*, 903 F.2d 585, 592-93 (9th Cir. 1989)).

²⁰ See 18 CFR 300.10(a)(3)(ii) (2017).

Commission generally approves the proposed rates on an interim basis, unless the filing

is patently deficient, and provides the parties with an additional opportunity to raise issues with regard to Bonneville's filing.²¹

13. We decline at this time to grant Bonneville's request for final confirmation and approval of Bonneville's proposed transmission rates. However, we will grant Bonneville's request for interim approval. Our preliminary review indicates that Bonneville's IS Rates filing appears to meet the statutory standards and the minimum threshold filing requirements of Part 300 of the Commission's regulations.²² Moreover, our preliminary review of Bonneville's submittal indicates that the filing is not patently deficient. Contrary to the Northern California Utilities' arguments, we find that section 7(a) of the Northwest Power Act, and not section 7(k), governs the transmission rates at issue here and thus governs our review.²³ The language of section 7(k) of the Northwest Power Act addresses power rates, not transmission rates.²⁴ Thus, Northern California Utilities' arguments that Bonneville's filing is deficient for failing to meet the statutory standards of section 7(k) of the Northwest Power Act and the Commission's regulations promulgated pursuant to section 7(k), specifically 18 CFR 300.14 (2017) and

²¹ See, e.g., *Bonneville Power Admin.*, 152 FERC ¶ 61,201 at P 11 (citing *U.S. Dep't of Energy – Bonneville Power Admin.*, 64 FERC ¶ 61,375, at 63,606 (1993); *U.S. Dep't of Energy – Bonneville Power Admin.*, 40 FERC ¶ 61,351, at 62,059-60 (1987)).

²² See, e.g., *id.* P 12 (citing *U.S. Dep't of Energy – Bonneville Power Admin.*, 105 FERC ¶ 61,006, at PP 13-14 (2003); *U.S. Dep't of Energy – Bonneville Power Admin.*, 96 FERC ¶ 61,360, at 62,358 (2001)).

²³ See 16 U.S.C. 839e(k) (2012) (stating “Notwithstanding any other provision of this chapter, all rates or rate schedules for the *sale of nonfirm electric power . . .*” (emphasis added)); 16 U.S.C. 839a(9) (2012) (defining “[e]lectric power” within the Northwest Power Act as “electric peaking capacity, or electric energy, or both.”); *Aluminum Co. of Am. v. Bonneville Power Admin.*, 903 F.2d 585, 587-89 (discussing the first nonfirm power rates that Bonneville established under section 7(k) and defining nonfirm power as “energy in excess of firm power, and is provided only when such excess exists.”); *U.S. Dep't of Energy – Bonneville Power Admin.*, 53 FERC ¶ 61,193, 61,667 (1990) (stating that “nonfirm energy is energy in excess of that which Bonneville can reliably plan on producing, based on estimates that water levels used for power generation will at times be low or critical. That is, nonfirm energy is energy that is available to Bonneville as the result of it[] having water available for power generation . . .”).

²⁴ See 16 U.S.C. 839e(k) (2012) (“Notwithstanding any other provision of this chapter, all rates or rate schedules for the *sale of nonfirm electric power . . .*” (emphasis added)).

by incorporation 18 CFR 35.13(a)(2) (2017), are irrelevant to our approval on an interim basis of Bonneville's transmission rates for the Southern Intertie.²⁵ The proposed rates therefore will be approved on an interim basis pending our further review. In addition, we note that 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.²⁶

14. In addition, we will provide an additional period of time for parties to file comments and reply comments on 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. Specifically, if parties wish to file additional comments, they will be due within 30 days of the date of this order. Reply comments are due 20 days thereafter.

The Commission orders:

(A) Interim approval of Bonneville's proposed IS Rates is hereby granted, to become effective on October 1, 2017, through September 30, 2019, subject to refund with interest as set forth in section 300.20(c) of the Commission's regulations, 18 CFR 300.20(c) (2017), pending final action and either their approval or their disapproval.

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

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

By the Commission.

Issued: September 25, 2017.

Kimberly D. Bose,

²⁵ Because section 7(k) of the Northwest Power Act does not govern our review of the rates at issue in this proceeding, section 7(k)'s allowance for a further trial-type evidentiary hearing does not provide a basis for such a trial-type evidentiary hearing here.

²⁶ See 18 CFR 300.20(c) (2017). We further find that Northern California Utilities' arguments that our refund condition will not protect them to be speculative, and their request for the Commission to stay implementation of the rates to be unsupported.

Secretary.

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