



DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF23-7-000]

Bonneville Power Administration; Order Approving Rates on an Interim Basis and Providing Opportunity for Additional Comments

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

1. In this order, we approve Bonneville Power Administration's (Bonneville) proposed fiscal years 2024-2025 wholesale power and transmission rates on an interim basis, pending our further review. We also provide an additional period of time for the parties to file comments.

I. Background

2. On July 28, 2023, Bonneville filed a request for interim and final approval of its proposed wholesale power¹ and transmission rates² in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act)³ and

¹ The proposed wholesale power rates for which Bonneville seeks approval for fiscal years 2024-2025 are: Priority Firm Power Rate (PF-24); New Resource Firm Power Rate (NR-24); Industrial Firm Power Rate (IP-24); Firm Power and Surplus Products and Services Rate (FPS-24). Bonneville also seeks approval of related General Rates Schedule Provisions for the same period. Fiscal years 2024-2025 is the period October 1, 2023, through September 30, 2025.

² The proposed transmission and ancillary services rates (referred to collectively as transmission rates) for which Bonneville seeks approval for fiscal years 2024-2025 are: Formula Power Transmission Rate (FPT-24.1); Network Integration Rate (NT-24); Point-to-Point Rate (PTP-24); Southern Intertie Rate (IS-24); Montana Intertie Rate (IM-24); Use-of-Facilities Transmission Rate (UFT-24); Advance Funding Rate (AF-24); Townsend-Garrison Transmission Rate (TGT-24); Regional Compliance Enforcement and Regional Coordinator Rates (RC-24); Oversupply Rate (OS-24); Eastern Intertie Rate (IE-24); and Ancillary and Control Area Services Rates (ACS-24). Bonneville also seeks approval of related General Rates Schedule Provisions for the same period.

³ 16 U.S.C. 839e(i).

Subpart B of part 300 of the Commission's regulations.⁴ Bonneville projects that the filed rates will produce average annual power revenues of \$3.144 billion and average annual transmission revenues of \$1.264 billion. Bonneville asserts that this level of annual revenues is sufficient to recover its costs for the fiscal years 2024-2025 rate approval period, while providing cash flow to assure at least a 95% probability of making all payments to the United States Treasury in full and on time for each year of the fiscal years 2024-2025 rate approval period.

II. Notice of Filing

3. Notice of Bonneville's application was published in the *Federal Register*, 88 FR 53,480 (Aug. 8, 2023), with interventions and protests due on or before August 28, 2023. Timely motions to intervene were filed by Public Power Council, M-S-R Public Power Agency, and Powerex Corp. The Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Umatilla Indian Reservation (together, Treaty Tribes), along with the Columbia River Inter-Tribal Fish Commission (collectively, Tribal Parties) filed a motion to intervene. On September 5, 2023, Bonneville filed a request for leave to answer and an answer to the Tribal Parties' motion to intervene.

4. The Tribal Parties assert that Bonneville's rates during the 2024-2025 rate period are insufficient to assure repayment of the federal investment in the Federal Columbia River Power System, and are not based on Bonneville's total system costs.⁵ The Tribal Parties contend that the Bonneville Administrator failed to take into account Bonneville's obligations under the Treaty Tribes' respective treaties as directly applicable to Bonneville and as incorporated through the Northwest Power Act.⁶ The Tribal Parties further assert that, under the Northwest Power Act, the proposed fiscal years 2024-2025 rates fail to afford equal treatment between fish and wildlife and power interests, and are not consistent with the Northwest Power and Conservation Council (NPCC) Fish and Wildlife Program.⁷

5. In Bonneville's answer, Bonneville states that the Commission should approve Bonneville's proposed rates as requested.⁸ Bonneville asserts that the Tribal Parties' arguments fall outside the Commission's limited jurisdiction over Bonneville's power and transmission rates established by section 7(a)(2) of the Northwest Power Act.⁹ Bonneville argues that the Commission has previously concluded that the Commission does not second

⁴ 18 CFR 300.10–300.14 (2022).

⁵ Tribal Parties Motion to Intervene at 2 (citing 16 U.S.C. 839e(a)(2)(a)-(b)).

⁶ *Id.* (citing 16 U.S.C. 839e(k)).

⁷ *Id.*

⁸ Bonneville Answer at 3.

⁹ *Id.* (citing 16 U.S.C. 839e(a)(2)).

guess Bonneville’s decisions on fish and wildlife issues, and that the Commission’s review is not the proper forum to challenge Bonneville’s cost projections.¹⁰

6. Bonneville contends that the Commission previously considered the issue of whether Bonneville’s rates failed to afford “equitable treatment” to fish and wildlife under section 4(h)(11)(A) of the Northwest Power Act. Bonneville argues that the Commission correctly concluded that “Bonneville’s compliance with its environmental review and fish and wildlife protection obligation . . . is outside the scope of the Commission’s review under section 7(a)(2).”¹¹

7. In response to the Tribal Parties’ claim that Bonneville’s rates are not consistent with the NPCC Fish and Wildlife Program, Bonneville argues that this issue also concerns Bonneville’s fish and wildlife cost projections and whether those projections are (or must be) consistent with the NPCC’s Fish and Wildlife Program. Bonneville states that the Commission has previously addressed this issue, noting correctly that “issues related to the amount of money [Bonneville] plans to spend on fish and wildlife under the [NPCC’s] fish and wildlife [program]” are outside of the Commission’s scope of review.¹²

8. Bonneville further argues that the Tribal Parties misstate the procedures applicable to this proceeding when the Tribal Parties note that “parties in the [Bonneville] rate proceedings ‘shall be afforded an opportunity by the Commission for an additional hearing.’”¹³ Bonneville argues that the Tribal Parties do not request such a hearing and explains that the referenced hearing opportunity in section 7(k) of the Northwest Power Act is inapplicable to the Commission’s review of Bonneville’s fiscal years 2024-2025 rates. Bonneville states that section 7(k) applies to the sale of “nonfirm electric power within the United States, but outside the region,” which is not at issue in this proceeding.¹⁴

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 CFR 385.214 (2022), the timely, unopposed motion to intervene serve to make the entities that filed them parties to this proceeding.

¹⁰ *Id.* at 5 (citing *U.S. Dep’t of Energy – Bonneville Power Admin.*, 105 FERC ¶ 61,068, at P 10 (2003)).

¹¹ *Id.* (citing *Bonneville Power Admin.*, 178 FERC ¶ 61,211, at P 13 (2022)).

¹² *Id.* at 6 (citing *U.S. Dep’t of Energy – Bonneville Power Admin.*, 32 FERC ¶ 61,014, at n.15 (1985)).

¹³ *Id.* (citing Tribal Parties Motion to Intervene at 1 (citing 16 U.S.C. 839e(k))).

¹⁴ *Id.* (quoting 16 U.S.C. 839e(k)).

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Bonneville's answer because it has provided information that assisted us in our decision-making process.

B. Standard of Review

11. Under the Northwest Power Act, the Commission's review of Bonneville's proposed regional power and transmission rates is limited to determining whether Bonneville's proposed rates meet the three specific requirements of section 7(a)(2) of the Northwest Power Act:¹⁵

(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.

12. 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,¹⁶ 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 that Bonneville's non-regional, non-firm rates:

(A) recover the cost of generation and transmission of such electric energy, including the amortization of investments in the power projects within a reasonable period;

(B) encourage the most widespread use of Bonneville power; and

(C) provide the lowest possible rates to consumers consistent with sound business principles.

13. 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

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

¹⁶ *Id.* § 839e(k).

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.¹⁷

14. 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,¹⁸ 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 application.¹⁹

15. The Commission declines at this time to grant final confirmation and approval of Bonneville's proposed wholesale power and transmission rates. The Commission's preliminary review nevertheless indicates that Bonneville's wholesale power and transmission rates application appears to meet the statutory standards and the minimum threshold filing requirements of part 300 of the Commission's regulations.²⁰ Moreover, the Commission's preliminary review of Bonneville's application indicates that it does not contain any patent deficiencies. The proposed rates therefore will be approved on an interim basis pending 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.²¹

16. 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.

The Commission orders:

(A) Interim approval of Bonneville's proposed wholesale power and transmission rates for fiscal years 2024-2025 is hereby granted, to be effective October 1, 2023, through September 30, 2025, subject to refund with interest as set forth in section 300.20(c) of the

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

¹⁸ See 18 CFR 300.10(a)(3)(ii).

¹⁹ See, e.g., *U.S. Dep't of Energy – Bonneville Power Admin.*, 160 FERC ¶ 61,113, at P 6 (2017).

²⁰ See, e.g., *id.* P 13.

²¹ 18 CFR 300.20(c) (2022).

Commission's regulations,²² pending final action and either their approval or 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 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-21694 Filed: 9/29/2023 8:45 am; Publication Date: 10/2/2023]

²² *Id.*