

petition for exemption in lieu of the applicable fee.³ Bonneville is an agency within the United States Department of Energy. It is a Federal power marketing administration with its principal place of business at 905 N.E. 11th Avenue, Portland, Oregon. Bonneville requests exemption from the filing fee.

INTRODUCTION

This filing is the final step in a long saga that began in June 2011, when several wind generators filed a complaint against the protocol's predecessor, Bonneville's Environmental Redispatch Policy, which Bonneville adopted to manage an oversupply of water that can prevent it from fulfilling its environmental responsibilities under the Clean Water Act and Endangered Species Act. After the Commission invalidated the policy, Bonneville adopted the oversupply protocol and filed it with the Commission; held a rate case to allocate the costs of oversupply; filed a successor protocol with the Commission when the first one expired; and, finally, filed the oversupply rate for approval under both the Northwest Power Act and the Federal Power Act. Meanwhile Bonneville developed sufficient new tools to manage the oversupply of water such that it has been able to relegate the OMP to a necessary but seldom used last resort when all other methods fail. The oversupply protocol has resulted in a successful balancing of all parties' interests; Bonneville is making this filing to bring this history of litigation to an end.

I. BACKGROUND

A. Oversupply and the Environmental Redispatch Policy

Oversupply conditions occur when Bonneville has an excess of water relative to its electric load and must dispose of the excess through additional generation or spilling water over the dams. Excessive spill adds dangerous amounts of nitrogen to the water,

³ 18 C.F.R. § 381.108 (2015).

creating gas bubbles that can harm or kill salmon and other aquatic species, some of which are listed as threatened or endangered under the Endangered Species Act. To protect these species, the states of Oregon and Washington have used their authority under the Clean Water Act to set water quality standards, including maximum total dissolved gas levels. To meet its legal responsibilities under the Clean Water Act and Endangered Species Act, Bonneville must take all reasonable actions to avoid excess spill and keep total dissolved gas levels within the limits set by the states.

One such action is to run the excess water through the turbines at the dams to generate additional electricity. Bonneville can do so, however, only if it has sufficient load to absorb the power. In past years Bonneville secured additional load by offering generators low-cost or free federal hydropower to serve their loads, allowing the generators to reduce generation and save on fuel costs. Although thermal generators generally accepted these offers, wind generators did not, because they received production tax credits (PTCs) and renewable energy credits (RECs) for the amount of electricity they actually generated. Therefore, in 2011 Bonneville adopted its Environmental Redispatch and Negative Pricing Policy (ER Policy), under which, after taking other reasonable actions to reduce water flow, Bonneville secured additional load by displacing nonfederal generation in Bonneville's balancing authority area with free federal hydroelectric generation.

A group of wind generators challenged the policy, and in a December 7, 2011, order the Commission found that the policy failed to result in comparable transmission service.⁴ Under section 211A of the Federal Power Act, the Commission directed Bonneville to file within 90 days of the order tariff revisions that “address the

⁴ *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, 137 FERC ¶ 61,185 (2011).

comparability concerns raised in this proceeding in a manner that provides for transmission service on terms and conditions that are comparable to those under which Bonneville provides transmission services to itself and that are not unduly discriminatory or preferential.”⁵

B. Bonneville’s March 2012 Compliance Filing

In response to the Commission’s order, on March 6, 2012, Bonneville filed the OMP as Attachment P to its tariff, requesting approval of the protocol for one year (March 31, 2012, through March 30, 2013).⁶ Under its prior ER Policy Bonneville did not compensate displaced generators for their losses. Under the OMP, however, Bonneville pays generators their displacement costs, including lost PTCs and RECs and, with respect to the generators’ power sales contracts in effect as of March 6, 2012, penalties and lost revenues because of the generators’ failure to supply wind energy during displacement hours. In the OMP filing Bonneville explained that it would be establishing a rate to recover the costs of the payments from customers. Because Bonneville must establish its rates under a rate case process prescribed by the Northwest Power Act, it could not propose any particular cost allocation in its compliance filing. Bonneville indicated, however, that in the rate case it would propose a rate under which 50 percent of the displacement costs were allocated to generators and 50 percent to Federal power customers.

C. The Commission’s December 20, 2012 Order

On December 20, 2012, the Commission issued an order accepting the protocol “as an interim remedy” to the oversupply problem, but holding that a 50/50 sharing of

⁵ *Id.* P 64.

⁶ Compliance Filing of the Bonneville Power Administration, *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, No. EL11-44-002 (Mar. 6, 2012).

displacement costs would not result in comparable transmission service for displaced wind generators.⁷ The Commission directed Bonneville to submit a compliance filing within 90 days “that proposes a methodology for allocating displacement costs under the OMP in a manner that results in comparability in the provision of transmission service for all resources.”⁸ The Commission also directed Bonneville to “identify those specific actions it will take prior to displacing generation in any future proposal submitted to the Commission to address oversupply situations.”⁹ Because Bonneville could not complete its oversupply rate case within 90 days, in a subsequent order the Commission extended the time for filing the cost allocation methodology until 30 days after Bonneville filed its oversupply rate with the Commission under Section 7(a)(2) of the Northwest Power Act.¹⁰

D. Filing and Approval of Revised Oversupply Management Protocol and Oversupply Rate

On March 1, 2013, Bonneville filed its revised oversupply management protocol with the Commission.¹¹ The protocol continued the basic framework of displacing generators within Bonneville’s balancing authority area and compensating them for lost PTCs and RECs and certain contract costs. The most significant changes to the protocol were the inclusion of a new expiration date of September 30, 2015, which coincided with the expiration date of the oversupply rate Bonneville was developing in its rate case,¹²

⁷ *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, 141 FERC ¶ 61,234 (2012).

⁸ *Id.* at ordering para. (B).

⁹ *Id.* P 56.

¹⁰ 16 U.S.C. § 839e(a)(2) (2013).

¹¹ Bonneville Power Administration’s Request for Approval of Revised Oversupply Management Protocol, *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, No. EL11-44-006 (Mar. 1, 2013) (Bonneville’s Request for Approval).

¹² Bonneville is establishing a successor rate in its current rate case.

and of a list of actions Bonneville will take before displacing generation whenever they are available and will reduce the need for displacement.

On April 23, 2014, Bonneville filed its oversupply rate with the Commission for confirmation and approval under the Northwest Power Act.¹³ Under the rate, oversupply costs are assigned to transmission rates and allocated to generators within Bonneville’s balancing authority area that schedule transmission during oversupply event hours.¹⁴ On May 23, 2014, in compliance with the Commission’s directive in its 2012 order, Bonneville filed the rate with the Commission under section 211A of the Federal Power Act.¹⁵

On October 16, 2014, the Commission issued orders approving the rate under the Northwest Power Act¹⁶ and approving the oversupply protocol and cost allocation methodology (which is embodied in the oversupply rate) under the Federal Power Act.¹⁷ In its FPA order the Commission held that the oversupply protocol “when taken together with the cost allocation methodology . . . results in comparable transmission service.”¹⁸ On February 19, 2015, the Commission denied rehearing of both the rate order¹⁹ and the order approving the protocol.²⁰ In the rehearing order on the protocol the Commission said that “[w]e continue to find that the cost allocation methodology . . . equitably allocates oversupply costs and ensures comparable treatment.”²¹

¹³ Application for Confirmation and Approval of Proposed Oversupply Rate, *U.S. Dep’t of Energy – Bonneville Power Admin.*, No. EF14-5-000 (Apr. 23, 2014).

¹⁴ *Id.* at 99.

¹⁵ Compliance Filing of the Bonneville Power Administration, *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, No. EL11-44-002 (May 23, 2014).

¹⁶ *Bonneville Power Admin.*, 149 FERC ¶ 61,043 (2014).

¹⁷ *Iberdrola Renewables*, 149 FERC ¶ 61,044 (2014).

¹⁸ *Id.* P 52.

¹⁹ *Bonneville Power Admin.*, 150 FERC ¶ 61,112 (2015).

²⁰ *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, 150 FERC ¶ 61,113 (2015).

²¹ *Id.* P 19.

II. THE OVERSUPPLY MANAGEMENT PROTOCOL CONTINUES TO RESULT IN COMPARABLE TREATMENT AND TO PROVIDE A BALANCED RESOLUTION TO THE OVERSUPPLY PROBLEM

The two versions of the OMP that Bonneville previously submitted to the Commission included expiration dates; as noted above, the expiration date of the existing protocol coincides with the expiration date of Bonneville's initial oversupply rate. The Northwest Power Act requires Bonneville to "periodically review and revise rates" for the sale of electric energy and transmission,²² and Bonneville sets rates every two years for the following two-year period. By doing so Bonneville balances rate stability with the mitigation of risk; one year would require constant rate changes, while longer rate periods would make cost and revenue projections less certain.

There is no similar need to revisit the oversupply protocol on a fixed schedule, and Bonneville respectfully submits that it is time for it to attain certainty in its ability to manage oversupply conditions. In its 2012 order the Commission accepted the OMP "as an interim remedy," conditioned on Bonneville's submission of a compliance filing proposing an appropriate cost allocation methodology.²³ In 2014 Bonneville made its filing, and in the order approving that filing the Commission did not repeat the same limitation. Instead, the Commission ordered that "Bonneville's Cost Allocation Proposal is hereby accepted"²⁴ and that "Bonneville's Revised OMP is hereby accepted."²⁵ The Commission approved the OMP for the period March 31, 2013, through September 30, 2015, because that was the time period for which Bonneville requested approval.

²² 16 U.S.C. § 839e(a)(1) (2013).

²³ *Iberdrola Renewables*, 141 FERC ¶ 61,234 at ordering para. (A).

²⁴ *Iberdrola Renewables*, 149 FERC ¶ 61,044 at ordering para. (A).

²⁵ *Id.* at ordering para. (B).

Nothing in the Commission's order suggested that the protocol would not result in comparable treatment after that time.

To the contrary, the Commission's findings were consistent and unequivocal. The Commission found that oversupply costs "are properly allocable to Bonneville's transmission customers."²⁶ As to the specific allocation Bonneville proposed, the Commission held that oversupply costs "are properly allocated to generation that is scheduled to use Bonneville's transmission system."²⁷ The Commission found "no merit" in the argument that an allocation based on scheduled rather than actual use of transmission results in non-comparability, and found that wind generators were not harmed by displacement: "Bonneville compensates the displaced wind generators for lost revenue, thereby putting the wind generators in a similar financial position as if they were allowed to generate and deliver power under normal conditions."²⁸

In its order on rehearing the Commission reiterated its findings with equal force. For example, the Commission said that "[w]e continue to find that the cost allocation methodology proposed by Bonneville complies with the Commission's directive for Bonneville to establish a cost allocation methodology for the OMP that equitably allocates oversupply costs and ensures comparable treatment."²⁹ The Commission added that "neither Caithness nor Iberdrola [two of the complainants] refute the Commission's finding that compensation under the OMP puts wind generators in a similar financial position as if they were allowed to generate and deliver power" and that "we continue to find that the OMP is a fair and reasonable method for managing oversupply events, given

²⁶ *Id.* P 40.

²⁷ *Id.*

²⁸ *Id.* P 41.

²⁹ *Iberdrola Renewables*, 150 FERC ¶ 61,113 at P 19.

Bonneville’s obligations to both protect fish and wildlife and to satisfy the comparability requirements of FPA section 211A.”³⁰

Protestors, however, will seize on the final sentence of that order, in which the Commission said that “[w]e continue to find that the OMP remains necessary and appropriate until Bonneville, in coordination with stakeholders, develops a durable mechanism for managing oversupply events.”³¹ This statement effectively reiterates Bonneville’s statement in the petition accompanying its 2013 OMP filing that “Bonneville will . . . continue working with its stakeholders to seek a durable, long-term solution to the oversupply problem.”³²

In fact, however, the OMP *is* a durable solution for managing oversupply events; or, rather, it is *part of* a durable solution. In its petition Bonneville also said that it “will continue to seek additional mechanisms for managing seasonal electricity oversupply in order to reduce the need to implement the protocol.”³³ Although Bonneville has been unable to reach agreement with stakeholders on an alternative to the OMP, it has continued to develop mechanisms to minimize its use. Thus, the OMP is simply a backstop mechanism to be used when all alternatives fail. As the Commission noted in its order approving the protocol, “Bonneville has demonstrated, through its efforts to reduce its use of the OMP, its willingness to exhaust alternatives before opting to displace generation. However, when these alternatives are exhausted Bonneville needs a

³⁰ *Id.* P 21.

³¹ *Id.* P 24.

³² Bonneville’s Request for Approval at 23.

³³ *Id.*

backstop to ensure it can operate its transmission system in accordance with all applicable statutes.”³⁴

Bonneville’s exploration of alternatives has indeed been prodigious. In its 2013 petition, Bonneville listed the various actions it had taken since 2011 (when Bonneville adopted the original Environmental Redispatch Policy) to reduce the need for displacement, from rescheduling outages, to coordinated spill, to exports of power, to spill exchanges.³⁵ In Bonneville’s answer to protests challenging its oversupply rate filing with the Commission, Bonneville quoted several protestors praising Bonneville’s efforts in this regard.³⁶ Consequently, as the Commission noted in its order approving the revised protocol, “Bonneville’s use of the OMP since 2012 has been minimal, which suggests that the alternative actions have been successful at reducing or eliminating the need for displacement.”³⁷ The Commission rejected arguments that the list of actions Bonneville included in the protocol was insufficient: “We find that Bonneville’s proposed list of alternative actions satisfies the Commission’s compliance directive. . . . [W]e find no need to direct Bonneville to modify or augment the list.”³⁸

Bonneville’s use of the OMP since 2012 has not just been minimal; it has been non-existent. Bonneville did not use the protocol at all in 2013 or 2014, or so far in 2015. Bonneville will continue to refine its tools for managing oversupply as it seeks to maintain this record. To ensure that Bonneville can fulfill its legal responsibilities,

³⁴ *Iberdrola Renewables*, 149 FERC ¶ 61,044 at P 54.

³⁵ Bonneville’s Request for Approval at 5-9.

³⁶ Response to Motion and Request for Leave to Answer and Answer of the Bonneville Power Administration at 3-5, *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, No. EL11-44-007 (June 30, 2014) (Bonneville has minimized the use of the OMP “through improved advance planning”; “[Bonneville] has significantly improved its management of the system using available tools, such as selling recallable energy and conducting maintenance on its federal nuclear generation facility during oversupply season.”).

³⁷ *Iberdrola Renewables*, 149 FERC ¶ 61,044 at P 59.

³⁸ *Id.*

however, it must have this tool as a final resort. Thus, in its order on rehearing the Commission “reject[ed] Iberdrola’s claim that the Commission erred in finding a continuing need for the OMP” and found that “Iberdrola’s objections to the OMP do not diminish the appropriateness of a backstop that Bonneville may use during oversupply events.”³⁹

III. CONCLUSION

As a backstop to ensure that Bonneville can fulfill its environmental obligations under all circumstances, the Oversupply Management Protocol is reasonable, comparable, and durable. Bonneville respectfully asks that the Commission grant its request for a declaratory order that the Oversupply Management Protocol provides comparable transmission service under section 211A of the Federal Power Act.

DATED this 17th of July, 2015.

Respectfully submitted,

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³⁹ *Iberdrola Renewables*, 150 FERC ¶ 61,113 at P 24.