

not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the eFiling link.

*Protest Date:* October 6, 2003.

**Magalie R. Salas,**  
*Secretary.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project 2210-090]

#### Appalachian Power Company; Notice of Extension of Comment Period

October 2, 2003.

This notice applies to the Smith Mountain Pumped Storage Project, FERC No. 2210. The project is licensed to Appalachian Power Company, a part of American Electric Power and is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

On September 10, 2003, a Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests was issued for the amendment of license to approve a shoreline management plan filed on September 3, 2003. The comment period ends October 10, 2003. This notice extends the comment period for 90 days until January 10, 2004.

The Commission staff will prepare a Draft Environmental Assessment (DEA) of the application. Once this DEA is completed, it will be noticed to provide an opportunity for Federal, state, and local agencies, as well as the public, to provide comments. All comments will be used in preparing the Final Environmental Assessment to be considered by the Commission when acting on this application.

For further information, contact Heather Campbell at (202) 502-6182.

**Magalie R. Salas,**  
*Secretary.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EF03-2011-000]

#### United States Department of Energy, Bonneville Power Administration; Order Approving Rates on an Interim Basis and Providing Opportunity for Additional Comments

Issued: October 1, 2003.

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

1. In this order we approve on an interim basis, pending our full review for final approval, the Bonneville Power Administration's (Bonneville) proposed modification to the Safety-Net and Financial-Based Cost Recovery Adjustment Clauses (CRACs), and to the Dividend Distribution Clause, under the 2002 Wholesale Power Rate Schedule General Rate Schedule Provisions (GRSPs). We also provide an additional period of time for the parties to file comments. The proposed rates will allow Bonneville to recover its costs and repay the U.S. Treasury for the Federal investment.

#### Background

2. On July 29, 2003, Bonneville filed a request for interim and final approval to modify its CRACs and the Dividend Distribution Clause under the 2002 Wholesale Power Rate Schedule General Rate Schedule Provisions (GRSPs), in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) <sup>1</sup> and subpart B of part 300 of the Commission's regulations.<sup>2</sup> The Commission previously granted final approval of the 2002 GRSPs for a five-year period ending September 30, 2006.<sup>3</sup> Bonneville contends that the CRACs allowed BPA to keep rates low while still addressing any financial shortfalls, rather than instituting higher base rates for the entire rate period.

<sup>1</sup> Sections 7(a) and 7(i)(6) of the Northwest Power Act, 16 U.S.C. 839e(a)(2) and 839e(i)(6) (2000).

<sup>2</sup> 18 CFR part 300 (2003).

<sup>3</sup> United States Department of Energy—Bonneville Power Administration, 104 FERC ¶ 61,093 (2003).

3. In accordance with the statutory procedure,<sup>4</sup> Bonneville seeks interim approval of this adjustment effective October 1, 2003, and final approval effective October 1, 2003 through September 30, 2006.

#### Notice of Filing and Interventions

4. Notice of Bonneville's filing was published in the **Federal Register**, 68 FR 47561 (2003), with comments, protests, or motions to intervene due on or before September 3, 2003.

5. Avista Corporation, Generating Public Utilities, Eugene Water & Electric Board, Golden Northwest Aluminum, Inc., PacifiCorp, Portland General Electric, Puget Sound Energy, Inc., and the City of Tacoma, Department of Public Utilities, Light Division, d/b/a Tacoma Power filed timely motions to intervene raising no issues. Northwest Requirements Utilities (NRU) filed a motion to intervene out of time.

6. In addition, Alcoa, Inc., Generating Public Utilities, Industrial Customers of Northwest Utilities, Golden Northwest Aluminum, Inc., 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, Protesters) filed timely motions to intervene and protests.

#### Discussion

##### *Procedural Matters*

7. Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2003), the notices of intervention and timely, unopposed motions to intervene make the entities that filed them parties to this proceeding. We will grant NRU's untimely, unopposed motion to intervene because: NRU's interests cannot be adequately represented by other parties; NRU intervened at an early stage of the proceeding; and no prejudice or additional burden upon existing parties will result from permitting the intervention.

#### Standard of Review

8. 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):

They must be sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over

<sup>4</sup> Sections 7(a) and 7(i)(6) of the Northwest Power Act, 16 U.S.C. 839e(a)(2) and 839e(i)(6) (2000).

a reasonable number of years after first meeting the Administrator's other costs;

They must be based upon the Administrator's total system costs; and

Insofar as transmission rates are concerned, they must equitably allocate the costs of the Federal transmission system between Federal and non-Federal power.<sup>5</sup>

9. 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 Act,<sup>6</sup> 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, 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 power; and

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

10. 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: To affirm or remand the rates submitted to it for review.<sup>7</sup>

11. 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,<sup>8</sup> 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 to raise issues.<sup>9</sup>

#### *Interim Approval*

12. Protesters contend that Bonneville has not shown the need for the rate increase. They argue that the proposed GRSPs will operate to preclude the Commission's statutorily mandated review of future SN CRAC rate adjustments, as required under the Northwest Power Act. They contend that Bonneville has not based the rates on its total system costs, as required by the Northwest Power Act. Protesters also argue, among other things, that (1) Bonneville's application is deficient and fails to comply with the Northwest Power Act, (2) Bonneville failed to file a complete evidentiary record, (3) Bonneville relied on data and information that was not included in the evidentiary record, (4) Bonneville denied the parties in this proceeding due process, and (5) Bonneville submitted materials and a Notice of Filing that do not comply with the Commission's regulations.

13. The Commission's preliminary review indicates that Bonneville's filing appears to meet the minimum threshold filing requirements of part 300 of the Commission's regulations and the statutory standards. Because the Commission's preliminary review of Bonneville's submittal indicates that they do not contain any patent deficiencies, the proposed modifications 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 refunds with interest if the Commission later determines in its final decision not to approve the rates.<sup>10</sup>

14. 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.

#### *The Commission Orders*

(A) Protesters' requests to reject Bonneville's filing are hereby denied.

(B) Interim approval of Bonneville's filing is hereby granted, to become effective on October 1, 2003, subject to

refund with interest as set forth in section 300.20(c) of the Commission's regulations, 18 CFR 300.20(c) (2003), 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.

**Magalie R. Salas,**

*Secretary.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP03-621-000]

#### CenterPoint Energy-Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2003.

Take notice that on September 29, 2003, CenterPoint Energy Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet to be effective October 1, 2003:

Seventh Revised Sheet No. 11  
Third Revised Sheet No. 249A

MRT states that the purpose of this filing is to revise the provisions of the General Terms and Conditions of MRT's tariff in order to clarify that it possesses the authority to bill taxes, levies, and other charges imposed on Customers by regulatory agencies or taxing authorities where MRT is required by law to collect such amounts from Customer(s) and remit these amounts to the respective agencies or authorities.

MRT states that copies of the revised tariff sheet are being mailed to all parties on MRT's official service list, to MRT's jurisdictional customers, and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

<sup>5</sup> 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.

<sup>6</sup> 16 U.S.C. 839e(k) (2000).

<sup>7</sup> *E.g.*, United States Department of Energy—Bonneville Power Administration, 67 FERC ¶ 61351 at 62216-17 (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.

<sup>8</sup> 18 CFR 300.10(a)(3)(ii) (2003).

<sup>9</sup> *See, e.g.*, United States Department of Energy—Bonneville Power Administration, 64 FERC ¶ 61375 at 63606 (1993); United States Department of Energy—Bonneville Power Administration, 40 FERC ¶ 61351 at 62059-60 (1987).

<sup>10</sup> 18 CFR 300.20(c) (2003).