

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, Linda Breathitt,
Pat Wood, III and Nora Mead Brownell.

Idaho Power Company

v.

Docket No. EL01-66-000

Bonneville Power Administration

ORDER ON COMPLAINT

(Issued July 9, 2001)

On April 20, 2001, the Idaho Power Company (Idaho Power) filed a complaint under Section 206 of the Federal Power Act (FPA) and Rule 206 of the Commission's Rules of Practice and Procedure against the Bonneville Power Administration (Bonneville). Idaho Power's complaint requests that the Commission employ its fast-track procedures in the disposition of the filing, declare that Bonneville's refusal to grant 277 MW of Idaho Power's 577 MW request for short-term firm transmission capacity violates Section 18.8 of its Open Access Transmission Tariff (OATT), and direct Bonneville to provide Idaho Power with the 277 MW of transmission capacity that was available at the time Idaho Power's request was considered. As discussed in the body of this order, the Commission finds that Bonneville violated Section 18.8 of its reciprocity tariff and OATT.

I. Background

In its complaint, Idaho Power states that, on March 2, 2001, Bonneville posted on its Open Access Same-Time Information System (OASIS) 577 MW of firm monthly Available Transmission Capacity from the Nevada-Oregon Border to the Big Eddy substation for May and June of 2001. Idaho Power states that it desired as much of the 577 MW of transmission capacity as it could get, and thus submitted a request for the entire amount. Bonneville received three requests, each for 100 MW of firm monthly capacity from TransAlta Energy Marketing, Inc. (TransAlta) before Idaho Power's request for 577 MW, thus making Idaho Power fourth in the bidding queue. Bonneville accepted TransAlta's three 100 MW requests leaving a balance of approximately 277

MW of remaining firm capacity. Idaho Power states that instead of offering Idaho Power the remaining 277 MW of capacity, Bonneville denied Idaho Power's request in its entirety and awarded the remaining 277 MW of capacity to TransAlta, which was next in the OASIS bidding queue in three increments of 100 MW, 100 MW and 77 MW, respectively. Idaho Power allegedly assumed that Bonneville had denied its request because there was no remaining transmission capacity. When Idaho Power subsequently learned that Bonneville had granted three requests in the bidding queue after Idaho Power's request, it contacted Bonneville to find out why, and to request Bonneville to grant the 277 MW transmission capacity to Idaho Power. According to Idaho Power, Bonneville responded that transmission request of 364 days or less can be rejected by Bonneville if the request cannot be filled in its entirety.¹

Idaho Power argues in its complaint that Bonneville violated its obligation to offer and provide transmission service under Section 18.8 of Bonneville's OATT. Accordingly, Idaho Power requests that the Commission find that Bonneville violated its OATT and order Bonneville to immediately offer Idaho Power the partial interim service. Idaho Power also requests the Commission to direct Bonneville to comply with all effective provisions of its OATT, and grant any other relief to Idaho Power as it deems appropriate.

II. Idaho Power's Complaint

Idaho Power contends that Bonneville is obligated under Section 18.8 of its OATT² to offer and provide Idaho Power with partial interim service, or the 277 MW of capacity that was remaining. Idaho Power notes that Section 18.8 of Bonneville's OATT is similar to Section 19.7 of the Commission's pro forma tariff with regard to transmission providers being obligated to provide and offer the portion of firm transmission service that can be accommodated at the time of a request. Idaho Power

¹Application at 4.

²Section 18.8 of Bonneville's OATT provides, in relevant part, that:

If Bonneville determines that it will not have adequate transmission capacity to satisfy the full amount of a Valid Request for Firm Transmission Service, Bonneville nonetheless shall be obligated to offer and provide the portion of the requested Firm Transmission Service that can be accommodated, including through redispatch, without addition of any facilities if the Transmission Customer agrees to pay the appropriate cost for such service consistent with Commission Policy.

states that Bonneville neither offered the available portion of the requested capacity nor appropriately reconsidered Idaho Power's follow-up request. Idaho Power further argues that the Commission discussed and established a framework, in Morgan Stanley Capital Group v. Illinois Power Company,³ for the obligations of a Transmission Provider under Section 19.7 of the pro forma tariff, and cites to the following language in that order:

When Section 19.7 of the pro forma tariff obligates a transmission provider to offer a portion of the requested long-term service, if available, it is only a long-term portion that must be considered. Thus, Illinois Power should have offered as much transmission services it could provide continuously for the duration of the request, i.e., as many MW of transmission service as available for the entire one-year period Morgan Stanley requested.

Idaho Power states that although the decision was related to long-term transmission service requests, the rational should not differ for short-term transmission service requests. Moreover, Section 19.7 of the pro forma tariff and Section 18.8 of Bonneville's tariff do not make a distinction between long-term and short-term transmission service.⁴ Accordingly, Idaho Power contends that Bonneville is required to offer and provide the portion of the requested transmission service that can be accommodated without the addition of any facilities and through redispatch.

III. Notice of Filings, Interventions and Comments

Notice of Idaho Power's complaint was published in the Federal Register, 66 Fed. Reg. 21,132 (2001), with comments, protests, and interventions due on or before April 27, 2001.

On April 24, 2001, Bonneville filed a response to Idaho Power's request for fast track procedures asking the Commission to reconsider the deadline and grant Bonneville

³93 FERC ¶ 61,081 (2000). See also Wisconsin Public Power Inc., SYSTEM v. Wisconsin Public Service Corporation, 83 FERC ¶ 61,198, reh'g, 84 FERC ¶ 61,120 (1998).

⁴Idaho Power notes that Section 1.16 of Bonneville's OATT defines firm transmission service as either long-term firm transmission service or short-term firm transmission service over the Federal Columbia River Transmission System.

the full 20 days allowed under the Commission's Rule 206.⁵ On April 26, 2001, Idaho Power filed a reply to Bonneville's response requesting that the Commission reject Bonneville's appeal for an extension.

Subsequently, Bonneville filed an answer to the complaint. Bonneville points out that it is not a public utility, and therefore the Commission does not have the authority to grant the relief requested by Idaho Power. Bonneville agreed, however, that the Commission has the authority to review Idaho Power's claim which presents a significant issue of first impression. Bonneville argues that the language of the pro forma tariff, as modified in Bonneville's current OATT, requires it to offer partial interim service only in response to requests for long-term transmission.

Bonneville contends that the denial of available transmission capacity to Idaho Power was consistent with its procedures of only offering partial interim service in response to requests for long-term firm transmission. Bonneville also asserts that its decision was an appropriate interpretation of the pro forma tariff because the process established under Section 19 to conduct system impact studies, facility studies and construction are mechanisms for responding to long-term transmission when capacity is inadequate. Bonneville believes a system impact study for short-term service would be meaningless. Moreover, Bonneville states that the purpose of a system impact study is to determine that the facilities, upgrades or other means necessary to relieve certain transmission constraints. Bonneville contends that with respect to Idaho Power's request for short-term transmission service, a system impact study could not have been performed in time by Bonneville to provide the service, nor could Bonneville have begun any necessary upgrades. In addition, Bonneville notes that Idaho Power did not contest Bonneville's failure to offer it a system impact study because it knew an offer would have been pointless.

Bonneville states that if the Commission determines that the pro forma tariff requires a transmission provider to offer partial service in response to requests for short-term service, it asks the Commission to allow it to continue to satisfy the reciprocity standards using Bonneville's interpretation of Section 18.8 through October 1, 2001, the date Bonneville's amended tariff takes effect. Bonneville contends that its systems have been developed to handle offers of partial service as it relates to long-term requests. To offer partial service in response to short-term transmission requests, Bonneville would need to develop an automated system that can determine the requested transmission capacity that is available and implement the applicable tariff reservation procedures.

⁵18 C.F.R. § 385.206(f) (2000).

TransAlta Energy Marketing, Inc. (TransAlta) filed a motion to intervene and answer arguing that Idaho Power's complaint should be rejected. TransAlta requested that the Commission reject Idaho Power's complaint. Its arguments are similar to Bonneville's arguments. However, TransAlta argues further that: (1) Idaho Power implemented a poor bidding strategy; and (2) Bonneville eliminated any uncertainty with regard to the procedures for short-term transmission service requests when it subsequently posted those procedures on its web site for future short-term transactions.

TransAlta argues that both Idaho Power and TransAlta elected to request the entire 577 MW of available capacity. TransAlta argues further that, unfortunately for Idaho Power, its bidding strategy did not contemplate the possibility that its single bid would not be the first in the queue. TransAlta contends that the Commission has no obligation to safeguard market participants from the adverse effects of poorly conceived bidding strategies.

An untimely motion to intervene raising no substantive issue was filed by Reliant Energy Power Generation, Inc.

Idaho Power subsequently filed an answer to Bonneville's and TransAlta's answers on April 30, 2001 (April 30 Answer). And Bonneville filed an answer to Idaho Power's answer on May 1, 2001 (May 1 Answer).

IV. Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2000), the timely, unopposed motions to intervene serve to make the filing entities parties to this proceeding.

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2000), we will grant the late motion to intervene of Reliant Energy Power Generation Inc., given its interest in the proceeding, the early stage of the proceeding and the absence of any undue prejudice or delay.

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213 (2000), Idaho Power's April 30 Answer and Bonneville's May 1 Answer are rejected.

B. Idaho Power's Complaint

Most of the underlying facts alleged in Idaho Power's complaint are not in dispute. The matter at issue is whether Bonneville was required to offer Idaho Power, as the next bidder in the OASIS bidding queue, the remaining 277 MW of short-term firm transmission capacity.

We find that Bonneville was required by the terms of its reciprocity tariff to offer Idaho Power the 277 MW of short-term firm transmission capacity interim service remaining at the time Idaho Power's request reached the head of the bidding queue line. The transmission customer, in this case Idaho Power, makes the decision as to whether it wants the remaining transmission capacity, or none of the capacity. The transmission provider does not make that decision for the customer. Section 18.8, entitled Partial Interim Service, in Bonneville's reciprocity tariff provides that:

If Bonneville determines that it will not have adequate transmission capacity to satisfy the full amount of a Valid Request for Firm Transmission Service, Bonneville nonetheless shall be obligated to offer and provide the portion of the requested Firm Transmission Service that can be accommodated, including through redispatch, without addition of any facilities if the Transmission Customer agrees to pay the appropriate cost for such service consistent with Commission Policy.

Similarly, Section 19.7 of the Commission's pro forma tariff provides that a transmission provider must offer and provide the portion of a request for firm point-to-point transmission service as can be accommodated. There is no distinction in Section 19.7 of the pro forma tariff, or in Section 18.8 of Bonneville's tariff, between long-term and short-term firm service. We find that the denial of Idaho Power's request for service would be a violation of the Commission's pro forma tariff requirements and accordingly, is a violation of Bonneville's reciprocity tariff.

Although we find that Bonneville incorrectly interpreted Section 18.8 of its tariff, we decline, under the current circumstances, to direct Bonneville to provide Idaho Power with the amount of capacity that was available at the time the short-term service was initiated, which is the remedy sought by Idaho Power. Our decision in this regard is based on several factors. First is the fact that the interpretation rendered herein is the first time we explicitly held that the requirement to offer remaining transmission capacity applied to short-term as well as long-term firm service. In addition, a requirement to reassign transmission of such a short duration could be more disruptive to existing transactions than warranted by the violation.

We reject, however, Bonneville's request that it be granted until October 1, 2001, to apply the partial interim service provision to requests for short-term firm transmission service. Bonneville's tariff requires application of the interim service provision to all future requests for short-term service upon issuance of this order.⁶ Until an automated system is developed, Bonneville must use manual procedures to implement this tariff requirement.

The Commission orders:

Bonneville has violated Section 18.8 of its reciprocity tariff as discussed herein.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

⁶We note that if Bonneville chooses not to comply with the provisions of its reciprocity tariff, Bonneville could lose the "safe harbor" provided by its reciprocity tariff and can be denied open access services by public utilities not being offered reciprocal open access services by Bonneville.