

I N D E X

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PROCEEDINGS

1
2 HEARING OFFICER BROOKHYSER: Good morning.
3 Let's go on the record.

4 Today is May 13th, 2019, and this is the oral
5 argument in Docket BP-20 for the Bonneville Power
6 Administration. My name is Donald Brookhyser. I'm the
7 hearing officer designated by Bonneville for this
8 proceeding.

9 For the record, we have hearing oral argument
10 this morning Elliot Mainzer, the Administrator of the
11 BPA; Mary Jensen, the Executive Vice-President and
12 General Counsel; Richard Shaheen, Senior Vice-President
13 for Transmission Services; Joel Cook, Senior
14 Vice-President for Power Services; and Michelle Manary,
15 Executive Vice-President and Chief Financial Officer.

16 Before we begin, I'd ask if Administrator
17 Mainzer or any of the other Executives have opening
18 comments.

19 ADMINISTRATOR MAINZER: Thank you very much.
20 No real opening comments, just wanted to welcome
21 everybody to the proceeding this morning. Looking
22 forward to hearing your arguments, and thank you for
23 taking time to be here this morning.

24 HEARING OFFICER BROOKHYSER: We'll proceed to
25 oral argument, and we'll begin with --

1 ADMINISTRATOR MAINZER: Actually, my leadership
2 team just reminded me, we need to take a brief moment
3 for safety.

4 If anybody were to have an incident, the exit
5 is in the back of the room. You proceed down the
6 stairs, across the street to Holladay Park, which is
7 where we typically assemble.

8 You can proceed. Thank you.

9 HEARING OFFICE BROOKHYSER: Thank you. First
10 is Joint Party 4.

11 MR. JOHNSON: Administrator Mainzer, members of
12 the executive team, good morning. My name is Tyler
13 Johnson and I represent Powerex in this proceeding.

14 Today I'm appearing on behalf of Joint Party 4,
15 which consists of Powerex and Public Power Council.
16 Joint Party 4 previously requested ten minutes for oral
17 argument today. We did so in case there's a need to
18 respond to issues in briefing. However, after having
19 reviewed the legal briefs pertaining to Bonneville's
20 hourly rates for service on the Southern Intertie, I
21 feel that the briefs speak for themselves and have no
22 further oral argument for you this morning.

23 We also wanted to thank and provide our
24 appreciation for your staff and their commendable
25 efforts and we're available to answer any questions.

1 ADMINISTRATOR MAINZER: Thank you very much.
2 No questions for you at this time. Appreciate it.

3 MR. JOHNSON: Thank you.

4 HEARING OFFICER BROOKHYSER: The next will be
5 Joint Party 1.

6 MR. MEDITZ: Good morning. So we had requested
7 20 minutes, and we'll likely use all of that.

8 So good morning. My name is Andrew Meditz and
9 I am here from the SMUD's Office of the General Counsel.
10 I'd like to make a few brief comments before turning it
11 over to SMUD's outside legal counsel, Harvey Reiter.

12 First of all, we appreciate the opportunity to
13 be here today to address all of you about an important
14 and significant concern of ours, and that's the Southern
15 Intertie hourly rate.

16 By way of background, SMUD and the other
17 Northern California public power utilities reluctantly
18 began this journey with the BPA team and are now here
19 again reluctantly in BP-20 to address the same issue,
20 and that's the three-fold increase on the Southern
21 Intertie hourly rate.

22 For those of us who rely on this service, such
23 an increase required our response and this is why we are
24 here. While Portland is a great city and today there's
25 going to be sun, I hope, we are excited to be here at

1 your rate proceedings and we would have greatly
2 preferred to stay away, but we were compelled to
3 intervene.

4 Indeed, BPA, SMUD and the other Northern
5 California publics have decades of successful
6 collaboration and cooperation along our agencies and
7 little history of adversarial conflicts. This
8 intervention, therefore, represents an unnecessary,
9 unwanted and unplanned departure from this long
10 collaborative history. It is our hope that this
11 collaborative history will continue and the issues
12 requiring us to make this appearance remain the
13 exception, not the norm.

14 As a result of the BP-18 rate case, we have
15 been engaged from the outset in the workshops, in
16 settlement discussions leading up to BP-20.

17 We were a party to the TC-20 settlement and
18 were happy to work with BPA and the others on a
19 consensus. And Michelle is quite familiar with all of
20 that. We spent many long days over here. In fact, we
21 agreed to everything except the one issue regarding the
22 Southern Intertie hourly rate, which we believe not only
23 harms our customers but also the Pacific Northwest.

24 As you know, in the 1980s, a group got together
25 to build the California Oregon Transmission Project, the

1 COTP, to establish a partnership with the Northwest.
2 The Northern California public power agencies involved
3 in the COTP have individually and collectively invested
4 hundreds of millions of dollars in this connection, and
5 we all rely on the Northwest to help keep our lights on
6 and maintain our low customer rates.

7 We believe that the Southern Intertie hourly
8 rate structure chosen impacts these investments and
9 harms our customers and the Northwest, and as the west
10 looks at future transmission investments to harness our
11 renewable future, abrupt and significant changes in rate
12 design like this undermine the long-term certainty
13 needed for such investments.

14 As everyone recognizes, BPA is an important
15 player in the region. What it does affects not just the
16 Northwest but also the rest of the west. We are all
17 witnessing a rapid change in the energy landscape,
18 making us all the more dependent on each other. We can
19 no longer look inward for self-reliance. Regional
20 integration is necessary to stay ahead of the curve. I
21 know BPA shares this common role to embrace regional
22 integration, and a clear example of this is BPA's
23 commitment to join the western EIM very soon.

24 However, we view the Southern Intertie hourly
25 rate as a more parochial decision that does not fully

1 consider the best interests of the region. We don't
2 want to take one step forward and then two steps back.
3 We, therefore, implore BPA to consider which direction
4 it wants to go and to make decisions to move it forward
5 where it wants to be. If regional collaboration is in
6 BPA's future, this decision moves in the wrong
7 direction.

8 We completely understand that BPA is in a
9 predicament. Both its largest transmission customer and
10 biggest advocate organization originally pushed BPA in
11 this direction in BPA-16 and they continue to press the
12 issue in BP-20. Ironically, our arguments over the last
13 few years on the Southern Intertie rate have been
14 consistent with BPA's own arguments and conclusions in
15 BP-16 when it rejected raising the rate. Therefore, its
16 reversal in BP-18 came as a complete surprise. And now
17 with BP-20, we truly do not think BPA has considered all
18 the implications of raising the Southern Intertie rate
19 even more. Even when BPA is potentially faced with
20 millions of dollars in lost revenue as a result of its
21 decision, it has decided to continue nonetheless.

22 We believe that overlooking these important
23 facts sets a bad precedent going forward. Not just for
24 we who oppose of the Southern Intertie rate, but for any
25 entity regardless of what side of the issue you may be

1 on. While BPA is winning in the eyes of some folks in
2 the Northwest, we believe its approach to the Southern
3 Intertie issue over the past two rate proceedings
4 overgrows its credibility and trust.

5 As BPA joins the EIM and expands its role in
6 the west, it is imperative that it has a strong
7 foundation of trust, for regional collaboration and
8 integration to work trust is critical. We, therefore,
9 respectfully request that you reconsider the Southern
10 Intertie hourly proposal and the decisions that have got
11 us here in the first place.

12 So with that, I'll pass it on to Harvey Reiter
13 to talk more specifics about the BP-20 proposal. But I
14 thank you for your time.

15 MR. REITER: Good morning. My name is Harvey
16 Reiter. I'm going to talk about three of our arguments
17 that we presented in this case.

18 The first is that Bonneville and the other
19 settlement proponents have failed to meet their burden
20 under the Administrative Procedure Act for justifying
21 settlement rates for hourly service on the Southern
22 Intertie.

23 Our second argument that I'll talk a little bit
24 more about is that there's simply no evidence that the
25 circumstances that BPA relied on in the last case still

1 exist, if they ever did, and that BPA, therefore, should
2 not be increasing those rates even further as is
3 proposed in this settlement but should refer to its
4 pre-BP-18 rate design.

5 The last argument I'll talk about is that not
6 only have the Bonneville and Southern proponents failed
7 to meet their burden of justification, but proposed
8 rates will only serve to breach Bonneville's long-term
9 firm rights holders, no benefits to anybody else and
10 significant potential loss to Northwest Power Supply
11 customers who face depressed prices for electricity in
12 Mid-C. I'll talk last about that.

13 I want to emphasize that's not the most
14 important issue in this case, whether the number is 40
15 million or some other number. The problem is that the
16 rates themselves haven't been justified, and the harm to
17 Northwest customers simply exacerbates the problem.

18 Let me turn first to the question of the burden
19 of proof. Our point here is really pretty simple is the
20 proponent of a rate increase, Bonneville bears the
21 burden of proof and so do the settlement proponents that
22 joined them in supporting that proposal. But the
23 evidence in this case is what Bonneville itself
24 describes as a black box settlement; that is, the rates
25 are just agreed to numbers and they don't have any

1 underlying foundation. There's no underlying rate
2 design. There's no underlying cost allocation. Indeed,
3 by definition, there's no underlying rationale or
4 principle behind the rates. They're simply agreement by
5 a large number of parties that they like the rates.

6 Nothing in settlement, for example, explains or
7 supports or explains why the hourly rates on the
8 Southern Intertie are discounted going northbound but
9 not southbound, or why the Southern Intertie hourly rate
10 southbound is double the hourly rates on the rest of the
11 Bonneville system. There's not a word in the settlement
12 about that that supports that disparity. In fact,
13 neither Bonneville staff nor the proponents of the
14 settlement said a word in their briefs about this.

15 Finally on this point, the staff has said that
16 the fact that the settlement itself is supported among
17 the long-term firm rights holders and nonopposition by
18 many others is evidence that would support the option of
19 the settlement.

20 I think you'll find that that argument can't be
21 supported under the judicial review provisions of the
22 Northwest Power Act which incorporates the
23 Administrative Procedure Act, and whether you have a lot
24 of parties or a few supporting the settlement, the
25 settlement still must meet the standards of the Act.

1 They must be supported by substantial evidence. They
2 can't be arbitrary. They have to show -- you have to
3 show that the rates are consistent with past practices,
4 that they don't depart without explanation from
5 precedent and that they're the lowest rates possible,
6 consistent with sound business principles.

7 None of that is accomplished by the settlement.
8 In fact, you don't have to look any farther than the
9 testimony your staff provided, the testimony labeled
10 Power and Transmission Rate Policy. In that testimony,
11 the staff states that the purpose of the testimony was
12 "to address the ratemaking and policy issue that affect
13 transmission and power services."

14 So we're hearing them say, okay, what are the
15 policy and ratemaking issues that are addressed by the
16 settlement with respect to the rates for service on the
17 Southern Intertie hourly services? The staff gave us a
18 one-word answer. None.

19 In other words, the settlement doesn't address
20 the seams issues. It doesn't address the long-term
21 service, cost allocation and duck curve. It doesn't
22 address any of the issues that Bonneville itself cited
23 to support the rate hike in the last case, much less the
24 4 1/2 percent increase on top of that under the
25 settlement proposal.

1 So let me turn next to changed circumstances.
2 Is there any evidence that the factors that led
3 Bonneville to triple hourly rates in BP-18 are still
4 expanding, if they ever were? Again, I think the answer
5 here is no.

6 So how did we get here in the first place?
7 Administrator Mainzer, in your decision in BP-18, you
8 said there were two reasons for raising the hourly rate:
9 One was the seams issue, the possibility that now firm
10 hourly service might flow ahead of long-term service and
11 might drive long-term firm customers to drop their
12 contracts and switch to hourly service, and that the
13 duck curve, in fact, exacerbated that problem. And your
14 second argument was the hourly customers should pay
15 their fair share of Southern Intertie costs.

16 Let's take the seams issue. At the hearing,
17 your staff admitted that by itself the seams issue was
18 never a reason -- never a reason to change the former
19 hourly rate design. They testified that the old rate
20 was already providing adequate incentives for long-term
21 firm customers to renew. It was already doing that, so
22 that's consistent. In fact, with other testimony your
23 staff gave at hearing that they've never studied -- ever
24 studied either how often hourly customers were able to
25 flow ahead of long-term firm customers, or even if that

1 occurred, how many megawatts or megawatt hours were
2 affected? They never looked at it.

3 And PPC says that the seams problem persists,
4 and it claims on brief that the existence of this purely
5 theoretical problem, it's not a ten-year-old problem, is
6 somehow substantial evidence. But it, too, admits it
7 doesn't know how big this theoretical problem ever was
8 or is. And if Powerex knows, it's not saying.

9 So how does Bonneville reason its seams issue
10 is even relevant? Somehow it says that the seams issue
11 when combined with the duck curve effect creates this
12 risk of nonrenewal, but that's -- it's really an
13 argument run amiss of the lyric from Billy Preston's
14 late 1970s hit, *Nothing From Nothing Leaves Nothing*.

15 The duck curve effect is the phenomenon that
16 Northern California load has been concentrated during
17 the evening peak, and that load in California has
18 changed. Load has changed, but there's no evidence that
19 this has affected the demand for long-term firm service
20 on the Intertie. On the contrary, sky high renewal
21 rates haven't budged for many years, both before and
22 after the duck curve and before and after the rate
23 increase that you adopted in BP-18. And although
24 Bonneville says the duck curve has become more
25 pronounced since the last case, flows on the Southern

1 Intertie are now the highest they've been since fiscal
2 year 2011.

3 PPC and Powerex have accused the Joint Party 1
4 of confusing correlation with causation and criticizing
5 the aggression study that we did and our conclusion that
6 it's put -- that the rate increase put a downward
7 pressure on prices at Mid-C, but their own grounds for
8 saying that the rate increase is creating an incentive
9 to renew hourly service suffers from at least that
10 defect.

11 They say that customer's incentive, you simply
12 need to look at the renewal rate of 100 percent. And
13 they conclude from that there's a renewal rate now of
14 100 percent, that the higher hourly rates must have done
15 the trick. But PPC and Powerex claim on brief that this
16 100 percent renewal evidence -- renewal rate is
17 evidence. Really? The problem with this conclusion -
18 and it isn't even supported by correlation - renewal
19 rates have been, as I mentioned before, in the high 90s
20 for years and 100 percent in most recent years. Should
21 we conclude from that that the pre-BP-18 hourly rate was
22 the cause of these higher renewal rates? Of course not.
23 But that's deficient logic between PPC and Powerex's
24 argument.

25 The real reason renewal rates are high, even

1 with the duck curve, is pretty simple. As Powerex's own
2 witness testified in the last case, Southern Intertie
3 remains highly valuable and that's particularly true for
4 long-term firm service. The record is undisputed that
5 long-term firm customers use their contract rights
6 almost entirely for short-term arbitrage. That's how
7 they make their money.

8 Let's look at the world realistically. Powerex
9 has been the driver behind the campaign to raise hourly
10 rates through the roof. It has argued that this was
11 necessary to discourage long-term firm customers like
12 itself from bolting for hourly service when their
13 contracts came up for renewal.

14 But as you point out in your own Record of
15 Decision, BP-16, Administrator Mainzer, hourly service,
16 to use your word, often, often is unavailable during
17 peak periods of Southern Intertie usage because service
18 goes to long-term firm customers instead. That's still
19 true.

20 Let's take fiscal year 2016. During the three
21 highest usage hours on the Southern Intertie, requests
22 for hourly service were denied between 11 and 17 percent
23 of the time because long-term firm service had priority.
24 Why in the world -- why in the world would the long-term
25 firm rates holder risk giving up valuable long-term

1 capacity to switch to an hourly service that is often
2 unavailable at peak periods when the capacity is most
3 valuable for their arbitrage transactions?

4 Again, long-term firm rights holders let
5 Powerex make their money by arbitrage. There's no
6 logical reason why they would give up long-term firm
7 service to take the significant risks that by switching
8 to an hourly service that is inferior, that they
9 wouldn't do it. There's no logical reason they would do
10 it. If anything, duck curve effect makes long-term firm
11 service at peak relative to hourly service more, not
12 less, valuable.

13 Tellingly, the Intertie Risk Study that
14 Bonneville submits to accompany its rate filings, and
15 they did in this case, doesn't even take seams or the
16 duck curve into account in making its assessment of
17 renewal risks. That study, I might add, the one
18 submitted in this case, uses exactly the same
19 methodology that BPA has used in the risk studies
20 accompanying its last several cases.

21 These same facts also undercut the fair share
22 argument that Bonneville relied on in the last case.
23 The fair share rationale was that hourly customers only
24 used their service during peak hours should pay the same
25 amount as the long-term firm customer that also only

1 uses rates during peak hours.

2 But Mr. Mainzer, as you've already said, hourly
3 service is often not even available during those peak
4 periods. What does fair share mean when there's no
5 assurance that hourly service will even be available to
6 use during peak period?

7 And the disparity in the quality of service
8 will only increase under the TC-20 supplement. Under
9 that settlement, new restrictions on the availability of
10 hourly service will begin in July. And in January, firm
11 hourly customers will not be available to take -- not be
12 able to take hourly service in real-time at all at any
13 price.

14 In BP-18, you concluded that tripling the
15 hourly rates on the Southern Intertie would be "more
16 beneficial" to these customers, the hourly customers,
17 than no service at all. But the BP-20 settlement you've
18 been asked to approve offers no hourly service in
19 real-time at all and a rate increase. There's nothing
20 fair about that.

21 So last thing, I'd like to turn to the impact
22 on Northwest customers.

23 HEARING OFFICER BROOKHYSER: You have two
24 minutes left.

25 MR. REITER: This might take me about three or

1 four, with your permission.

2 ADMINISTRATOR MAINZER: You've got four
3 minutes.

4 MR. REITER: Thank you.

5 BPA staff set out to conduct a study of adverse
6 consequences associated with its rate hike in BP-18 but
7 never followed through. The Southern Intertie report
8 was by its own account and by PPC's compilation of data,
9 not an analysis. By committing to a settlement before
10 it ever completed an actual analysis or got to hear
11 Joint Party 1's report, Bonneville staff disabled itself
12 from reversing its position regardless of what it would
13 have found. The criticism on the regression analysis
14 impact the analysis of the settlement. They do not say
15 the conclusions were wrong, only that they weren't
16 adequately supported.

17 So the criticisms fall in three categories:
18 Bonneville says that Joint Party 1 included irrelevant
19 factors or excluded relevant ones. PPC argues that we
20 confused correlation with causation. And Powerex said
21 that we reached counter-intuitive conclusions without
22 explaining key inputs in the study.

23 But the effects of prices at Mid-C is exactly
24 what BPA's own analytical framework predicted. Powerex'
25 reasons for pushing the rate hike will be obvious to the

1 outside viewer. Your staff itself stated its
2 expectation during the workshops that preceded BP-18
3 rate hike that by raising the rate for hourly service,
4 this would improve the margins earned by long-term firm
5 customers.

6 And as I've said, they were never going to drop
7 long-term firm service to begin with. It was too
8 valuable. The rate hike was simply a way to make more
9 money on the long-term firm service and that's exactly
10 what happened, and it put downward pressure on Mid-C
11 prices.

12 And if you look at the testimony in this case,
13 you'll see that your own staff says that the use of
14 hourly service dropped off when the rate hike went into
15 effect. It dropped off significantly. Not
16 surprisingly, you raise the rate, triple the rate,
17 people buy less of the service, yet the total use of the
18 Southern Intertie actually increased.

19 They pointed out just what happened. Customers
20 now found hourly service too expensive and went to less
21 expensive substitutes. And by less expensive, let me be
22 clear as the staff was at hearing, that they don't mean
23 less expensive than the old \$3.50 rate. They mean less
24 expensive than the new \$10 rate.

25 So where did they go? Bonneville says that

1 it's likely that the long-term firm rights holders
2 increased their usage. Now, how does that happen?
3 Well, one way would be for people who used to buy hourly
4 service to buy service from the long-term firm rates
5 holder and resell it on an hourly basis, but that amount
6 of service actually went down. So for through-put to
7 remain higher in the increase, what else happened?

8 Well, staff explained the other substitute for
9 these hourly customers. They would sell their
10 electricity at Mid-C to the long-term firm rate holder
11 who would then use its rights to move the power into
12 California. Well, what does that mean? That means that
13 there's more power at Mid-C depressing prices. So it's
14 not rocket science. You don't need an analysis to
15 realize that that's what's going on.

16 So the depressing effect itself is also
17 consistent with the AURORA program that Bonneville uses
18 to project electricity prices. They said that all else
19 equal, that program predicts an increase in the
20 composite rates into California that would depress
21 prices at Mid-C. But they didn't run any studies
22 assuming an increase in composite rates in California,
23 so they never ran the study that would have shown that.
24 But logic tells us that if you increase the hourly rate
25 and the purpose behind that was to encourage customers

1 to stick with long-term firm service and not take hourly
2 service, what would you expect? What's happened here,
3 again, whether it's 40 million or some other number,
4 what's happened is that the only party to benefit from
5 all of this is the long-term firm rights holder. You
6 haven't increased the security of long-term firm as far
7 as and customers who had that service would have been
8 due it anyway.

9 HEARING OFFICER BROOKHYSER: Mr. Reiter, reach
10 your conclusion.

11 MR. REITER: And you have hurt the customers in
12 California. I'd be happy to answer any questions now.

13 ADMINISTRATOR MAINZER: I appreciate your
14 presentation. I understand your main points. Thank you
15 very much.

16 HEARING OFFICER BROOKHYSER: That concludes
17 oral argument.

18 Administrator Mainzer or anyone else, do you
19 have any closing comments?

20 ADMINISTRATOR MAINZER: I think we've set a
21 record for oral argument brevity.

22 Thank you. These are important issues and we
23 do appreciate you being here. Everybody stay safe.
24 Thank you very much.

25 HEARING OFFICER BROOKHYSER: Any other matters

1 to come before us this morning? The hearing is
2 concluded. Thank you.

3 (Hearing concluded at 9:30 a.m.)
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CERTIFICATE

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

I, the undersigned, Teresa Rider, a Certified Shorthand Reporter for Oregon, do hereby certify that oral argument was held before me at the time and place mentioned in the caption of the foregoing hearing.

I further certify that all oral proceedings occurring upon the taking of said oral argument were then and there taken down by me in stenotype and thereafter reduced to typewriting by computer under my direction, and that the foregoing transcript, pages 3 through 23, constitutes a full, true and accurate transcript of said proceedings.

IN WITNESS THEREOF, I have hereunto set my hand and reporter seal this 15th day of May 2019.

Teresa L. Rider, CSR
CSR No. 12-0421