

## DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER  
COMMISSIONER SMITH  
COMMISSIONER REDFORD  
COMMISSION SECRETARY  
COMMISSION STAFF  
LEGAL**

**FROM: DONOVAN E. WALKER**

**DATE: APRIL 19, 2007**

**SUBJECT: BONNEVILLE POWER ADMINISTRATION'S PETITION FOR A  
DECLARATORY ORDER DISCLAIMING JURISDICTION, CASE NO.  
BPA-E-07-01**

On April 6, 2007, Bonneville Power Administration (BPA) petitioned the Commission for a declaratory order disclaiming Commission jurisdiction and regulation of the owner/lessor in a proposed lease financing arrangement for the construction of various electric transmission facilities within the State of Idaho. BPA requested that its Petition be processed by Modified Procedure.

### THE PETITION

BPA's Petition states that it is a federal power marketing administration within the U.S. Department of Energy that markets wholesale electrical power and operates transmission facilities in the west and Pacific Northwest. According to the Petition, BPA proposes to enter into a lease financing arrangement under which it would acquire, construct, and/or install various, and as of yet undetermined, transmission facilities (Facilities) for the purposes of enhancing transmission grid reliability, ensuring compliance with mandatory reliability standards, enabling the integration of new generation, and managing grid congestion. Some of the Facilities will be located in Idaho and according to the Petition all Facilities will be used exclusively by BPA to provide interstate transmission service.

As stated in the Petition, the Facilities will be financed by a special purpose entity (SPE) who is the Owner Lessor. The Facilities will be owned by the Owner Lessor, SPE,

Northwest Infrastructure Financing Corporation II, which will be formed expressly for the purpose of arranging for the financing of the Facilities. All of the capital stock of the Owner Lessor, SPE, will be owned by JH Holdings, acting solely as trustee under a trust agreement between J.H. Management Corporation (JHM) as grantor, and JH Holdings Corporation (JHH) as trustee. All of the capital stock of JHM and JHH will be owned by the 1960 Trust, an independent charitable support organization operated for the benefit of Harvard University. The Owner Lessor SPE will not engage in any business other than arranging for the acquisition and financing of the Facilities.

The SPE will finance the construction of the Facilities through one or more loans. The SPE's sole source of funds to repay the loans will be payments made by BPA under the lease of the Facilities to BPA. The SPE will lease its undivided interest in each of the Facilities to BPA at the time each such Facility is acquired, installed, and/or constructed. The term of the lease will be seven (7) years from the date that the master lease and the first lease commitment are executed. BPA will agree in the lease to operate and maintain the Facilities in the same manner as it operates and maintains its other transmission facilities. The SPE will have no operating responsibilities or control rights with respect to the Facilities. A draft of the lease agreement was filed with the Petition.

BPA requests that the Commission issue a declaratory order disclaiming jurisdiction over the Owner Lessor SPE in the proposed lease financing for the construction of the transmission facilities. BPA also requests that its Petition be processed by Modified Procedure.

#### **STAFF RECOMMENDATION**

Procedural Rules 101 and 102 provide for the issuance of declaratory rulings by the Commission. IDAPA 31.01.01.101, 31.01.01.102. Pursuant to Rule 101, persons seeking such a declaratory ruling must state the ruling that the Petitioner seeks, set out the factual allegations, and indicate the statute or other controlling law pertaining to the Petition. IDAPA 31.01.01.101.02. Rule 102 provides that the notice of the petition for a declaratory ruling will be issued to all affected utilities. IDAPA 31.01.01.102.

Staff recommends that it is appropriate to process the Petition under Modified Procedure, and recommends a comment deadline twenty-one (21) days from the service date of the Commission's Order.

**COMMISSION DECISION**

Does the Commission wish to process this Petition for a Declaratory Ruling under Modified Procedure with a 21-day comment period?



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Donovan E. Walker