

DECISION MEMORANDUM

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

FROM: DONOVAN E. WALKER

DATE: MAY 24, 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. On April 25, 2007, the Commission issued a Notice of Petition and Modified Procedure seeking comments on this matter. Order No. 30308. Commission Staff was the only party to file comments.

BPA's PETITION

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 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. Petition at 2. 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. *Id.* Some of the Facilities will be located in Idaho and all Facilities will be used exclusively by

BPA to provide interstate transmission service and will not be available for use for bundled retail service. *Id.*

Construction of the Facilities will be financed by a special purpose entity (SPE) that is the Owner Lessor. *Id.* The Facilities will be owned by the SPE, Northwest Infrastructure Financing Corporation II, which will be formed expressly for the purpose of arranging for the financing of the Facilities. *Id.* at 4. All of the capital stock of the 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. *Id.* 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. *Id.* at 4-5. The SPE will not engage in any business other than arranging for the acquisition and financing of the Facilities. *Id.* at 5.

The SPE will finance the construction of the Facilities through one or more loans. The SPE's sole source of funds to repay the loan(s) will be payments made by BPA under the lease of the Facilities to BPA. *Id.* The SPA will lease its undivided interest in each of the Facilities to BPA at the time each such Facility is acquired, installed, and/or constructed. *Id.* The term of the lease will be seven (7) years from the date that the master lease and the first lease commitment are executed. *Id.* 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. *Id.* The SPE will have no operating responsibilities or control rights with respect to the Facilities. *Id.* 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. *Id.* at 8.

STAFF COMMENTS

On May 16, 2007, the Commission Staff submitted comments in this matter. Based upon the facts presented in BPA's Petition, the Staff concluded that the SPE's leasing of transmission facilities to BPA does not subject the SPE to the Commission's regulatory jurisdiction. The Staff noted that an electrical corporation is a public utility subject to the jurisdiction, control, and regulation of the Commission where the service is performed and the commodity delivered to the public or some portion thereof for compensation within the State of Idaho. *Idaho Code* § 61-129.

Relying on Idaho Supreme Court cases, Idaho Code, and a prior Commission Order regarding the leasing of locomotive engines for the generation of electricity, the Staff concluded that the SPE's leasing of transmission facilities to BPA does not constitute the provision of utility service to the "public." The Staff observed that the SPE will be formed expressly for the purpose of arranging for the financing of the transmission facilities, and will lease its undivided interest in the transmission facilities to BPA. BPA will operate and maintain the Facilities in the same manner as it operates and maintains its other transmission facilities, and the SPE will have no operating responsibilities or control rights with respect to the Facilities. Additionally, the Facilities will be used exclusively by BPA to provide interstate transmission service and will not be available for use for bundled retail service. Petition at 2. Consequently, Staff believes, based upon the representations made in the Petition, the SPE, Owner/Lessor, would not be subject to the Commission's regulation.

COMMISSION DECISION

1. Does the Commission believe that BPA's proposed lease financing arrangement for the construction of various electric transmission facilities within the State of Idaho subjects the SPE to the Commission's regulatory jurisdiction under Title 61?
2. Does the Commission wish to address any other matter?


Donovan E. Walker