

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 DR 39

4 In the Matter of

5 BONNEVILLE POWER
6 ADMINISTRATION Petition for a
7 Declaratory Ruling pursuant to ORS 756.450
Disclaiming Jurisdiction.

STAFF'S COMMENTS

8 On March 26, 2007, Bonneville Power Administration (BPA) filed a Petition for
9 Declaratory Ruling (Petition) pursuant to ORS 756.450 requesting that the Public Utility
10 Commission of Oregon (Commission) declare that an Owner Lessor in a proposed lease
11 financing of the construction, installation or acquisition, or both, of certain electric transmission
12 facilities is not a public utility subject to Commission regulation.¹ On April 10, 2007, BPA filed
13 a modification to its Petition to clarify that it is only requesting a declaratory ruling on whether
14 the factual situation presented in its Petition would create a public utility subject to Commission
15 jurisdiction under ORS Title 57, Chapters 756 and 757. On April 11, 2007, Administrative Law
16 Judge, Patrick Power, issued a memorandum establishing a due date for comments of April 27,
17 2007. Commission Staff takes this opportunity to state that, based upon the alleged facts,² this
18 situation would not create a public utility subject to the Commission's jurisdiction.

19 In reviewing BPA's request, the Commission's definition of "public utility" is the correct
20 place to begin. ORS 757.005(1)(a)(A) defines "public utility" as:

21 Any corporation, company, individual, association of individuals, or its lessees,
22 trustees or receivers, that owns, operates, manages or controls all or a part of any
23 plant or equipment in this state for the production, transmission, delivery or
24 furnishing of heat, light, water or power, directly or indirectly to or for the public,
whether or not such plant or equipment or part thereof is wholly within any town
or city.

25 ¹ For purposes of declaratory rulings pursuant to ORS 756.450, the Commission assumes the facts as alleged by the
petitioner.

26 ² Instead of reiterating the alleged facts, Staff incorporates the facts as alleged in BPA's Petition.

1 As BPA's Petition correctly notes, the alleged facts do not create a "public utility"
2 because the service is not offered "directly or indirectly to or for the public." ORS
3 757.005(1)(a)(A); *See also* BPA's Petition at Paragraphs 19, 20, and 21 (discussing what
4 constitutes service to the public at large).

5 While Commission Staff generally agrees that the alleged facts are similar to a situation
6 where the Washington Utilities and Transportation Commission (WUTC) disclaimed jurisdiction
7 in 2004, it is not necessary to rely on the WUTC's decision, or to consider Washington's specific
8 statutory classification of public utilities, because it is clear that this situation does not fall under
9 Oregon's classification of public utilities. *See* ORS 757.005(1)(a)(A). Nonetheless, the WUTC
10 decision on similar facts is illustrative and could be used as additional support for disclaiming
11 jurisdiction in this proceeding.

12 In summary, Commission Staff takes this opportunity to file comments in order to state
13 that it agrees with BPA that the alleged facts do not create a "public utility" under ORS
14 757.005(1)(a)(A) because the activity is not offered "directly or indirectly to or for the public."

15 **CONCLUSION**

16 For the foregoing reasons, Staff respectfully requests that the Commission issue a
17 declaratory ruling that determines that the facts alleged in BPA's Petition do not subject the
18 Owner Lessor to Commission jurisdiction under ORS 757.005(1)(a)(A).

19 DATED this 27th day of April 2007.

20 Respectfully submitted,

21 **HARDY MYERS**
22 Attorney General

23
24 /s/Jason W. Jones
25 Jason W. Jones, #00059
26 Assistant Attorney General
Of Attorneys for Staff of the Public Utility
Commission of Oregon

1 **CERTIFICATE OF SERVICE**

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3 I certify that on April 27, 2007, I served the foregoing upon all parties of record in this
4 proceeding by delivering a copy by electronic mail and by mailing a copy by postage prepaid
5 first class mail to the parties accepting paper service.

6 **BONNEVILLE POWER ADMINISTRATION**
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