

BEFORE THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION

In the Matter of the Petition of  
  
Bonneville Power Administration for  
Declaratory Order Disclaiming Jurisdiction

UE-040088  
  
PacifiCorp's Late-Filed Comments to  
Petitioner Bonneville Power Administration's  
Petition for Declaratory Order

1. PacifiCorp is an indirect, wholly owned subsidiary of Scottish Power plc. PacifiCorp is an investor-owned utility that provides retail electric service within the states of Oregon, Washington, Idaho, Utah, California, and Wyoming. Thus PacifiCorp is subject to the regulatory authority of the Washington Utilities and Transportation Commission (the "Commission"). PacifiCorp requests that the following names be added to the official service list for this proceeding and that communications and correspondence concerning this proceeding be directed to:

John Carr  
Managing Director, Strategy and  
Major Projects: RTO  
PacifiCorp  
825 NE Multnomah Blvd., Suite 300  
Portland, OR 97232  
Telephone: (503) 813-5123  
Fax: (503) 813-5346  
john.carr@pacificorp.com

Pamela L. Jacklin  
Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204  
Telephone: (503) 294-9406  
Fax: (503) 220-2480  
pljacklin@stoel.com

2. On January 21, 2004, the Bonneville Power Administration ("Bonneville") filed with the Commission a Petition for Declaratory Order Disclaiming Jurisdiction ("Petition"), in which Bonneville seeks a declaratory order that the Commission does not have jurisdiction over the owner lessor and the indenture trustee in Bonneville's proposed lease financing of certain electric transmission facilities in Washington.

3. These comments are submitted in response to the Commission's January 23, 2004 Notice of Receipt of Petition for Declaratory Order and Opportunity to Submit Statements of Fact and Law. Comments were due by February 10, 2004. PacifiCorp respectfully requests permission to file these comments late because it received actual notice of the filing only shortly before the comment deadline and needed until now to review Bonneville's Petition and obtain review and approval to file comments. The late comments are not interposed for delay, and PacifiCorp does not request formal party status in this docket.

4. Bonneville's Petition urges the Commission to disclaim jurisdiction in part on the representation that the transmission facility to be constructed will not be available for bundled retail service. Bonneville states:

7.3 The Commission should enter a declaratory order disclaiming jurisdiction over the SPE and the Trustee under title 80 RCW because, under federal law, FERC has exclusive jurisdiction over the unbundled transmission of electric energy in interstate commerce.

....

7.3.2 The Facility will be used by Bonneville to provide interstate transmission service and will not be available for use for bundled retail service. Silverstein Decl., ¶11. Under the Federal Power Act, FERC has exclusive jurisdiction over such transmission and therefore sole jurisdiction over the Facility. *See* 16 U.S.C. § 824(b).

5. PacifiCorp suggests that it is unnecessary for the Commission to focus on whether service over the proposed 500 kV transmission facility may or may not include the transmission of energy that will ultimately be sold to retail customers on a bundled or unbundled basis. The pertinent inquiry is whether the proposed 500 kV transmission facility is a facility for interstate transmission under the jurisdiction of the Federal Energy Regulatory Commission ("FERC") or a facility used in local distribution over which the state of Washington has jurisdiction. Under Section 201(b) of the Federal Power Act, FERC has exclusive jurisdiction over transmission of

electric energy in interstate commerce with certain exceptions. The relevant exceptions for these purposes are that FERC lacks jurisdiction over “facilities used in local distribution or only for the transmission of electric energy in intrastate commerce.” 16 U.S.C. § 824.

6. The proposed transmission facility is designed to be used in interstate commerce, not simply for intrastate commerce. (Declaration of Brian Silverstein ¶ 3, attached to Bonneville Petition.) Thus it is a FERC-jurisdictional facility unless it will be used in local distribution.

7. The Commission can take official notice of the fact that a 64-mile-long, 500 kV transmission line and related facility designed to relieve transmission congestion in the heart of Bonneville’s high-voltage transmission system cannot be used to provide local distribution service to retail customers. (*See id.* ¶¶ 4-10.) Acknowledgment of this fact is a sufficient basis for the Commission to disclaim jurisdiction over the proposed transmission facility. The Commission need not determine whether any power that will be transported over the proposed Bonneville facility is ultimately to be sold to a retail customer in a bundled sale by a utility.

WHEREFORE, for the above reasons, PacifiCorp respectfully requests that the Commission consider these comments in determining whether to grant Bonneville’s request for a declaratory order.

DATED: February 17, 2004.

STOEL RIVES LLP

By: /s/ Pamela L. Jacklin  
Pamela L. Jacklin  
Of Attorneys for PacifiCorp

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused to be served this document upon all parties of record in this proceeding by U.S. mail, properly addressed with first-class postage prepaid.

Dated at Portland, Oregon this 17th day of February, 2004.

Robb Roberts  
Bonneville Power Administration  
PO Box 3621  
Portland, OR 97232

Marc R. Greenough  
Orrick, Herrington & Sutcliffe LLP  
719 Second Avenue, Suite 900  
Seattle, WA 98104

Michael D. Hornstein  
Orrick, Herrington & Sutcliffe LLP  
3050 K Street NW  
Washington, DC 20007

Sally Johnston  
Assistant Attorney General  
Washington Utilities and  
Transportation Commission  
Attorney General Office  
State Mail Stop 40128  
Olympia, WA 98504

Simon Ffitch, AAG  
Office of the Attorney General  
Public Counsel  
900 Fourth Avenue, Suite 2000  
Seattle, WA 98164

/s/ Pamela L. Jacklin  
Pamela L. Jacklin  
Of Attorneys for PacifiCorp