

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

City of Tacoma, Washington
City of Seattle, Washington

v.

Docket No. TX06-3-000

South Columbia Basin Irrigation District
East Columbia Basin Irrigation District
Quincy Columbia Basin Irrigation District
Grand Coulee Project Hydroelectric Authority

South Columbia Basin Irrigation District
East Columbia Basin Irrigation District
Quincy Columbia Basin Irrigation District

Project Nos. 2849-015
3295-012

City of Tacoma, Washington
City of Seattle, Washington

Docket Nos. DI07-3-000
DI07-4-000

PROPOSED ORDER DIRECTING INTERCONNECTION SERVICES AND
ORDERING FURTHER PROCEDURES, ORDER FINDING LICENSING
REQUIRED, AND NOTICE OF INTENT TO REOPEN LICENSES

(Issued March 15, 2007)

1. This proposed order directs South Columbia Basin Irrigation District, East Columbia Basin Irrigation District, and Quincy Columbia Basin Irrigation District (collectively, Irrigation Districts) to interconnect their hydroelectric project facilities with facilities to be built by the City of Tacoma, Washington, and the City of Seattle,

Washington (collectively, Cities), under section 210 of the Federal Power Act (FPA),¹ and orders further proceedings to establish the terms and conditions of the proposed interconnection. The order also gives notice to the Irrigation Districts of our intent to invoke the reserved authority under certain license articles of the Irrigation Districts' hydroelectric licenses for the Main Canal Project No. 2849 (Main Canal Project) and the Summer Falls Project No. 3295 (Summer Falls Project) to the extent necessary to require the licensees to permit the interconnection. Finally, the order finds that the new transmission lines to be built by the Cities are required to be licensed as primary transmission lines under Part I of the FPA.²

I. Background

2. The Irrigation Districts are licensees for the Main Canal Project and the Summer Falls Project; Grand Coulee Project Hydroelectric Authority (GCPHA) operates the projects. The Main Canal and Summer Falls projects are located approximately seven miles apart in Grant County, Washington, on the main canal of the United States Bureau of Reclamation's Columbia Basin Project. They each use surplus water of the government's Grand Coulee Dam. The licensed project works of each project include diversion and intake structures, a powerhouse with generating units, and a transmission line.³

3. Currently, pursuant to 40-year power purchase agreements expiring in 2026, the Irrigation Districts transmit all of their projects' power to the Cities through the projects' licensed primary transmission lines and the transmission facilities of Avista Corporation (Avista)⁴ and the Bonneville Power Administration (BPA).

4. On February 28, 2006, the Cities asked GCPHA and the Irrigation Districts to permit the Cities to reconfigure the primary transmission lines of the two projects and to

¹ 16 U.S.C. § 824i (2000).

² 16 U.S.C. §§ 791(a)-823(b) (2000).

³ See the 50-year licenses for the Summer Falls and Main Canal projects issued, respectively, at *East Columbia Basin Irrigation District, et al.*, 16 FERC ¶ 62,243 (1981) and *East Columbia Basin Irrigation District, et al.*, 17 FERC ¶ 62,239 (1981).

⁴ Avista, an investor-owned natural gas and electric utility, currently provides transmission service to the Cities under its Open Access Transmission Tariff for the Main Canal and Summer Falls Projects.

permit the Cities to change the two points of delivery under each contract to a single interconnection at a new substation to be built by the Cities and to be owned by BPA. The Cities explained that their interest in changing the points of delivery was prompted, in part, by the fact that the Cities' transmission contract with Avista was scheduled to expire on October 31, 2007, and the Cities believed that they would not be able to renew that contract. The Cities also stated that they believed they could save a significant amount of money by having BPA transmit all of the Cities' entitlement to the project power rather than using both the Avista and BPA transmission systems for that purpose, as the Cities have done for the last 20 years. On March 28, 2006, GCPHA and the Irrigation Districts rejected the Cities' request, as contrary to the best interests of their customers.

5. On May 18, 2006, the Cities filed the instant application for a Commission order directing the Irrigation Districts and GCPHA to interconnect their hydroelectric project facilities with a new 115-kV transmission line and a new 230/115-kV substation to be constructed, operated, and maintained by the Cities. The proposed facilities will connect to a new 230-kV switchyard to be constructed, operated, and maintained by BPA pursuant to a Large Generator Interconnection Agreement between BPA and the Cities. The Cities requested expedited consideration of this application in order to have the new interconnection in place by October 31, 2007 the expiration date of transmission agreements with Avista under which each of the Cities presently transmits the power they purchase from the Irrigation Districts.

6. The Main Canal Project has a 600-foot-long primary transmission line that extends from the project's substation adjacent to the powerhouse to Avista's Chelan-Stratford #2 network line. Under the Cities' interconnection proposal, a new transmission line for the Main Canal Project would be connected to the point where the project's existing 600-foot line meets the Chelan-Stratford #2 line and would carry the project's power approximately 7.5 miles to a point of interconnection with BPA's system.

7. The Summer Falls Project's transmission line is approximately 6.3 miles long and extends from the powerhouse switchyard to Avista's Stratford substation. The Cities would build a new line that would connect to the existing line either at the project's switchyard or at some point along the line and carry the project's power to a new substation adjacent to the existing BPA transmission line. A new BPA switchyard would provide an interconnection for the Summer Falls Project to BPA's line.⁵

⁵ The Cities intend to negotiate a long-term maintenance agreement for the existing lines so that they can act as backups for the proposed line. The Cities agree to pay the maintenance costs for the existing lines.

II. Notice of Filings and Responsive Pleadings

8. Notice of the Cities' filing was published in the *Federal Register*, 71 Fed. Reg. 32,530 (2006), with comments, protests, or interventions due on or before June 19, 2006. Timely motions to intervene were filed on June 5, 2006, by Avista, and on June 14, 2006, by BPA and the Public Utility District No. 2 of Grant County, Washington. BPA also filed comments in support of the application.

9. On June 19, 2006, the Irrigation Districts filed an answer and on June 20, 2006, they filed supporting affidavits. On June 23, 2006, the Cities filed a response to the Irrigation Districts' answer. On July 7, 2006, the Irrigation Districts filed a reply to the Cities' June 23 answer.

10. On August 24, 2006, the Commission issued an order requesting the submission of additional information from the Cities, in particular, information regarding whether the requested facilities would constitute primary lines within the meaning of section 3(11) of the FPA.⁶ On September 25, 2006, the Cities filed a response. The Irrigation Districts filed an answer to the Cities' response on October 10, 2006. On December 15, 2006, the Cities filed a renewed request for expedited action, and on December 18, 2006, the Irrigation Districts filed an answer to the Cities' request for expedited action.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the Irrigation Districts' and the Cities' answers herein because they provide information that assisted us in our decision-making process.

⁶ 16 U.S.C. § 796(11) (2000).

B. Section 210 Requirements

1. Statutory Provisions

13. Section 210(a)(1) of the FPA provides that, upon application of an electric utility:

[T]he Commission may issue an order requiring –

(A) the physical connection of . . . the transmission facilities of any electric utility, with the facilities of such applicant.

(B) such action as may be necessary to make effective any physical connection described in subparagraph (A), which physical connection is ineffective for any reason, such as inadequate size, poor maintenance, or physical unreliability.

14. Section 210(c), however, limits the Commission’s ability to order interconnection:

No order may be issued by the Commission under subsection

(a) unless the Commission determines that such order –

(1) is in the public interest,

(2) would –

(A) encourage overall conservation of energy or capital,

(B) optimize the efficiency of use of facilities and resources, or

(C) improve the reliability of any electric utility system or Federal power marketing agency to which the order applies, and

(3) meets the requirements of section 212.

15. Section 212(c)(1) of the FPA⁷ provides that, before issuing a final order under section 210, the Commission shall issue a proposed order setting a reasonable time for the parties to agree to terms and conditions for carrying out the order, including the apportionment of and compensation for costs.

2. The Cities' Arguments for Interconnection

16. The Cities argue that the proposed interconnection will meet the requirements of section 210 of the FPA by being in the public interest, by conserving energy and capital, by optimizing efficient use of facilities and resources, by improving the reliability of several utility systems, and by meeting the requirements of section 212 of the FPA.⁸

17. According to the Cities, the proposed interconnection will meet the public interest requirement of section 210(c)(1)⁹ because the new interconnection will increase reliability, efficiency, and economy of the transmission service on which the Cities depend. The Cities claim that retail customers will benefit from the increased reliability of the proposed interconnection, and they will also benefit from lower costs, as the Cities eliminate the cost of the extra transmission over Avista's lines. The Cities also assert that Avista and the retail customers served from Avista's Chelan-Stratford 115-kV line will benefit, as the reliability of that line will be increased. They maintain that no offsetting adverse consequences - engineering or economic - have been uncovered by BPA, the Cities, Avista, or GCPHA. The environmental consequences of the proposed interconnection have been studied by BPA and, subject to issuance of a final report, appear to be negligible. The Cities argue that this is the essence of a solution that serves the public interest.

18. The Cities also argue that the proposed interconnection meets all three prongs of section 210(c)(2), even though it need only meet one of them. The Cities reason that the proposed interconnection will conserve both energy and capital. They assert that transmission through the Cities' new 230/115-kV step-up transformer onto the BPA 230-kV system will result in lower line losses than the current path, which involves transmission for a significant distance on the Avista 115-kV system. They also believe

⁷ 16 U.S.C. § 824k(c)(1) (2000).

⁸ Application at 20-21.

⁹ 16 U.S.C. §§ 824i(c)(1) (2000).

capital will be conserved because the proposed interconnection is a better engineering solution to problems of real-power losses on Avista's Chelan-Stratford 115-kV line.

19. Next, the Cities say that the requirement of optimizing the efficient use of resources will also be met because the proposed interconnection will optimize the efficient use of BPA's Grand Coulee-Rocky Ford 230-kV line by using available transmission capacity on it. Additionally, the Cities say that the interconnection will also optimize the efficient use of Avista facilities because unloading the Cities' wheeling transaction from Avista's Chelan-Stratford 115-kV line will, according to Avista, reduce losses on that line and relieve constraints on Avista's system.

20. Finally, the Cities say the section 210(c)(2) third prong will be met because the interconnection will improve the reliability of several utility systems. The Cities say that Avista's Chelan-Stratford 115-kV line will be both more efficient and reliable with the proposed interconnection in operation. Also, the proposed interconnection will, according to the Cities, improve the reliability of service to GCPHA facilities that now receive electric power over Avista's Chelan-Stratford 115-kV line since it will relieve reliability problems and reduce losses on that line by offloading the Cities' usage.

21. The Cities argue that the requirements of section 212 are also met since the only applicable requirement is section 212(c)(1), which requires issuance of a proposed order, before issuance of a final order, and allowance of time during which the parties may seek to agree on terms and conditions for carrying out that final order, including the apportionment of, and compensation for costs.

3. The Irrigation Districts' Opposition to Interconnection

22. In 2002, a dispute arose between the Cities and the Irrigation Districts over the methodology of the pricing formula in the power sale contracts.¹⁰ The Irrigation Districts argue that the Cities are using section 210 inappropriately to secure a modification of these non-jurisdictional contracts.¹¹ Next they argue that the Cities do not meet the requirements of section 210(c). The Irrigation Districts argue that the Cities

¹⁰ See *City of Tacoma and City of Seattle v. East Columbia Irrigation District, et al.*, No. 05-2-01697-8, Superior Court of Washington, County of Spokane.

¹¹ Irrigation Districts' Answer at 6. The Irrigation Districts admit that the concerns of GCPHA and themselves with the Cities' request were, as the Cities assume, in part, related to that contract litigation. *Id.*

have not shown that their application is in the public interest, and that the Cities have not shown that the proposed interconnection will conserve energy or capital. They note that, generally, where an electric utility requesting an interconnection can show, among other benefits, that its customers will be able to purchase power at a lower cost, the Commission has found that directing an interconnection is in the public interest.¹² However, the Irrigation Districts argue that, the Cities have not provided any credible evidence for their assertion the requested interconnection will save their customers money by avoiding the double transmission charge. The Irrigation Districts maintain that the Cities' analysis of the cost savings ignores that they are involved in litigation with the Irrigation Districts and GCPHA which could well minimize the savings gleaned from the proposed interconnection.

23. The Irrigation Districts also argue that the Cities fail to prove that the proposed interconnection will increase reliability, or that such an increase is needed. Furthermore, the Irrigation Districts argue that the Cities' claims of congestion relate only to the Main Canal Project while the majority of the output sold to the Cities comes from the Summer Falls Project facility. Additionally, they assert that the Cities have not shown that their proposed interconnection will optimize the efficiency of facilities. The Irrigation Districts state that the Cities' proposed line will effectively result in the mothballing or abandonment of a portion of the existing transmission lines from the Main Canal and Summer Falls Project facilities and will terminate their connection to lines of Avista. Moreover, they argue that the Cities have not shown that the Irrigation Districts' existing transmission lines are not being used efficiently or that they should be abandoned. They assert that the Cities only alluded to the possibility that the lines may need to be upgraded, *see* Application at 11, with no indication of when or at what cost - hardly enough of a showing to justify building a new line.

4. Commission Determination

24. To order interconnection, section 210(c) requires that the Commission must find that an interconnection order is in the public interest and that the proposed interconnection will meet at least one of the three specified criteria, *i.e.*, it will encourage conservation of energy or capital, optimize efficiency of facilities and resources, or improve the reliability of any electric utility system to which the order applies.

¹² *Laguna Irrigation District*, 84 FERC ¶ 61,226, at p. 62,089 (1998) (*Laguna*).

25. We find that the Cities' application meets the standards for a proposed order directing interconnection under section 210(c).¹³ The requested interconnections would save the Cities from having to pay an extra transmission fee to Avista. They would also enable power to flow over a more direct route, limiting the Cities' line losses, and thereby conserving energy. The requested interconnections would also reduce congestion over the Avista and neighboring systems, which would optimize the efficiency of the use of facilities and resources,¹⁴ as well as improve the reliability of the transmission service on which the Cities' retail customers depend. Therefore, based on these engineering and economic benefits, we find that it would be in the public interest to issue a proposed order directing interconnection.

26. Section 212(c)(1) provides that, before issuing a final order under section 210, the Commission must issue a proposed order setting a reasonable time for the parties to agree to terms and conditions for carrying out the order, including the apportionment of and compensation for costs.

27. If the parties are able to agree within the allotted time, the Commission will issue a final order reflecting the agreed-upon terms and conditions in that agreement, if the Commission finds them acceptable. In the alternative, if the parties are unable to agree within the allotted time, the Commission will evaluate the positions of each party and prescribe the apportionment of costs, compensation, and other terms and conditions of interconnection, as appropriate.

¹³ With respect to meeting the requirements of section 212, we order further procedures, as discussed below.

¹⁴ Additionally, we have long held that the "benefit of a competitive market is that it enhances efficiency." See *Public Service Company of New Mexico*, Opinion No. 203, 25 FERC ¶ 61,469 at 62,038 (1983), *reh'g denied*, Opinion No. 203-A, 27 FERC ¶ 61,154 (1984). See also *Public Service Company of Indiana*, 49 FERC ¶ 61,346 at 62,243 (1989) (enhancing efficiency, by competition, can help achieve the goal of ensuring the lowest cost energy to consumers in the long run, consistent with reliable service); *Laguna*, 84 FERC ¶ 61,226, at p. 62,089 and n.26 (increased competition optimizes the use of existing facilities). See generally *NAACP v. FPC*, 520 F.2d 432, 441 (D.C. Cir. 1975), *aff'd*, 425 U.S. 662 (1976).

28. The Cities have requested expedited action and a shortened negotiation period, and BPA supports that request.¹⁵ While the Irrigation Districts oppose this request, they do so on the basis that “[t]his request – not unlike virtually every previous claim and assertion made in support of the Cities’ request for an interconnection order – is unaccompanied by any affidavit or support document from a knowledgeable individual.”¹⁶ They do not offer any reason why an abbreviated period of time to negotiate the terms and conditions would create hardship. Accordingly, we will give the parties 30 days to negotiate an interconnection agreement reflecting all issues upon which the parties have agreed, to identify all issues upon which the parties have not agreed, and to give their rationale for their final position on those issues on which the parties have not agreed. After considering their rationale for their final positions, the Commission will issue a final order.

C. Hydroelectric Licensing Issues

29. In addition to their opposition to the proposed interconnection on section 210 grounds, the Irrigation Districts oppose the application on two grounds that concern the Commission’s hydroelectric licensing authority. First, the Irrigation Districts argue that the interconnection, if approved, would result in material modifications to the Summer Falls and Main Canal Projects’ licensed primary transmission lines, which are prohibited by section 6 of the FPA without their consent.¹⁷ Second, the Irrigation Districts assert that the new transmission lines proposed by the Cities would constitute primary transmission lines for their projects, and therefore would have to be licensed before construction could begin.

30. The Cities argue that the new lines would not be primary lines because instead of solely transmitting project power, they would perform other “network” functions. The

¹⁵ To permit adequate construction time, the Cities’ Application (at 23) requested issuance of a proposed order by June 15, 2006, and a final order no later than July 14, 2006. Proper resolution of the issues raised by the application simply did not permit such an extremely shortened decision-making period. In any event, we have endeavored to decide the issues involved in an expeditious manner, consistent with the requirements for due process and informed decision-making.

¹⁶ Irrigation Districts December 12, 2006 Answer at 1.

¹⁷ 16 U.S.C. § 799 (2000).

Cities also argue that the proposed line connecting the Main Canal Project to BPA's system could provide "bi-directional" power transmission over a portion of the existing Main Canal line and the proposed Main Canal line, thereby providing power transmission between Avista's system and BPA's system.

1. The FPA Section 6 Issue

31. Section 6 of the FPA states, in pertinent part, that a license "may be altered . . . only upon mutual agreement between the licensee and the Commission." This prohibition applies only to "substantial alterations" of the license.¹⁸

32. The Irrigation Districts contend that, since the proposed interconnection would materially modify their licensed project works by rendering their existing primary lines all but useless, section 6 of the FPA prohibits the Commission from ordering the interconnection without their consent.

33. However, even assuming, as the Irrigation Districts argue, that the proposed interconnection would "substantially" alter the Irrigation Districts' licensed project works, FPA section 6 does not provide the Irrigation Districts with a unilateral veto over the interconnection, as they contend.¹⁹ The Commission includes standard conditions in its licenses that reserve the Commission's authority to require reasonable changes to the license after notice and opportunity for a hearing. Such reservation of authority is a well-recognized means of obtaining the licensee's consent to modifications that may be necessary during the term of the license.²⁰

¹⁸ See *Fall River Rural Electric Cooperative, Inc.*, 114 FERC ¶ 61,152 at 61,508 (2006), citing *Pacific Gas and Electric Company v. FERC*, 720 F.2d 78, 89-90 (D.C. Cir. 1983), where the court explained: "[T]he operative term 'altered' is not self-defining. . . . Section 6, like most other statutory provisions, must incorporate some common sense limits." The court, while declining to precisely define those limits (*id.*, at 89-90), frequently used the term "de minimis" to describe alterations of license that would be permissible under section 6 without the licensee's consent.

¹⁹ In fact, it is not clear whether, or to what extent, implementation of the new interconnections would require alterations to the licenses.

²⁰ See *Public Utility District No. 1 of Pend Oreille County, Washington*, 117 FERC ¶ 61,205 at 62,022 (2006).

34. Standard Articles 9 and 10 of the Irrigation Districts' licenses provide:²¹

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

35. While the Commission previously has not used these standard articles to order modifications to a project that would be necessary to implement an interconnection order issued under section 210, the language of these articles is certainly broad enough to allow the Commission to do so.²² Based on the economies and efficiencies to be gained in the transmission of power by the Cities' proposed interconnection, as described in this order,

²¹ The standard articles are in Form L-2 (Revised October 1975) entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States," (See 54 FPC 1808), incorporated by reference in the license for the Main Canal Project at 16 FERC ¶ 62,243 at 63,461 (1981) and for the Summer Falls Project at 17 FERC ¶ 62,239 at 63,402 (1981).

²² The courts have sustained the Commission's use of reserved authority in articles such as Articles 9 and 10 as a means of meeting the comprehensive development objectives of FPA section 10(a)(1), 16 U.S.C. § 803(a)(1). *See Cascade Power Company*, 74 FERC ¶ 61,240 at 61,822 (1996), *citing Dept. of the Interior v. FERC*, 952 F.2d 538, 546-48 (D.C. Cir. 1992); *Pacific Gas & Electric Co. v. FERC*, 720 F.2d 78, 83-84 (D.C. Cir. 1983); and *California v. Federal Power Commission*, 345 F.2d 917, 921-25 (9th Cir. 1965). For example, the Commission has invoked Article 10 to require a licensee of a downstream hydroelectric project to coordinate its operations with a project immediately upstream where operation of the downstream project impeded project operations at the upstream project. *See Philadelphia Corporation v. Sandy Hollow Power Company*, 61 FERC ¶ 61,045 (1992).

and in light of the Cities' intent to finance the entire cost of construction and maintenance of the interconnection,²³ we preliminarily conclude that any project modifications needed to implement the new interconnections would be economically sound and in the public interest. Also, based on the section 210 findings this order makes, we preliminarily conclude that, in the interest of power, the licensees should coordinate electrically the transmission of their projects' power with the Cities' interconnection facilities.

36. As noted, the Commission can exercise its reserved authority to order modifications to project operations or facilities only after notice and opportunity for hearing. Accordingly, we hereby give notice, pursuant to standard Articles 9 and 10 of the licenses for Project Nos. 2849 and 3295, of our preliminary conclusions, and we are affording an opportunity to comment on this proposed use of our reserved authority. The Irrigation Districts and other interested entities have 30 days from the date of this order to file comments and another 15 days to submit reply comments.

2. The Primary Transmission Line Issue

37. Section 3(11) of the FPA²⁴ defines a hydroelectric "project" as the complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures ... which are a part of the unit, ... *the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system*, all miscellaneous structures used and useful in connection with said unit or any part thereof.... [Emphasis added.]

38. The definition of a jurisdictional primary transmission line was placed in section 3(11) to ensure that, if the federal government exercises its authority under FPA section 14 to take over the project at the expiration of the project's license, the government "should be able to acquire a usable facility with the means of transmitting power and at the same time not be saddled with the potentially astronomical cost of acquiring the licensee's interconnected primary transmission system or portions of its

²³ Application at 12.

²⁴ 16 U.S.C. § 796(11) (2000)

distribution system.”²⁵ In other words, in the event of a federal takeover, one would want to have a line available to transmit all the energy generated by the project to the interconnected power grid.²⁶

39. The Commission uses a two-pronged technical test for determining whether a line is a primary transmission line: whether it is used solely to transmit power from a Commission licensed project to the interconnected distribution system, and whether without it there would be no way to market the full capacity of the project.²⁷ Under this test, the line leading from a project ceases to be a primary line at the point it is no longer used solely to transmit all of the power from its project to the interconnected grid.²⁸ The Commission has recognized that this is at bottom a case-specific, factual inquiry.²⁹

40. The Commission issued an order seeking additional information from the Cities (and a response from the Irrigation Districts) as to whether, and to what extent, the proposed transmission lines would constitute primary transmission lines under section 3(11) of the FPA.³⁰

41. The Cities responded that the proposed lines are not “primary lines.” They reason that the proposed lines would not be the exclusive means of transmitting the respective project’s power because the existing licensed lines would be available for backup in an emergency. For the Main Canal Project, a disconnect switch could be installed so that, if

²⁵ *Southern California Edison Company*, 57 FPC 690, 695 (1977).

²⁶ *See, e.g., id.*

²⁷ *Pacific Gas and Electric Company*, 85 FERC ¶ 61,411 (1998), *citing Niagara Mohawk Power Corp.*, 5 FERC ¶ 61,301 at p. 61,646 (1978) and cases cited therein.

²⁸ *See Vermont Electric Generation & Transmission Cooperative, Inc. and North Hartland, LLC*, 104 FERC ¶ 61,151; *order on rehearing*, 105 FERC ¶ 61,038; *reh’g granted*, 105 FERC ¶ 61,403 (2003).

²⁹ *See, e.g., Georgia Power Co.*, 37 FPC 620, 629 (1967).

³⁰ 116 FERC ¶ 61,172 (2006). The interconnection application did not address the issue of whether the proposed lines would need to be licensed as primary transmission lines. The Irrigation Districts’ comments on the application contended that under the Cities’ proposal portions of the licensed primary lines would be disconnected and “mothballed,” and that the new lines would be primary transmission lines of the projects.

ever needed, the Irrigation Districts' 600-foot-line could be reconnected to the Avista system. For Summer Falls, the portion of the existing primary lines that would no longer be used could be left in place and a disconnect switch could be installed to enable the project to reconnect to the Avista system, if needed in the future. Under this argument, because there would be two possibilities for getting each project's power to market, neither one would be the exclusive means of transmitting power to the grid, and neither would therefore be required to be licensed.

42. In addition, the Cities contend that the new lines would not be used solely to transmit project power because they would perform other "network" functions such as relieving congestion and reducing resulting "line losses" on Avista's system.

43. The Irrigation Districts replied that the new lines meet the Commission's test for primary transmission lines. First, all of the projects' power would be transmitted along the lines to a point of interconnection with BPA's system, and, second, only the projects' power will be transmitted on these lines. According to the Irrigation Districts, the key is that the Cities' lines will transmit all of the projects' power to BPA's system directly. Thus, reason the Irrigation Districts, those lines will in fact be the exclusive means of transmitting the power to the interconnected transmission system.

44. Excluding both the existing and proposed lines from licensing because of their "redundancy," as the Cities propose, would be inconsistent with the Commission's rationale for including lines under a license, *i.e.*, that the project would be "viable" in case of federal takeover. Furthermore, connecting and transmitting power to Avista's system would be infrequent – for emergencies or for repairs – since the whole purpose of the requested new interconnection is to avoid Avista's system and transmit directly to BPA's facilities. If we were to find the new lines are not required to be licensed, there would be no guarantee that the "backup" lines and switches would remain in place and viable through the license term.³¹

45. As to the Cities' argument that the new lines would not be used solely to transmit project power because they would perform other "network" functions, the Cities misread

³¹ Arguably, the Irrigation Districts could seek to remove from their Summer Falls license the portion of the transmission line that would no longer be used to carry the projects' power. If the request were granted, the licensees would have no obligation under their license to maintain the line. Moreover, even assuming the line remains in place, there is no guarantee that the licensees would have the rights in the future to reconnect the Main Canal or Summer Falls lines to Avista's system.

the Commission's "sole use" test. The question is not whether the line performs other network functions, but rather whether the line carries only project power or other power as well.³² Moreover, the Commission believes that such a "network function" could be ascribed to many licensed primary transmission lines that are the exclusive means of transmitting their projects power to the interconnected grid.

46. The Cities also argue that the proposed line connecting the Main Canal Project to BPA's system could provide "bi-directional" power transmission over a portion of the existing Main Canal line and the proposed Main Canal line, thereby providing power transmission between Avista's system and BPA's system. However, while the Cities claim that a public utility district may be interested in such two-way transmission service, they provide no evidence of any agreement for such new service. The potential use of the new Main Canal line for serving customers other than the licensed projects at some time in the future does not affect the line's status as a primary line.³³

³² The Cities cite two delegated staff orders (*Garkane Power Association, Inc.*, 105 FERC ¶ 62,219 at 64,501-02 (2003) and *Puget Sound Energy, Inc.*, 99 FERC ¶ 62,126, (2002)) to bolster their argument that their proposed transmission lines are not primary because they perform "network functions" and are therefore not used solely to transmit project power to the interconnected grid. However, delegated orders are not binding precedent, and in any event both of the orders authorized removal of transmission lines from project licenses, not because they were performing "network functions," such as the congestion-relieving function the Cities ascribe to their proposed lines, but rather because the lines were an integral part of the transmission system and distribution network. The *Garkane* order is conclusory in nature and simply finds that the transmission line involved "is not used solely to transmit project power, [but] rather ... is an integral part of the transmission system and distribution network." 105 FERC at 64,502. The *Puget Sound* order deleted four transmission lines from a public utility's license because they included portions of the utility's transmission network, were not necessary to deliver project power to market, and would continue to exist even if their existence were not guaranteed by a Commission license (i.e., they would be needed to serve the licensee's customers). 99 FERC at 64,356. The same cannot be said of the Cities' proposed lines, which are used to transmit the project power to the Cities and no one else.

³³ See *Vermont Electric Generation & Transmission Cooperative, Inc.*, 104 FERC ¶ 61,151 at PP 10-11 (2003) (rejecting the argument that because a transmission line exclusively serving the North Hartland Project could one day also serve "a distribution function," the segment should be considered a distribution line, and not a primary line).

47. For the above reasons, we find that the requested interconnection includes the construction of transmission lines that constitute “primary lines,” and therefore the Commission would have to license each line under FPA Part I before the new lines could be constructed and the interconnection completed.³⁴ As a practical matter, the lines that carry the projects’ power to the point of interconnection with BPA’s distribution system (which would include the Cities’ proposed lines) would be the primary lines for the projects, and thus would be required to be licensed prior to their construction.³⁵ This determination is final and is therefore subject to rehearing.³⁶

The Commission orders:

(A) In Docket No. TX06-3-000, the Irrigation Districts are hereby ordered to interconnect with the Cities, pursuant to section 210 of the FPA, as discussed in the body of this order.

(B) In Docket No. TX06-3-000, the Irrigation Districts and the Cities are hereby directed to undertake procedures as discussed in the body of this order.

(C) In Project Nos. 2849-015 and 3295-012, the Irrigation Districts and other interested entities may file initial comments within 30 days of issuance of this order and reply comments within 45 days of this order, addressing the preliminary findings in this order under Articles 9 and 10 of their licenses.

(D) In Docket No. TX06-3-000, within 30 days, the Cities and the Irrigation Districts shall make a filing with the Commission setting forth terms and conditions for

³⁴ See the mandatory licensing provisions of section 23(b)(1) of the FPA, 16 U.S.C. § 817(1) (2000).

³⁵ See 18 C.F.R. § 4.70 *et seq.* (2006) for the application requirements for a transmission-line-only license.

³⁶ Determinations made regarding the proposed order directing interconnection, however, pursuant to section 212(c)(1) of the FPA, are not final determinations and are not subject to rehearing. See *Florida Municipal Power Agency v. Florida Power & Light Co.*, 65 FERC ¶ 61,372 at 63,012 (1993).

carrying out the order, including the apportionment of and compensation for costs and addressing other matters as described in the body of this order.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.