

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IDAHO CONSERVATION LEAGUE,	)
GREAT OLD BROADS FOR WILDERNESS,	)
and IDAHO RIVERS UNITED,	)
	)
Petitioners,	)
	)
v.	)
	)
BONNEVILLE POWER ADMINISTRATION,	)
	)
Respondent.	)

PETITION FOR REVIEW UNDER THE NORTHWEST POWER ACT

Petitioners Idaho Conservation League, Great Old Broads for Wilderness, and Idaho Rivers United respectfully petition this Court for review of the Bonneville Power Administration’s (“BPA”) decision adopting power and transmission rates for the fiscal years 2022–23 (the “BP-22 rates”). Petitioners also request review of all “preliminary, procedural, or intermediate agency action[s] or ruling[s] not directly reviewable,” 5 U.S.C. § 704, that preceded, fed into, and/or were effectively part of BPA’s decision to adopt the BP-22 rates, including (1) BPA’s adoption of its 2018–2023 Strategic Plan and (2) BPA’s integrated program review (“IPR”) for BP-22. This petition is brought pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (“Northwest Power

Act”), 16 U.S.C. § 839 *et seq.*, and the Administrative Procedure Act, 5 U.S.C. §§ 701–06.

BPA adopted its BP-22 rates in a record of decision signed on July 28, 2021.¹ The Federal Energy Regulatory Commission (“FERC”) approved BPA’s rates on March 24, 2022. Petitioners timely filed a request for rehearing with FERC. On May 9, 2022, FERC notified Petitioners that their request had been constructively denied. *See* Exhibit 1. Under this Court’s caselaw, BPA’s adoption of the BP-22 rates became final when approved by FERC or, at the latest, when FERC denied rehearing. *See Golden Nw. Aluminum, Inc. v. Bonneville Power Admin.*, 501 F.3d 1037, 1042–43 (9th Cir. 2007). This petition is filed within 90 days of both dates and is thus timely under the Northwest Power Act. 16 U.S.C. § 839f(e)(5).

FERC’s review of BPA’s rates had FERC docket number EF21-3-000. Petitioners’ request for rehearing was filed under docket number EF21-3-001. The BPA rate proceeding had BPA docket number BP-22. To the best of Petitioners’ knowledge, there are no pending petitions for review of the same final decisions.

Petitioners ask this Court to set aside BPA’s final rate decision and remand the matter to the agency with instructions to set new rates in accordance with a

¹ The record of decision is available here: <https://www.bpa.gov/-/media/Aep/rates-tariff/bp-22/bp-22-final-decision/bp-22-a-02-bp-22-final-rod.pdf>

proper construction of the Northwest Power Act. Petitioners also ask for other declaratory and injunctive relief as necessary to remedy their injuries, including an order requiring BPA to provide increased funding for fish and wildlife mitigation efforts during the remand period. This relief would remedy and/or prevent ongoing and imminent harm to Petitioners. Petitioners also ask this Court to award reasonable attorney's fees and costs as allowed under the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable laws.

Dated: June 16, 2022

Respectfully submitted,

/s/ Andrew R. Missel

Andrew R. Missel
Laurence ("Laird") J. Lucas
ADVOCATES FOR THE WEST
P.O. Box 1612
Boise, ID 83701
(208) 342-7024

amissel@advocateswest.org
llucas@advocateswest.org

*Attorneys for Petitioners
Idaho Conservation League,
Great Old Broads for Wilderness, and
Idaho Rivers United*

RULE 26.1 DISCLOSURE STATEMENT

Petitioners Idaho Conservation League, Great Old Broads for Wilderness, and Idaho Rivers United are all non-profit organizations recognized by the IRS as Section 501(c)(3) public charities. They have no public shares and no corporate parents or affiliates with public shares.

Dated: June 16, 2022

Respectfully submitted,

/s/ Andrew R. Missel

Andrew R. Missel

Laurence (“Laird”) J. Lucas

ADVOCATES FOR THE WEST

P.O. Box 1612

Boise, ID 83701

(208) 342-7024

amissel@advocateswest.org

llucas@advocateswest.org

Attorneys for Petitioners

Idaho Conservation League,

Great Old Broads for Wilderness, and

Idaho Rivers United

179 FERC ¶ 62,081
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Bonneville Power Administration

Docket No. EF21-3-001

NOTICE OF DENIAL OF REHEARING BY OPERATION OF LAW

(May 9, 2022)

Rehearing has been timely requested of the Commission's order issued on March 24, 2022, in this proceeding. *Bonneville Power Admin.*, 178 FERC ¶ 61,211 (2022).

In the absence of Commission action on a request for rehearing within 30 days from the date it is filed, the request for rehearing may be deemed to have been denied. 18 C.F.R. § 385.713 (2021).

Kimberly D. Bose,
Secretary.