

Act (the act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

### Background

The Hawaii Department of Human Services, Vocational Rehabilitation and Services for the Blind Division, the State Licensing Agency (SLA) alleged violations by the United States Department of Defense, Department of the Navy (Navy) of the Act, and the implementing regulations in 34 CFR part 395. Specifically, the SLA alleged the Navy improperly denied the SLA's request to establish a Randolph-Sheppard vending facility at three parcels of real property located at the Pearl Harbor Naval Base. The Navy owned the parcels but leased them to private entities as described in this notice.

In 1999, Congress gave the Navy authority to lease or convey real and personal property in Hawaii that was not needed for Navy operations. On June 30, 2003, the Navy entered into a lease with Fluor Hawaii, LLC, which was terminated in April 2007, covering an area of property at Pearl Harbor immediately adjacent to the USS Arizona Memorial Visitor Center that is known as Halawa Landing. The lease granted exclusive use and possession of the property for a term of 65 years and provided that the property be used solely for a support facility for visitor attractions.

In November 2004, the lessee entered into an agreement with the Pearl Harbor Visitor Center (PHVC) providing for the provision of visitors services at Halawa Landing including but not limited to food, beverage, bag storage, and visitor information. Between late 2004 and early 2007, PHVC operated several food concessions and other visitor services in a large white tent constructed on a portion of the Halawa Landing property adjacent to the primary parking lot used by visitors. A blind vendor operated a food stand at the entrance to that complex pursuant to a concession granted by the National Park Service.

In June 2003, the Navy entered into a lease with a private party for Ford Island, which covered certain Pearl Harbor property on which old and underutilized airplane hangars stood. In 2006, the lessee subleased a portion of the area to the Pacific Aviation Museum (PAM) at Pearl Harbor. The PAM included a cafe, which sold a variety of food and beverages.

On July 7, 1986, the Navy leased certain property near Halawa Landing

for the sole purpose of establishing a museum. Inside the museum, known as the USS Bowfin Museum, was a hot dog cart where, in addition to hot dogs, sandwiches, snacks, beverages, and ice cream, some nonfood items were sold.

The SLA alleged that the three parcels of real property at the Pearl Harbor Naval base leased by Navy to a private entity were in violation of the Act that authorizes blind persons to operate vending facilities on any Federal property. Navy responded that the Act did not apply to leased property. After several informal attempts to resolve this dispute, the SLA filed for Federal arbitration in February 2006. A hearing on this matter was held on July 25, 2007.

*The issues heard by the arbitration panel were:* whether the act applies to real property owned by Navy if leased to a private entity and whether an arbitration panel convened under the Act can award monetary damages.

### Arbitration Panel Decision

After reviewing all of the records and hearing testimony of witnesses, the panel ruled for the Navy. While finding the Act ambiguous with regard to whether the priority provisions of the Act at 20 U.S.C. 107(b) applies to Federally owned property that has been leased to a private entity, the panel concluded, based on legislative history as well as the text of the Act and its implementing regulations, that the priority applies only on property "controlled, maintained, or operated by Federal agencies."

Specifically, the panel majority found that Congress had authorized the Secretary of the Navy to sell or lease any property in excess of the needs of the Navy. The Navy entered into lease agreements granting exclusive use and possession of the leased properties. With respect to the USS Bowfin Museum, the arbitration panel determined that, because no cafe or cafeteria was planned for the museum, the SLA's claims regarding the museum were moot. With respect to the Halawa Landing and PAM properties, the majority concluded that the priority did not apply because the Navy did not control the leased properties.

Furthermore, the panel concluded that the satisfactory site provisions of the Act did not apply because no Federal employees used the properties and there was not any Federal office space located there. Based upon the foregoing, the panel ruled that the Act's priority did not apply to these properties leased by the Navy.

Lastly, although stating that the concession area in the white tent at

Halawa Landing apparently damaged the blind vendor financially, the panel concluded that the Act does not prohibit competition except in instances where vending machines are in direct competition with a blind vendor's facility, which did not occur here. In addition, the panel concluded that the SLA would not be entitled to damages even if the Navy violated the Act because the Act does not authorize the panel to make damages awards. One panel member concurred with the majority opinion and one panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

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Dated: September 8, 2009.

**Tracy R. Justesen,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

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BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 12569–001]

#### Public Utility District No. 1 of Okanogan County; Notice of Application Tendered for Filing With the Commission

September 5, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* Major License.
- b. *Project No.:* P–12569–001.

- c. *Date filed*: August 22, 2008.
- d. *Applicant*: Public Utility District No. 1 of Okanogan County.
- e. *Name of Project*: Enloe Hydroelectric Project.
- f. *Location*: On the Similkameen River, near the Town of Oroville, Okanogan County, Washington. The project occupies about 35.47 acres of federal lands under the jurisdiction of the U.S. Bureau of Land Management.
- g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)–825(r).
- h. *Applicant Contact*: John R. Grubich, General Manager, Public Utility District No. 1 of Okanogan County, P.O. Box 912, Okanogan, Washington 98840, (509) 422–8485.
- i. *FERC Contact*:

Dianne Rodman, 888 First Street, NE., Room 6B–02, Washington, DC 20426, (202) 502–6077, [dianne.rodman@ferc.gov](mailto:dianne.rodman@ferc.gov).  
 Kim A. Nguyen, 888 First Street, NE., Room 63–11, Washington, DC 20426, (202) 502–6105, [kim.nguyen@ferc.gov](mailto:kim.nguyen@ferc.gov).

j. *Cooperating agencies*: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below. Cooperating agencies should note the Commission’s policy that agencies that cooperate in the preparation of the environmental

document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. The application is not ready for environmental analysis at this time.

l. Deadline for requesting cooperating agency status is October 21, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

m. *The Enloe Project would consist of*: (1) An existing 315-foot-long and 54-foot-high concrete gravity arch dam with an integrated 276-foot-long central overflow spillway with 5-foot-high flashboards; (2) an existing 76.6-acre reservoir (narrow channel of the Similkameen River) with a storage capacity of 775 acre-feet at 1049.3 feet mean sea level; (3) an 190-foot-long intake canal on the east abutment of the dam diverting flows into the penstock intake structure; (4) a 35-foot-long by 30-foot-wide penstock intake structure; (5) two above-ground 8.5-foot-diameter steel penstocks carrying flows from the intake to the powerhouse; (6) a powerhouse containing two vertical Kaplan turbine/generator units with a total installed capacity of 9.0 megawatts; (7) a 180-foot-long tailrace channel that would convey flows from the powerhouse to the Similkameen River, downstream of the Similkameen Falls; (8) a new substation adjacent to the powerhouse; (9) a new 100-foot-long, 13.2-kilovolt primary transmission line from the substation connecting to an

existing distribution line; (10) new and upgraded access roads, and (11) appurtenant facilities.

The project is estimated to generate an average of 54 gigawatthours annually.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission’s Web site at <http://www.ferc.gov> using the “eLibrary” link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are initiating consultation with the Washington State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

p. *Procedural schedule*: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter, if needed .....	September 2008.
Issue Acceptance letter .....	January 2009.
Issue Scoping Document 1 .....	February 2009.
Issue Scoping Document 2 .....	May 2009.
Notice that application is ready for environmental analysis .....	May 2009.
Notice of availability of the draft Environmental Assessment .....	October 2009.
Notice of availability of the final Environmental Assessment .....	March 2010.

**Kimberly D. Bose**,  
*Secretary*.  
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**BILLING CODE 6717–01–P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Combined Notice of Filings**

September 9, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers*: RP08–591–000

*Applicants*: Equitrans, L.P.

*Description*: Equitrans, LP submits Twenty First Revised Sheet 5 et al to

FERC Gas Tariff, Original Volume 1, effective 10/1/08.

*Filed Date*: 08/29/2008

*Accession Number*: 20080903–0031

*Comment Date*: 5 p.m. Eastern Time on Friday, September 12, 2008.

*Docket Numbers*: RP08–602–000

*Applicants*: Sabine Pipe Line LLC

*Description*: Sabine Pipe Line LLC submits a revision to original transmittal letter dated 8/27/08, correcting proposed effective date of October 1, 2008 instead of November 1, 2008.

*Filed Date*: 09/08/2008

*Accession Number*: 20080908–4000

*Comment Date*: 5 p.m. Eastern Time on Monday, September 22, 2008.

*Docket Numbers*: CP03–342–005  
 CP03–343–003

*Applicants*: Discovery Gas Transmission LLC and Discovery Producer Services LLC

*Description*: Discovery Gas Transmission LLC and Discovery Producer Services LLC submit a joint abbreviated application to amend the certificate granted by FERC’s order issued 5/6/04.

*Filed Date*: 08/12/2008

*Accession Number*: 20080818–0056

*Comment Date*: 5 p.m. Eastern Time on Friday, September 19, 2008.

*Docket Numbers*: CP08–30–001

*Applicants*: Colorado Interstate Gas Company

*Description*: Colorado Interstate Gas Company petitions to amend order to reflect increased project costs and to revise initial rates.