

MAY 19 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLATSKANIE PEOPLES UTILITY
DISTRICT,

Petitioner,

PUBLIC UTILITY DISTRICT NO. 1 OF
GRAYS HARBOR COUNTY
WASHINGTON,

Petitioner-Intervenor,

v.

BONNEVILLE POWER
ADMINISTRATION,

Respondent,

AVISTA CORPORATION; et al.,

Respondents-Intervenors.

No. 08-71006

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MEMORANDUM *

CLATSKANIE PEOPLES UTILITY
DISTRICT,

Petitioner,

No. 08-71505

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

v.

BONNEVILLE POWER
ADMINISTRATION,

Respondent,

AVISTA CORP; et al.,

Respondents-Intervenors.

On Review from the Bonneville Power Administration

Argued and Submitted May 5, 2009
Portland, Oregon

Before: W. FLETCHER, BEA, and IKUTA, Circuit Judges.

To establish standing, “the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (quotation marks omitted). Clatskanie alleges two injuries. First, it claims that it may be affected by the reduction of a pool of money held by BPA, from which Clatskanie is due to receive additional amounts to be established in an ongoing ratemaking proceeding. This injury is too tenuous to establish concrete and particularized injury.

Second, Clatskanie asserts that as a customer of BPA, Clatskanie has an interest in seeing BPA comply with statutory requirements. This injury also fails to establish standing. Any implication in our prior decisions that an interest in participating in BPA’s ratemaking procedure confers standing to challenge alleged departures from those procedures, *see California Energy Resources Conservation and Development Comm’n v. Bonneville Power Admin.*, 754 F.2d 1470, 1473 (9th Cir. 1985); *see also Portland General Electric Co. v. Johnson*, 754 F.2d 1475, 1480 (9th Cir. 1985), has been superseded by the Supreme Court’s recent intervening holding that “deprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create Article III standing.” *Summers v. Earth Island Institute*, 129 S. Ct. 1142, 1151 (2009); *see also Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (en banc) (“[W]here the reasoning or theory of our prior circuit authority is clearly irreconcilable with the reasoning or theory of intervening higher authority, a three-judge panel should consider itself bound by the later and controlling authority, and should reject the prior circuit opinion as having been effectively overruled.”).

In the absence of establishing it has suffered an injury-in-fact, Clatskanie fails to establish standing and we therefore lack jurisdiction over its petitions for review. *See Summers*, 129 S. Ct. at 1151.

DISMISSED.