

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Union Electric Company dba AmerenUE

Project No. 459-177

ORDER DENYING REHEARING

(Issued July 6, 2007)

1. Duncan's Point Lot Owners Association, Inc., Duncan's Point Homeowners Association, Inc., and, individually, Nancy A. Brunson, Juanita Brackens, and Pearl Hankins have filed a request for rehearing of a May 25, 2007 notice¹ rejecting a request for rehearing of the Commission's April 20, 2007 Order granting an application filed by AmerenUE, licensee of the Osage Hydroelectric Project No. 459, for non-project use of project lands.² Because the notice correctly concluded that the initial request for rehearing failed to allege any error in the April 20 Order, this order denies rehearing.

2. On April 20, 2007, the Commission issued an order authorizing AmerenUE to permit the use of approximately 160 square feet of project lands for the construction of a portion of a deck associated with a residence otherwise located outside of the project boundary. On May 21, 2007, the Associations and Nancy A. Brunson, Pearl Hankins, and Juanita Brackens, individually, filed a timely request for rehearing of the April 20, 2007 Order. By notice issued May 25, the Commission rejected the request for rehearing because it failed to set forth specifically the ground or grounds upon which it was based, as required by section 313(a) of the Federal Power Act (FPA),³ and also noted that the

¹ 119 FERC ¶ 61,202.

² 119 FERC ¶ 61,073.

³ 16 U.S.C. § 825l(a) (2000).

pleading was deficient because it failed to include a statement of issues, as required by the Commission's regulations.⁴

3. On June 25, 2007, the Associations, Ms. Brunson, Ms. Hankins, and Ms. Brackens⁵ filed a request for rehearing of the rejection notice. The arguments in this pleading are somewhat difficult to parse.⁶

4. The parties first note that they filed in this proceeding a November 18, 2007 pleading entitled "Comments, Recommendations for Terms and Conditions, Protest, or Motion to Intervene." They allege that, contrary to the May 25 notice, they have "stated the issue," and assert that the Commission did not address the issues they raised.⁷

⁴ See *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, 70 *Fed. Reg.* 55,723 (September 23, 2005), *FERC Statutes and Regulations* ¶ 31,193 (2005) as amended by Order 663-A, effective March 23, 2006, to limit its applicability to rehearing requests. *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663-A, 71 *Fed. Reg.* 14,640 (March 23, 2006), *FERC Statutes and Regulations* ¶ 31,211 (2006) (codified at 18 C.F.R. §§ 385.203(a)(7) and 385.713(c)(2) (2006)).

⁵ The May 25 notice also rejected the request for rehearing as to Ms. Brackens and Ms. Helen Davis -- both of whom were listed in the caption of the pleading, although only Ms. Davis was not listed as a signer of the pleading -- due to lack of party status, because they had not intervened in this proceeding. We have since determined that Ms. Brackens did in fact intervene in the proceeding and we therefore reverse our holding that the May 21 request for rehearing was rejected as to her based on lack of party status.

⁶ Indeed, while we have elected to respond substantively to this request for rehearing, we could well have rejected it, as we did the initial request, for a failure to set forth the grounds on which it is based.

⁷ The parties make several other arguments that appear to have no merit. Under the heading "Timely Filing" they cite the Commission's regulations regarding the computation of time. However, there is no issue regarding the timeliness of any of the parties' filings that are at issue. The request for rehearing also includes a section entitled "the Intervenor in this case have not changed," which contains a statement that the parties have intervened in the proceeding. We are uncertain of the purpose of this section, unless it is intended to clarify that Ms. Brackens is a party, which we agree is the case. See n. 5, *supra*.

(continued...)

5. The parties misapprehend their obligations under the FPA and our regulations. It is correct that the parties raised certain issues in their November 18, 2007 pleading. The Commission addressed those issues in detail in the April 20, 2007 Order.⁸ The parties' two-page, May 21 request for rehearing pleading stated that the order is based on "controverted facts," "untruths," and "biased evidence," but did not cite to any disputed facts whatsoever⁹ or allege any specific error in the April 20 Order. As noted above, parties filing requests for rehearing are obligated to set forth in those documents the grounds on which they are based.¹⁰ A request for rehearing cannot simply "relate back" to earlier pleadings to which the Commission has already responded, but rather must independently set forth grounds of alleged error in the order at hand.¹¹ Because the May 21 request for rehearing did not do so, the May 25 notice properly rejected it.

In addition, the parties state that the Commission "failed to inform Complainants of their appeal rights per 18 C.F.R. 385.713 (2006) in its April 20, 2007 Order." While we did not in the April 20, 2007 Order state that requests for rehearing of that order could be filed within 30 days, as we do in many initial orders, we are under no obligation to make that statement. Moreover, given that the parties indeed timely filed a request for rehearing, this allegation appears to be pointless. The parties also state that "[t]he present application involves boundary issues related to previous judicial matters currently in the D.C. Cir." While it is correct that the parties are seeking judicial review of earlier Commission orders regarding the Osage Project, none of those orders involve the deck authorized by the orders here, so we are unclear as to the relevance of this statement.

⁸ See 119 FERC ¶ 61,073 at P 11-23.

⁹ The only facts mentioned in the pleading are that the deck is located within the project boundary, which is not a matter of dispute, and that "most of the houses in Pebble Creek [Development] appear to be within the boundary," a fact that is neither supported nor relevant to this proceeding, which deals only with one deck.

¹⁰ This obligation is reinforced by our regulations. See 18 C.F.R. § 385.713(c)(1) (2006) (requiring that a request for rehearing "[s]tate concisely the alleged error in the final decision or final order").

¹¹ In any event, the May 21 request for rehearing contains no reference to the November 18 filing.

The Commission orders:

The June 25, 2007 request for rehearing filed by Duncan Point Lot Owners Association, Inc., Duncan Point Homeowners Association, Inc., Nancy A. Brunson, Juanita Brackens, and Pearl Hankins is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.