

120 FERC ¶ 61,172  
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.

City of Wadsworth, Ohio

Project Nos. 12796-001 and  
12797-001

Rathgar Development Associates,  
LLC

ORDER DISMISSING REQUESTS FOR REHEARING

(Issued August 20, 2007)

1. The Kentucky Municipal Power Agency (KMPA) has filed two requests for rehearing of a Commission staff notice of three competing applications for preliminary permits to study the Robert C. Byrd Dam Project. This order dismisses the requests for rehearing as premature.
2. The U.S. Army Corps of Engineers operates the Robert C. Byrd Locks and Dam on the Ohio River in West Virginia and Ohio. On March 22, 2007, Commission staff issued an order terminating a license for a project at that dam, due to the licensee's failure to timely commence construction.<sup>1</sup>
3. Thereafter, four entities filed applications for preliminary permits to study proposed projects at the Byrd Locks and Dam. First, Brookfield Power US filed a permit application on April 23, 2007. Because that application was filed too early (before the first business day following the day when the license termination became effective), it was rejected.<sup>2</sup> Second, on April 24, 2007, the first day that a new application could be

---

<sup>1</sup> *Gallia Hydro Partners*, 118 FERC ¶ 62,218, *reh'g denied*, *Gallia Hydro Partners*, 119 FERC ¶ 61,163 (2007).

<sup>2</sup> *See* letter from William Guey-Lee (Commission staff) to Mr. Sam S. Hirschey, regarding Project No. 12795 (May 25, 2007).

filed for the site,<sup>3</sup> the City of Wadsworth, Ohio (Wadsworth) filed a permit application. Third, Rathgar Associates filed an application on April 26, 2007. Finally, KMPA filed three identical applications on May 17, May 18, and May 21, 2007.<sup>4</sup>

4. On May 30, 2007, the Commission issued a notice that Wadsworth's, Rathgar's, and KMPA's applications had been filed and were available for public inspection. The notice also established dates for the filing of comments, protests and motions to intervene, and for competing permit and development applications.<sup>5</sup>

5. On June 25, 2007, KMPA filed separate requests for rehearing with respect to the notice as it pertained to Wadsworth's and Rathgar's applications. In both instances, KMPA argued that the applications had been filed prematurely, and that the Commission should therefore have rejected them.

6. On July 10, 2007, Wadsworth filed an answer to KMPA's request for rehearing, accompanied by a motion for leave to file the answer. Our regulations generally prohibit answers to requests for rehearing.<sup>6</sup> However, because Wadsworth's answer will assist in the development of a full record, we will grant the motion for leave to file the answer.

7. Rule 713 of our Rules of Practice and Procedure<sup>7</sup> provides that rehearing may be sought of a "final Commission decision or other final order." An agency order is final when it "imposes an obligation, denies a right, or fixes some legal relationship as a consummation of the administrative process."<sup>8</sup> The notice of the applications, which is

---

<sup>3</sup> See *Gem Irrigation District*, 41 FERC 61,186 (1987).

<sup>4</sup> In its requests for rehearing, KMPA states that it filed the three applications "out of an abundance of caution," because it was uncertain when the license termination would be final.

<sup>5</sup> Both of KMPA's requests for rehearing also included motions to intervene. Because the motions to intervene were timely and were not opposed, they were granted automatically 15 days after the date they were filed. See 18 C.F.R. § 385.214(c) (2007).

<sup>6</sup> See 18 C.F.R. § 385.213(a)(2) (2007).

<sup>7</sup> 18 C.F.R. § 385.713 (2007).

<sup>8</sup> See *City of Fremont v. FERC*, 336 F.3d 910, 913-14 (9th Cir. 2003); *Cities of Riverside and Colton v. FERC*, 765 F.2d 1434, 1438 (9th Cir. 1985); *Papago Tribal Utility Authority v. FERC*, 628 F.2d 235, 239 (D. C. Cir. 1980).

simply a procedural matter, imposes no obligation, denies no right, and fixes no legal relationship.<sup>9</sup> Thus, KMPA's requests for rehearing are premature, and we will dismiss them as unripe. At such time as the Commission acts on the merits of the permit applications at hand, KMPA will have the opportunity to raise on rehearing whatever issues it deems appropriate.

The Commission orders:

(A) The July 10, 2007 motion of the City of Wadsworth, Ohio for leave to file an answer is granted.

(B) The requests for rehearing, filed on June 25, 2007 by the Kentucky Municipal Power Agency, are dismissed.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

---

<sup>9</sup> See, e.g., *Halecrest Company*, 38 FERC ¶ 61,312 (1987) (finding Commission staff's acceptance of license application interlocutory and not subject of appeal to Commission).