

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Virginia Electric and Power Company, dba
Dominion Virginia Power/Dominion
North Carolina Power

Project No. 2009-031

ORDER DENYING REQUEST FOR STAY

(Issued May 27, 2004)

1. Virginia Electric and Power Company, dba Dominion Virginia Power/Dominion North Carolina Power (Dominion), has filed a request for stay of the new license for the company's Roanoke Rapids and Gaston Hydroelectric Project No. 2009, pending Commission action on rehearing of the new license. For the reasons discussed below, we deny the request.

BACKGROUND

2. Dominion is the licensee for the Roanoke Rapids and Gaston Project, which was originally licensed in the 1950s. On January 28, 1999, the company filed an application for a new license for the project. On July 15, 2003, Dominion filed with the Commission a comprehensive settlement agreement signed by Dominion and 13 of the major parties to the relicensing proceeding. No party opposed the settlement.

3. On March 31, 2004, the Director, Office of Energy Projects, issued an order approving the settlement and issuing a new license. 106 FERC ¶ 62,245 (2004). The order revised proposed license articles in the settlement agreement and added some new articles.

4. On April 21, 2004, Dominion filed a request for stay. Dominion argues that the license order's changes to the settlement agreement do not in all respects accurately reflect the intent of the parties and are inconsistent with Commission precedent. The company asserts that the Commission should grant a stay here until certain terms of the project license can be corrected or clarified.

5. Requests for rehearing of the March 31, 2004 order were filed by Dominion, the U.S. Department of the Interior, NOAA Fisheries, the North Carolina Department of Environment and Natural Resources, and the North Carolina Wildlife Resources Commission.

DISCUSSION

6. In acting on stay requests, the Commission applies the standard set forth in the Administrative Procedure Act, 5 U.S.C. § 705, *i.e.*, the stay will be granted if the Commission finds that “justice so requires.”¹ Under this standard, the Commission considers a number of factors related to the public interest, such as whether the movant will suffer irreparable injury in the absence of a stay and whether the issuance of a stay would substantially harm other parties.

7. Dominion asserts that it will suffer irreparable harm if a stay is not granted, because it will be “in the impossible situation of being required to comply with and implement the new terms and conditions of a new license that it has not accepted,” and because it and other settling parties will have to expend significant resources to implement license terms that it states need to be revised on rehearing.²

8. We have explained that, to the extent a licensee seeks a stay in order to defer deadlines for compliance with the requirements of license articles, the appropriate remedy is for it to seek extensions of those deadlines.³ Here, only a few articles in the new license for Project No. 2009 will require compliance activities during the next several months.⁴ While Dominion points to the inconvenience it alleges it will suffer if it

¹ See, *e.g.*, FPL Maine Energy Hydro, LLC, 107 FERC ¶ 61,120 (2004); Clifton Power Corp., 58 FERC ¶ 61,094 (1992).

² Request for Stay at 4. By filing of May 12, 2004, Dominion states that, it will operate under the terms of the new license “under protest,” but that this should not be construed as its acceptance of the new license.

³ See, *e.g.*, Lind and Associates, 66 FERC ¶ 61,352 (1994); Mahoning Hydro Associates, 56 FERC ¶ 61,138 (1991). The exception is if the statutory deadline in an original license for commencement of project construction precludes such options.

⁴ These include: Article 401 (surveys and literature review regarding fish passage); Article 402 (compliance with dissolved oxygen standards); Article 405 (flow augmentation); Article 406 (lake level management restrictions); Article 407 (flow releases in the bypassed reach); Article 408 (ramping rates in the bypassed reach);

must begin compliance activities while rehearing is pending, it does not in any way quantify the costs of compliance or contend that any of the actions it must take while rehearing is pending will constitute irreparable harm.⁵ In light of these circumstances, we conclude that the request for stay should be denied.⁶ We note that Commission staff will be convening a technical conference in the near future, as requested by the parties, to discuss revisions to license articles.

The Commission orders:

The request for stay, filed on April 21, 2004, by Virginia Electric and Power Company, dba Dominion Virginia Power/Dominion North Carolina Power, is denied.

By the Commission.

(S E A L)

Linda Mitry
Acting Secretary

Article 409 (providing recommended flows in the Roanoke River); Article 410 (implementing ramp down rates for flood control); Article 418 (bald eagle protection measures); and Article 424 (file whitewater boating plan).

⁵ Indeed, Dominion does not state that compliance with any of the license articles will result in any specific harm to it.

⁶ Dominion cites Puget Sound Energy, Inc., 88 FERC ¶ 61,143 (1999), in support of its request. That case is not apposite. In Puget Sound, the license applicant had reached a preliminary conclusion that it could not accept the license as then conditioned. That being the case, because the case involved an original license for an existing project, the applicant needed a stay to avoid having to shut down the project. The applicant therefore requested a stay of the license, as well as deferral of action on pending rehearing requests, to allow it 24 months to reach a post-license-issuance settlement with resource agencies, involving, among other things, unresolved Endangered Species Act issues. The case also involved the implementation of significant interim environmental measures.