

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Idaho Power Company

Project No. 1971-088

ORDER DISMISSING INTERLOCUTORY APPEAL

(Issued July 15, 2004)

1. On July 21, 2003, Idaho Power Company filed an application for a new license for the 1,436.9-megawatt Hells Canyon Project, located on the Snake River in Washington and Adams Counties, Idaho, and Wallowa and Baker Counties, Oregon. On July 31, 2003, the Commission issued public notice of the application and solicited requests for studies additional to those that had already been performed during the pre-filing period.
2. On September 23, 2003, American Rivers and Idaho Rivers United (American Rivers) filed a request for Idaho Power to conduct additional studies, including fish-passage studies.
3. On May 4, 2004, Commission staff responded by letter to the parties, including American Rivers, which had between them requested a total of 123 additional studies. See letter from Timothy J. Welch, Chief, Hydro West Branch 2, Office of Energy Projects. The letter granted a number of the requests, but denied requests by American Rivers and others for additional fish-passage studies, on the basis that Idaho Power had provided sufficient information for Commission staff to evaluate in its environmental impact statement the need for fish passage, reasonable passage alternatives, and restoration strategies that could be employed to restore anadromous fish to areas upstream of the project.
4. On June 11, 2004, American Rivers filed what it styled an interlocutory appeal of staff's decision. On June 28, 2004, Idaho Power filed an answer opposing American Rivers' pleading. On July 2, 2004, the Nez Perce Tribe filed a letter supporting American Rivers.

5. Rule 1902 of the Commission's Rules of Practice and Procedure provides that appeals of staff actions will be treated as requests for rehearing subject to the provisions of Rule 713. 18 C.F.R. § 385.1902(a) (2004). Requests for rehearing must be filed within 30 days of the date of issuance of the final decision from which rehearing is sought. 18 C.F.R. § 385.713(b) (2004). The letter in question here was issued on May 4, 2004, and American Rivers' pleading was filed on June 11, 2004, 38 days later. Thus, the pleading is untimely.

The Commission orders:

The interlocutory appeal filed by American Rivers on June 11, 2004, is dismissed.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.