

135 FERC 61,149
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Bishop Tungsten Development, LLC

Project No. 13163-001

ORDER DENYING REHEARING AND
CLARIFYING PRIOR ORDER

(Issued May 19, 2011)

1. KC LLC (KC) filed a request for rehearing of Commission staff's March 2, 2011 order granting Bishop Tungsten Development, LLC's (Bishop Tungsten) application for an exemption from the licensing requirements of Part I of the Federal Power Act (FPA)¹ for the proposed Pine Creek Mine Water Discharge System Sites 1 and 2 Small Conduit Hydroelectric Project No. 13163 (Pine Creek Project).² This order denies rehearing and clarifies the March 2 Order.

Background

2. On April 3, 2008, as supplemented April 10, 2008, March 16, 2009, and May 6, 2009, Bishop Tungsten filed an application for a conduit exemption for its proposed 150-kilowatt (kW) Pine Creek Project, located on its mine water discharge system in Inyo County, California. Bishop Tungsten's discharge system collects groundwater that enters the mine as a result of underground mining operations, uses some of it for reclamation activities (i.e., revegetation of disturbed areas), hydraulic scouring, and drilling, and carries the rest out of the mining area to protect the integrity of the mine, surface resources, and equipment. The groundwater is collected and transferred into a conduit and through two powerhouses at Sites 1 and 2.³ After exiting the powerhouses, the water

¹ 16 U.S.C. §§ 792-823 (2006).

² *Bishop Tungsten Development, LLC*, 134 FERC ¶ 62,191 (2011) (March 2 Order).

³ The powerhouses do not currently generate hydropower.

moves through the conduit into a surge tank and then into either a settling pond or Morgan Creek. Bishop Tungsten proposes to install a new 150-kW generating unit in the existing powerhouse at Site 2.

3. On March 2, 2011, Commission staff issued an order granting Bishop Tungsten's exemption from licensing.⁴

4. On April 1, 2011, KC filed a request for rehearing of the exemption order arguing, first, that the project does not meet the Commission's criteria for issuing an exemption and, second, that the project boundary proposed in Bishop Tungsten's application is too broad because it extends beyond the project works.

Discussion

5. Under section 30(a) of the FPA,⁵ the Commission is authorized to exempt from the licensing requirements of Part I of the FPA any facility (not including a dam or impoundment) that is constructed, operated, or maintained for the generation of electric power; is located on non-federal lands; and uses the hydroelectric potential of a manmade conduit that is "operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity."

6. On rehearing, KC states that power generation at the Pine Creek Project would occur at the end of the conduit system, below the industrial consumptive uses of the conduit. Because power generation is at the end of the conduit system, KC argues, the water does not serve any industrial consumptive purpose after it passes through the powerhouse; therefore, the project does not qualify for an exemption.

7. We disagree. Neither the statute nor our regulations defines a conduit exemption so narrowly. It is not the precise location of the uses of the water in a water conveyance system that is determinative, but rather whether the system as a whole is used primarily for such purposes.⁶ Thus, it is not relevant whether a project produces hydropower with

⁴ Bishop Tungsten did not propose to install any generating facilities at the Site 1 powerhouse, which is currently idle.

⁵ 16 U.S.C. § 823a (2006).

⁶ See 18 C.F.R. § 4.30(b)(2) (2010) (defining a conduit as any "manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity"), and 18 C.F.R. § 4.30(b)(28) (2010) (as pertinent here, requiring only that a small conduit project use for electric power generation the hydroelectric potential of a conduit and discharge the water it uses for power generation into a conduit).

water that is excess to the system or that will be used farther down the conduit for an agricultural, municipal, or industrial purpose.⁷ Bishop Tungsten's proposal to generate power at the end of the conduit system has no effect on the Pine Creek Project's qualification for a conduit exemption. We therefore deny rehearing on this issue.

8. On rehearing, KC also points out that the project boundary described in Bishop Tungsten's application encompasses an area that extends significantly beyond the exempted project works. It asks that the project boundary maps that Bishop Tungsten must file for Commission approval not include the conduit located downstream of the project's powerhouse so as not to interfere with KC's possible future development of nearby projects.

9. KC is correct that project boundaries for conduit exemptions are limited in scope. They include structures and equipment necessary for operation of the project (generally the powerhouse and generating unit), but exclude the conduit on which the project is located and any project transmission lines.⁸ The March 2 Order did not approve Bishop Tungsten's proposed boundary map, and instead required it to file a revised project boundary map that includes only the exempted project works, in this case the powerhouse at Site 2 and the 150-kW generating unit. We will revise Ordering Paragraph B(2) of the March 2 Order to specify the exempted project facilities.

The Commission orders:

(A) KC LLC's request for rehearing, filed on April 1, 2011, in Project No. 13163, is denied.

(B) The first sentence of Ordering Paragraph (B)(2) of the March 2, 2011 Order issuing exemption is modified to read:

⁷ See *Greater Lawrence Sanitary Dist.*, 13 FERC ¶ 61,082 (1980) (affirming that a project qualified for a conduit exemption even though power generation would occur at the end of the municipal consumptive use).

⁸ See 18 C.F.R. § 4.30(b)(28) (2010).

(2) The following project works: a concrete and steel powerhouse that measures 25 feet by 20 feet by 15 feet, a generating unit with an installed capacity of 150 kW, and appurtenant facilities.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.