

112 FERC ¶ 61,230
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Public Utility District No. 2 of Grant County,
Washington

Project No. 2114-127

ORDER GRANTING APPROVAL UNDER SECTION 22
OF THE FEDERAL POWER ACT

(Issued August 26, 2005)

1. Public Utility District No. 2 of Grant County, Washington (Grant County , licensee for the Priest Rapids Project No. 2114, filed, pursuant to section 22 of the Federal Power Act (FPA),¹ an application for Commission approval of three contracts which provide for the sale of power from Priest Rapids beyond the term of the existing license. For the reasons discussed below, we grant the application.

Background

2. The Priest Rapids Project is located on the Columbia River. It consists of two developments, the 855-megawatt (MW) Priest Rapids development, and the 900-MW Wanapum development. The existing, original license was issued effective November 1, 1955, and expires on October 31, 2005.² Grant has filed an application for a new license for the project. A draft environmental impact statement is scheduled to be issued in that proceeding in October 2005.

3. Grant County currently sells 63.5 percent of the output of each development to other utilities (existing purchasers) under long term contracts and uses 36.5 percent of the output to meet the loads of its customers in Grant County. Grant County's contracts for

¹ 16 U.S.C. § 815.

² 15 FPC 1067.

the sale of the output of the Priest Rapids development expire on October 31, 2005, and the contracts for the sale of the output of the Wanapum development expire on October 31, 2009.³

4. Grant County has also executed contracts with the existing purchasers and other utilities for the sale of surplus power following the expiration of the current license. Under these contracts, Grant County would, beginning on November 1, 2005, sell to the utility purchasers all of the output of the project that is not, with minor exceptions, needed by Grant County to serve its native load or to satisfy the requirement that any new licensee for Priest Rapids make available 30 percent of project power to other utilities in the region (Reasonable Portion power).⁴

5. On July 8, 2005, Grant County filed its application pursuant to section 22 for approval of the contracts. The Commission issued public notice of Grant's application, with comments due by August 15, 2005.⁵ On August 18, 2005, Avista Corporation (Avista) filed a late motion to intervene. Avista states that it just learned of the filing, it has an interest in the proceeding as a purchaser of power from Grant County, and that its late intervention will not disrupt the proceeding or burden other parties to it. Pursuant to Rule 214(d) of our Rules of Practice and Procedure,⁶ Avista's motion will be granted.

³ The Wanapum development was constructed later than the Priest Rapids development, and was financed by 50-year bonds and power contracts that commenced in 1959 and terminate in 2009. In 1996, Grant County received Commission approval pursuant to section 22 for the sale of power under the Wanapum contracts for the period through October 31, 2009. *P.U.D. No. 2 of Grant County, WA*, 75 FERC ¶ 61,190.

⁴ The Reasonable Portion requirement was established by the Commission pursuant to legislation specific to the Priest Rapids Project (P. Law 83-544). *See Kootenai Electric Cooperative, et al. v. P.U.D. No. 2 of Grant County, WA*, 82 FERC ¶ 61,112 (1998), *reh'g denied*, 83 FERC ¶ 61,289 (1998), *aff'd* 192 F.3d 144 (D.C. Cir. 1999). In a separate, contemporaneous order, we are approving Grant County's application pursuant to section 22 for approval of power sales contracts for Reasonable Portion power during the period from expiration of the current license until issuance of a new license for the Project which includes a Commission-approved marketing plan for the Reasonable Portion power. *P.U.D. No. 2 of Grant County, WA*, 112 FERC ¶ 61,229.

⁵ 70 Fed. Reg. 47,189 (August 12, 2005).

⁶ 18 C.F.R. § 214(d) (2005).

Discussion

6. Section 22 of the FPA provides in pertinent part:

That whenever the public interest requires or justifies the execution by the licensee of contracts for the sale and delivery of power for periods extending beyond the date of termination of the license, such contracts may be entered into upon the joint approval of the Commission and of the public-service commission or other similar authority in the State in which the sale or delivery of power is made, . . . and thereafter, in the event of failure to issue a new license to the original licensee at the termination of the license, the United States or the new licensee, as the case may be, shall assume and fulfill all such contracts.

7. The legislative history of section 22, which is not extensive, indicates that the Commission is to use its sound discretion in approving contracts extending beyond the term of the license.⁷ The Commission has previously approved applications under section 22 in order to accommodate situations where, in the absence of a power sales contract extending beyond the license termination date, the licensee would be unable to sell the project power and thereby finance the project,⁸ to give effect to a United States-Canada treaty⁹ regarding the sharing of power benefits from Columbia River hydropower

⁷ See debate on H.R. 3184, which was introduced in the 66th Congress by Representative Esch and became the Federal Water Power Act of 1920. 58 Cong. Rec. 2240-41 (July 1, 1919).

⁸ See, e.g., *Sabine River Authority of Texas and Sabine River Authority of Louisiana*, 31 FPC 885 (1964) and *P.U.D. No. 2 of Grant County, WA*, 75 FERC ¶ 61,190 (1996).

⁹ Treaty between Canada and the United States of America Relating to Cooperative Development of The Water Resources of the Columbia River Basin (January 17, 1961), 15 U.S.T. 1555.

projects,¹⁰ and to resolve litigation on the extent of licensee's liability under FPA section 10(e)¹¹ to pay annual charges for the use of tribal lands on an Indian reservation.¹²

Here, Grant County seeks approval under section 22 for three contracts:

- Priest Rapids Product Sales Contract, between Grant County and 17 utility purchasers,¹³ which provides generally for the sale of power surplus to Grant County's needs; and which is not Reasonable Portion power;¹⁴
- Additional Products Sales Agreement, between Grant County and eight purchasers,¹⁵ which provides for the sale of a portion of the non-firm energy output of the project which Grant County has determined is not needed to serve its own load;¹⁶ and the

¹⁰ *P.U.D. No. 1 of Chelan County, WA*, 81 FERC ¶ 61,364 (1997). The contract was extended to match the termination date of the treaty, approximately 18 years after license expiration.

¹¹ 16 U.S.C. § 803(e).

¹² *P.U.D. No. 1 of Douglas County, WA*, 110 FERC ¶ 61,128 (2005).

¹³ The utility purchasers are Portland General Electric Company (PGE); Public Utility District No. 1 of Cowlitz County, Washington (Cowlitz); City of Forest Grove, Oregon (Forest Grove); Eugene Water and Electric Board (EWEB); Avista Utilities (Avista); Puget Power (Puget); PacifiCorp; Public Utility District of Kittitas County (Kittitas); City of Milton-Freewater, Oregon (Milton-Freewater); City of McMinnville, Oregon (McMinnville); City of Seattle, Washington (Seattle); City of Tacoma, Washington (Tacoma); Inland County Power and Light Company (Inland); Kootenai Electric Cooperative (Kootenai); Northern Lights, Inc. (Northern Lights); Clearwater Electric Cooperative (Clearwater); and the Snake River Power Association (Snake River).

¹⁴ Application, Exhibit 1.

¹⁵ PGE, Cowlitz, EWEB, Avista, Puget, PacifiCorp, Seattle, and Tacoma.

¹⁶ Application, Exhibit 2.

- Exchange Agreement, executed between Grant County and nine of the signatory purchasers to the Product Sales Contract,¹⁷ under which the purchasers will received a fixed percentage of the project power for the life of any new license issued to Grant County in exchange for assigning to Grant County certain of the products to which they are entitled under the Product Sales Contract, and financial benefits from another, unrelated contract with Grant County.¹⁸

The contracts extend from November 1, 2005, through the term of any new license issued to Grant County, or such time as Grant no longer has authority to market Priest Rapids power.

8. We see no reason not to approve these contracts. The interests of the utility purchasers in the event a new license is issued to an entity other than Grant County have been addressed by their agreement that the contracts will remain effective only so long as Grant County remains the licensee.¹⁹ For the same reason, there is also no concern regarding the interests of any future potential licensee other than Grant County, or of the federal government in the event of a federal takeover pursuant to FPA section 14.²⁰ Under these circumstances, and because the contracts ensure that provisions are in place for the sale of surplus power upon the expiration of the existing license, we find the public interest will be served by approval of these contracts.

The Commission orders:

(A) Public Utility District No. 2 of Grant County, Washington's application filed July 8, 2005 for approval of the Priest Rapids Project Product Sales Contract, Additional Products Sales Agreement, and the Exchange Agreement during the period extending from November 1, 2005, through the term of any annual licenses and, if issued, the term of any new license issued to Grant County for the Priest Rapids Project, is granted.

¹⁷ Forest Grove, Kittitas, Milton-Freewater, McMinnville, Inland, Kootenai, Northern Lights, Clearwater, and Snake River.

¹⁸ Application, Exhibit 3.

¹⁹ Section 1 of all three contracts provides for the contract to remain in effect "until the earlier of expiration or termination of the New FERC License or such time that [Grant] no longer has authority to market Priest Rapids Project Products."

²⁰ 16 U.S.C. § 807.

(B) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.