

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.

Wellesley Rosewood Maynard Mills, L.P.

Project No. 5018-013

ORDER DISMISSING FILING AS DEFICIENT

(Issued December 8, 2006)

1. On July 13, 2004, the Commission issued an order accepting surrender of Wellesley Rosewood Maynard Mills, L.P.'s (Wellesley Rosewood) exemption for the Clock Tower Place Hydroelectric Project No. 5018, located on the Assabet River in Maynard, Massachusetts.¹ On August 28, 2006, Wellesley Rosewood filed a motion requesting that the Commission rescind the surrender order and permit it to retain its exemption, file an application to amend the exemption, and resume hydropower generation.
2. On October 19, 2006, the Commission issued an order denying Wellesley Rosewood's motion.² The Commission stated that the motion for rescission was, in effect, a request for rehearing of the order accepting surrender that was filed long after the statutory deadline had passed. It also noted that Wellesley Rosewood's amendment proposal would entail material changes to the project, and that Wellesley Rosewood had not completed the kind of preparation required for an amendment of an exemption, let alone a material amendment.
3. On November 16, 2006, Wellesley Rosewood timely filed a request for rehearing, maintaining that the Commission had not addressed all of its arguments in support of its rescission request and that reinstatement of the exemption is in the public interest. Wellesley Rosewood adds that it is prepared to notify and consult with agencies regarding amendment of the exemption.

¹ 108 FERC ¶ 61,048 (2004).

² 117 FERC ¶ 61,065 (2006).

4. Wellesley Rosewood's rehearing request is deficient because it fails to include a Statement of Issues section separate from its arguments, as required by Rule 713 of the Commission's Rules of Practice and Procedure.³ Rule 713(c)(2) requires that a rehearing request must include a separate section entitled "Statement of Issues" listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying.⁴ Under Rule 713, any issue not so listed will be deemed waived. Accordingly, we will dismiss Wellesley Rosewood's rehearing request.⁵

5. In any event, Wellesley Rosewood's arguments on rehearing are entirely unpersuasive. First, it suggests that it raised a number of grounds in support of its motion that the Commission did not address. But the "grounds" that Wellesley Rosewood references⁶ constitute only preliminary steps to determine the feasibility of

³ 18 C.F.R. § 385.713(c)(2). *See Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, 70 *Fed. Reg.* 55,723 (September 23, 2005), *FERC Statutes and Regulations* ¶ 31,193 (2005). *See also*, Order 663-A, effective March 23, 2006, which amends Order 663 to limit its applicability to rehearing requests. *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663-A, 71 *Fed. Reg.* 14,640 (March 23, 2006), *FERC Statutes and Regulations* ¶ 31,211 (2006) (codified at 18 C.F.R. § 385.713(c)(2)).

⁴ As explained in Order No. 663, the purpose of this requirement is to benefit all participants in a proceeding by ensuring that the filer, the Commission, and all other participants understand the issues raised by the filer, and to enable the Commission to respond to these issues. Having a clearly articulated Statement of Issues ensures that issues are properly raised before the Commission and avoids the waste of time and resources involved in litigating appeals regarding which the courts of appeals lack jurisdiction because the issues on appeal were not clearly identified before the Commission. *See* Order No. 663 at P 3-4.

⁵ *See, e.g., Duke Power Company, LLC*, 116 FERC ¶ 61,171 (2006), and *South Carolina Electric & Gas Company*, 116 FERC ¶ 61,218 (2006).

⁶ *See* Wellesley Rosewood's rehearing request at page 2-3. Wellesley Rosewood states that it has completed steps to evaluate the feasibility of restoring hydropower generation at the facility; co-funded and conducted a pre-feasibility study; applied for a grant for design and construction of hydropower facilities; discussed its desire to restore hydropower with resource agencies; and prepared some material in an effort to show how it would amend project design.

pursuing development of a hydropower project. None of these steps approaches the kind of preparation required by the Commission's regulations for development of an application to amend the exemption.⁷

6. Wellesley Rosewood attempts to justify its delay in complying with the surrender order by stating that the delays occurred under different management, when Wellesley Rosewood was not yet "aware of the benefits" of the exemption. It suggests that the exemption should be reinstated as "acknowledgement" of compliance efforts it has made during this past year -- after it decided that it wanted the exemption, after all.⁸ It also states that since the Commission has determined that Wellesley Rosewood's proposed changes to the project would constitute a material amendment, Wellesley Rosewood is prepared to comply with the regulations related to material amendment, including consultation with state and federal agencies and preparation of an Exhibit E.

7. A change of mind on the part of Wellesley Rosewood does not constitute sufficient reason to justify its failure to comply with the requirements of the surrender order. Nor should reinstatement be expected as a reward for finally making some effort to comply with its legal obligations under the surrender order. Finally, Wellesley

⁷ See 18 CFR §§ 4.104 and 4.107 (2006) and 117 FERC ¶ 61,065 at P 14.

Wellesley Rosewood also states as one of the grounds supporting its request for rehearing that renewed hydropower generation at the project would satisfy a need for increased alternative energy production. Completion of the surrender process will not rule out the site as a source of alternative energy production. As noted in the Commission's October 19th Order, the surrender process is well underway. Once Wellesley Rosewood completes that process, the site will once again be open to development. At that time, any entity, including Wellesley Rosewood, will be free, in accordance with the Federal Power Act and the Commission's regulations, to apply for a license or exemption and develop the site for hydropower production. *See Id.* at P 15.

⁸ Wellesley Rosewood also argues that the U.S. Department of the Interior (Interior) stated it would support a decision granting rescission and its amendment request. This is incorrect. Interior clearly opposed rescission of the order. The statement that Wellesley Rosewood quotes as support was meant only as a suggestion of how to handle the amendment in the alternative that the Commission granted rescission. *See* Interior's response to the exemptee's motion to rescind order, filed on September 13, 2006, at pages 2-3.

Rosewood's unsupported profession that it is "prepared" to comply with the Commission's regulations related to material amendment is, quite simply, far too little, far too late.⁹

The Commission orders:

Wellesley Rosewood's request for rehearing filed in this proceeding on November 16, 2006, is dismissed.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁹ Wellesley Rosewood also reiterates arguments that the Commission has jurisdiction to reinstate the exemption. The Commission addressed this issue in the prior order, and Wellesley Rosewood's argument raises nothing new. *See* 117 FERC ¶ 61,065 at P 12.