

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. 1 of Chelan County,
Washington

Project Nos. 2145-071 and
943-094

ORDER GRANTING APPROVAL UNDER SECTION 22
OF THE FEDERAL POWER ACT

(Issued March 28, 2006)

1. Public Utility District No. 1 of Chelan County, Washington (Chelan), licensee for the Rock Island Project No. 943 and Rocky Reach Project No. 2145, filed, pursuant to section 22 of the Federal Power Act (FPA),¹ an application for Commission approval of an agreement which provides for the sale of power from Rock Island and Rocky Reach to Puget Sound Energy (PSE) beyond the terms of Chelan's existing licenses. For the reasons discussed below, we grant the application.

Background

2. Rock Island and Rocky Reach are located on the Columbia River. The existing license for the 622-megawatt (MW) Rock Island Project was issued effective January 1, 1989, and expires on December 31, 2028.² Chelan currently sells power to PSE from Rock Island pursuant to a contract which expires on June 7, 2012.

3. The existing, original license for the 1,237-MW Rocky Reach Project was issued effective July 1, 1956, and expires on June 30, 2006.³ In 1957, Chelan and PSE's predecessor, Puget Sound Power & Light Company, entered into a power sales contract

¹ 16 U.S.C. § 815 (2000).

² 46 FERC ¶ 61,033 (1989).

³ 18 FPC 25 (1957).

which expires on October 31, 2011, for the sale of a portion of the output generated by Rocky Reach. Pursuant to section 22, the Commission approved that contract's extension beyond the term of the existing license.⁴

4. Chelan and PSE have entered into a February 1, 2006 agreement (Agreement), which provides for the sale of 25 percent of the output of both projects to PSE. PSE is obligated to pay 25 percent of the projects' costs during the term of the Agreement. The Agreement also calls for PSE to make a one-time payment to Chelan of \$89 million contemporaneously with the execution of the Agreement, to be expended by Chelan for various purposes, including debt reduction and increase of cash reserves. Although the effective date of the Agreement is February 1, 2006, power sales would commence on November 1, 2011 from Rocky Reach and July 1, 2012 from Rock Island (*i.e.*, upon expiration of Chelan's existing contracts with PSE).⁵ Sales from both projects would terminate on October 31, 2031, which is three years after the expiration of the Rock Island license, but will be within the term of any new license which may be issued to Chelan for Rocky Reach.⁶

5. Chelan's section 22 application was filed on February 9, 2006. The Commission issued public notice of the application, with comments due by March 9, 2006.⁷ A timely motion to intervene and comments supporting the application were filed by PSE. A motion to intervene was filed one day late by PacifiCorp. Allowing PacifiCorp to intervene will not disrupt the proceeding or result in any prejudice or additional burden on other parties. Accordingly, we will grant PacifiCorp's motion to intervene pursuant to Rule 214 of our Rules of Practice and Procedure.⁸

⁴ *P.U.D. No. 1 of Chelan County, WA*, 78 FERC ¶ 61,215 (1997). The same order approves the sale by Chelan of Rocky Reach power to four other entities, also for terms extending until October 31, 2011.

⁵ Sales from Rock Island under the Agreement would actually begin some three weeks following expiration of the existing contract between Chelan and PSE. We presume that the existing contract includes terms that permit it to be extended until sales commence under the Agreement.

⁶ Chelan has filed an application for a new license for Rocky Reach, which is pending.

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

⁸ 18 C.F.R. § 385.214(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.⁹

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.¹⁰ 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,¹¹ to give effect to a United States-Canada treaty¹² regarding the sharing of power benefits from Columbia River

⁹ Section 14 of the FPA, 16 U.S.C. § 807 (2000), provides that the United States shall have the right upon or after expiration of any license to take over a project, upon payment of the licensee's net investment therein. Hydropower projects licensed to municipalities are not, however, subject to such federal take-over. *See* the Act of August 15, 1953, 67 Stat. 587, as amended on July 31, 1959, 73 Stat. 271, 16 U.S.C. § 828b (2000). Chelan is a municipal corporation organized under the laws of the State of Washington.

¹⁰ *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).

¹¹ *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).

¹² 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.

hydropower projects,¹³ and to resolve litigation on the extent of a licensee's liability under FPA section 10(e)¹⁴ to pay annual charges for the use of tribal lands on an Indian reservation¹⁵ and the interpretation of existing power sales agreements.¹⁶

8. Chelan submits that our approval of the extension of the terms of this contract beyond the expiration dates of the current Rocky Reach and Rock Island projects will benefit Chelan, PSE, and their respective ratepayers. Chelan states that it has, and expects to have during the term of the Agreement, power surplus to the needs of Chelan County, and that there is substantial outstanding debt for the projects associated with environmental improvements, plant modernization, and other capital improvements. The Agreement would ensure that 25 percent of its project costs are covered during the term of the agreement, regardless of the project costs or amount of power produced. It states that this will enhance its bond rating and thereby assist efforts to obtain future bond financing for modernizing Rock Island, covering costs associated with relicensing of Rocky Reach, and other expenses. It further states that the Agreement provides PSE, which is resource-deficient, and its ratepayers with a reliable, low-cost, long-term, baseload resource. PSE agrees with the latter statement, and adds that the Agreement is consistent with its state-approved Least Cost Plan, and will provide flexibility to help PSE match its load and resources. Finally, PSE states that the Agreement provides it with certainty regarding access to power following expiration of the current Rocky Reach and Rock Island power sales contracts.

9. In a recent order considering an application under section 22, we considered how the contracts in question might affect the interests of the purchasing entities if a new license were issued to an entity other than the current licensee. There, the interests of those entities were protected because the contracts stated that they would remain in effect

¹³ *E.g., 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.

¹⁴ 16 U.S.C. § 803(e).

¹⁵ *P.U.D. No. 1 of Douglas County, WA*, 110 FERC ¶ 61,128 (2005).

¹⁶ *P.U.D. No. 2 of Grant County, WA*, 112 FERC ¶ 61,229 (2005).

only so long as the current licensee remained the licensee.¹⁷ For the same reason, there was no concern regarding the interests of any other future potential licensee or of the federal government in the event of a federal takeover pursuant to FPA section 14.¹⁸

10. The Agreement includes no such provisions. However, no entity other than Chelan filed an application for a new license for Rocky Reach, the Agreement extends only three years after the current term of the Rock Island license, and PSE appears to have no concerns in this regard. Finally, we have no reason to conclude that the public interest would not be served if any future potential licensee for either project, or the United States in the event of a federal takeover, were to take control of either project subject to the existence of the Agreement.

The Commission orders:

(A) Public Utility District No. 1 of Chelan County, Washington's application filed February 9, 2006 for approval of the "Power Sales Agreement by and between Public Utility District No. 1 of Chelan County, Washington, and Puget Sound Energy, Inc.," dated February 1, 2006, as it pertains to the sale of power to Puget Sound Energy for terms commencing November 1, 2011 with respect to the Rocky Reach Project No. 2145 and July 1, 2012, with respect to Rock Island Project No. 943, and terminating with respect to both projects on October 31, 2031, is granted.

(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.

¹⁷ See *Public Utility District No. 2 of Grant County*, 112 FERC ¶ 61,230 at P 8 (2005).

¹⁸ 16 U.S.C. § 807 (2000).