

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Reliant Energy Mid-Atlantic Power
Holdings, LLC

Project No. 309-042

ORDER DENYING REHEARING AND DISMISSING
OFFER OF SETTLEMENT

(Issued December 21, 2004)

1. On October 4, 2004, Reliant Energy Mid-Atlantic Power Holdings, LLC (Reliant) timely filed a request for rehearing of Commission staff's September 3, 2004 Order issuing a new license for the 28.8-megawatt Piney Hydroelectric Project, located on the Clarion River in Clarion County, Pennsylvania.¹ For the reasons set forth below, we deny Reliant's request for rehearing and dismiss its offer of settlement. This order is in the public interest because it resolves the remaining issues in the relicensing proceeding.

Background

2. On October 11, 2000, Reliant filed an application for a new license for the Piney Project.

3. Prior and subsequent to that filing, Reliant, federal and state resource agencies, and other interested entities engaged in negotiations for the purpose of reaching a settlement of the relicensing proceeding.

¹ 108 FERC ¶ 62,216.

4. Although Reliant indicated on a number of occasions, via telephone conversation or filing, that a signed offer of settlement would be forthcoming,² none was filed with the Commission within the timeframes indicated by the company. Therefore, after completing the processing of the license application, Commission staff issued a new license for the project. The order stated, with respect to a possible settlement, that, in the event the stakeholders were able to reach an agreement, Reliant could thereafter file an application to amend the license as necessary.³

5. On October 4, 2004, Reliant filed an “offer of settlement,” as well as a separate request for rehearing of the license order. On rehearing, Reliant asks that the Commission incorporate certain conditions of the settlement into the Piney license, including: (1) establishing a recreation fund; (2) authorizing an additional one-foot drawdown of the project reservoir during the recreation season; and (3) imposing a water quality monitoring requirement.⁴

Discussion

6. The Commission’s regulations provide that a request for rehearing must [s]tate concisely the alleged error in [a] final decision or final order.”⁵ This is consistent with section 313(b) of the Federal Power Act,⁶ which states that no objection to a Commission order shall be considered by the courts of appeals “unless such objection shall have been urged before the Commission in the application for rehearing” Reliant’s October 4, 2004 pleading does not allege any error in Commission staff’s September 3, 2004 Order, but rather asks the Commission to amend the license in accordance with the settlement. Therefore, the pleading is not a proper request for rehearing, and we deny it.

² See, e.g., February 24, 2004 letter from Reliant stating that it “anticipates filing the [Settlement] Agreement in April 2004;” and June 14, 2004 letter from Reliant stating that it “expects to file a signed settlement agreement within the next several weeks.”

³ 108 FERC ¶ 62,216 at P 37.

⁴ Rehearing request at 2.

⁵ See 18 C.F.R. § 385.713(c)(1) (2004).

⁶ 16 U.S.C. § 825l(b).

7. We note that, even if the pleading were to be construed as an argument that the Commission erred in not including the three proffered conditions in the license (notwithstanding the fact that they were received after the license was issued), we would nonetheless deny rehearing. With respect to the recreation fund, Reliant provides no information to support this proposed change to the recreation requirements of the license. As to an additional one-foot drawdown for the June-October period, the licensing order found that the proposal would have negative effects on recreational boating and did not adopt it.⁷ The order noted that Reliant had first proposed the additional drawdown in its comments on staff's Environmental Assessment (EA) for the project, and concluded that Reliant had provided no basis for changing the recommendations in the EA.⁸ The order explained that Reliant could in the future seek to modify the drawdown requirements through the license amendment process.⁹ The license already includes a water quality monitoring requirement, so the request as to that proposed condition is moot.

8. The Commission's regulations set forth the proper procedures for filing an application for license amendment.¹⁰ Reliant's offer of settlement and request for rehearing ask the Commission to amend the project license, but the company has not complied with the relevant requirements.¹¹ In addition, an application such as the one at hand, which involves proposals – the recreation fund and drawdown – that could affect public recreation at the project, would require consultation with relevant resource agencies and public notice with an opportunity for comment, neither of which has occurred here.¹²

⁷ See 108 FERC at P 33-34.

⁸ *Id.*

⁹ *Id.*

¹⁰ 18 C.F.R. §§ 4.200-4.202.

¹¹ The licensing order noted that Reliant had failed to file with the Commission a study that purported to support the drawdown. The study (which Reliant has submitted with its offer of settlement), while relevant to our consideration of a properly-filed amendment request, does not cure the deficiencies discussed above.

¹² Fewer than one-third of the 32 stakeholders involved in the settlement negotiations -- and none of the four state and federal resource agencies -- have signed the agreement.

9. Based on the foregoing, we deny Reliant's request for rehearing because it specifies no error in the September 3, 2004 Order. We dismiss the offer of settlement as an improper amendment application, without prejudice to its being properly refiled in the future.

The Commission orders:

(A) The request for rehearing, filed on October 4, 2004, by Reliant Energy Mid-Atlantic Power Holdings, LLC, is denied.

(B) The offer of settlement, filed on October 4, 2004, by Reliant Energy Mid-Atlantic Power Holdings, LLC, is dismissed without prejudice.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.