

122 FERC ¶ 61,031
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.

Grand River Dam Authority

Project No. 2524-012

ORDER DENYING REHEARING

(Issued January 17, 2008)

1. On August 7, 2007, the Commission's Director, Division of Financial Services (Director), granted the Grand River Dam Authority's (GRDA) appeals of its administrative annual charges statement for certain bill years for the Salina Pumped Storage Project No. 2524.¹ On September 6, 2007, GRDA filed a request for rehearing, seeking a refund of administrative annual charges paid for other bill years. The rehearing request was rejected by Secretary's notice of October 29, 2007, because GRDA had not filed timely appeals of the annual charges bill in question. On November 28, 2007, GRDA sought rehearing of the Secretary's notice. As discussed below, we deny rehearing.

Background

2. The Salina Pumped Storage Project was licensed in 1966.² The project was to be constructed in four stages. Each stage would have an installed capacity of 130 megawatts

¹ The letter also addressed the annual charge appeals in the Pensacola Project No. 1494 and the Markham Ferry Project No. 2184. No issues have been raised on rehearing pertaining to those projects.

² 35 FPC 3 (1966). The license was issued for a term of 50 years and expires in 2015.

(MW).³ The final generating capacity was to be 520 MW.

3. The licensee completed construction of the first stage in 1968, and the second in 1971.⁴ No further construction has occurred,⁵ so the project's total installed capacity is 260 MW.

4. The Commission determined in 1975 that GRDA was exempted from paying annual charges to the extent the authorized capacity for annual charge purposes exceeds the capacity constructed and in commercial service.⁶ Thus, since 1975, GRDA should have been assessed annual charges based on the project's actual installed capacity of 260 MW.

5. GRDA filed timely appeals of its annual charge bills for the years 2000, 2003, 2004, and 2006, arguing that the bills for those years were not based on the Salina Project's actual installed capacity. The Director's August 7, 2007 letter granted all but one of the appeals, and applied a credit against GRDA's 2007 bill.⁷ The Director granted the remaining appeal by letter of December 3, 2007, and authorized a refund.⁸

6. On September 6, 2007, GRDA filed a request for clarification, or in the alternative rehearing, of the Director's August 7, 2007 letter, asking that the Commission correct the installed capacity miscalculations for 1998 and 2001-- years it contends it had paid under protest. On October 29, 2007, the Commission Secretary issued a notice rejecting the rehearing request because GRDA had not timely appealed those assessments. On November 28, 2007, GRDA sought rehearing.

³ The stages were scheduled for completion in 1968, 1971, 1974, and 1977.

⁴ 53 FPC 1988 (1975).

⁵ In 1972, the Commission extended the time periods for commencement of construction and operation for stages 3 and 4. Stage 3 was to have been commenced in 1974, and completed in 1977. 47 FPC 957 (1972). No additional extensions were granted.

⁶ 53 FPC 1988 (1975).

⁷ The letter granted GRDA's 2003, 2004, and 2006 appeals.

⁸ GRDA's arguments raised on rehearing regarding the notice's dismissal of rehearing of the 2000 bill are therefore moot.

Discussion

7. GRDA argues that the Commission must issue a refund because it paid its 1998 and 2001 bills “under protest.” GRDA claims that since the Commission’s regulations do not specify a particular format for an appeal, we should construe its protest as an appeal that preserves its right to a refund.⁹ GRDA also notes that, while it did not specify the precise reason for the 2001 protest, it should have been obvious based on the prior appeal of the 2000 bill.¹⁰

8. GRDA’s argument is without merit. Our regulations clearly distinguish between appeals and protests, and are equally clear in establishing that a licensee may pay a bill under protest only if it has appealed or sought rehearing of a bill.¹¹

9. With respect to the 1998 bill, GRDA has filed no evidence of, nor can staff find in the Commission’s records, any indication that GRDA paid its 1998 bills under protest. As to the 2001 bill, even if we were to construe its payment under protest as an appeal of the bill, we would have to reject it for failing to allege any error. A bald statement on a

⁹ Rehearing at 6.

¹⁰ Rehearing at 6.

¹¹ Section 11.20 of our regulations, 18 C.F.R. § 11.20 (2007), provides:

Annual charges must be paid no later than 45 days after rendition of a bill by the Commission. *If the licensee or exemptee believes that the bill is incorrect*, no later than 45 days after its rendition the licensee or exemptee *may file an appeal* of the bill with the Chief Financial Officer. No later than 30 days after the date of issuance of the Chief Financial Officer's decision on the appeal, the licensee or exemptee may file a request for rehearing of that decision pursuant to § 385.713 of this chapter. *In the event that a timely appeal to the Chief Financial Officer or a timely request to the Commission for rehearing is filed, the payment of the bill may be made under protest*, and subject to refund pending the outcome of the appeal or rehearing. (Emphasis added.)

This language has been in effect since prior to 1998.

bill that the payment is being made under protest is not sufficient to allege error.¹² The bills for 1998 and 2001 are final, and it is too late to challenge them now.

10. GRDA next contends that a refund should be awarded as a matter of equity.¹³ Since 1986, section 3401 of Omnibus Budget Reconciliation Act (OBRA) requires the Commission to “collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.”¹⁴ The Commission is further directed to “make such adjustments in the assessments for such fiscal year as may be necessary to eliminate any overrecovery or underrecovery of its total costs.”¹⁵ Thus, if we were to grant GRDA’s request to refund the annual charges at issue here, we would be required to collect those amounts from other licensees.¹⁶

11. GRDA failed to timely contest its 1998 and 2001 bills and now wants the Commission to refund these monies to it and instead collect them from other licensees, but has provided no grounds that would support our doing so. A refund in these circumstances is not warranted. Therefore, we deny rehearing.

¹² Not only did GRDA fail to state any grounds for its payment under protest, but, given that the bill assessed charges for the three projects for which GRDA is licensee, it cannot be discerned whether GRDA intended to protest the entire bill or some particular portion thereof.

¹³ Rehearing at 7. GRDA cites to *Nebraska Public Power District (Nebraska)*, 67 FERC ¶ 61,191 (1994), and *Allegheny Energy, Inc. (Allegheny)*, 91 FERC ¶ 61,121 (2000), in support of its request. In *Nebraska*, the Commission allowed the refund of overcharges (for 1983-1991) for which rehearing was not sought where staff had previously acknowledged and corrected the error, issued a new bill, but then resumed the mistake in subsequent years. Here, there was no correction and resumption of error. Therefore, it was incumbent on the licensee to seek an appeal where it was aware of an error that had not been remedied. In *Allegheny*, the Commission, considering various factors, found that a refund was equitable, but only refunded that portion of the annual charges collected from the licensee prior to the effective date of OBRA. Here, all of the contested charges were incurred after the effective date of OBRA.

¹⁴ 42 U.S.C. § 7178(a)(1) (2000).

¹⁵ 42 U.S.C. § 7178(e) (2000).

¹⁶ See *Mt. Hope Waterpower Project, L.L.P.*, 121 FERC ¶ 61,050 at P 9 (2007).

The Commission orders:

The request for rehearing filed on November 28, 2007, by Grand River Dam Authority is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.