

122 FERC ¶ 61,148  
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.

Homestead Energy Resources, LLC

Project No. 7115-039

ORDER DENYING REHEARING

(Issued February 21, 2008)

1. On January 17, 2007, Commission staff issued a notice finding that Homestead Energy Resources, LLC (Homestead), licensee for the George W. Andrews Project No. 7115, had failed to commence construction of the project by the statutory deadline, and notifying Homestead of the consequent probable termination of the license. Homestead filed comments opposing termination, stating that the start of construction had taken place. By order issued November 15, 2007,<sup>1</sup> we found that, for purposes of section 13 of the Federal Power Act (FPA),<sup>2</sup> construction did not timely commence, and we terminated the license, as section 13 requires.
2. On December 17, 2007, Homestead filed a request for rehearing of the November 15 Order. As described below, we are denying rehearing.

**Background**

3. The George W. Andrews Project was licensed in 1987.<sup>3</sup> It was to be located at the U.S. Army Corps of Engineers' George W. Andrews Lock and Dam on the Chattahoochee River in Houston County, Alabama, and Early County, Georgia. The license, as amended in 1999,<sup>4</sup> required: (a) construction of an integral headworks-

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<sup>1</sup> 121 FERC ¶ 61,153 (2007).

<sup>2</sup> 16 U.S.C. § 806 (2000).

<sup>3</sup> 39 FERC ¶ 62,197 (1987).

<sup>4</sup> 87 FERC ¶ 62,314 (1999).

powerhouse structure, 140 feet long and 300 feet wide; (b) manufacture and installation of six turbine-generator units having a total installed capacity of 24 megawatts; and (c) construction of a tailrace channel and an 18-mile-long transmission line.

4. Under section 13 of the FPA, a licensee must commence the construction of project works within the time fixed in the license, which shall not be more than two years from the date thereof, and the Commission may extend the deadline for the commencement of project construction once, for no longer than two additional years.

5. Article 308 of the license required project construction to commence within two years of license issuance, *i.e.*, by May 22, 1989. The licensee requested and received the maximum two-year extension, which moved the construction deadline to May 22, 1991.<sup>5</sup> As explained in our November 15 Order,<sup>6</sup> the Commission stayed the construction deadline for over nine years; when the stay was lifted, the construction-commencement deadline was September 21, 2000. Pursuant to special legislation enacted in 2000, the statutory deadline was further extended to September 21, 2006.

6. As noted, on January 17, 2007, Commission staff notified Homestead of the probable termination of its license for failure to commence construction by the deadline.

7. On February 16, 2007, Homestead responded to Commission staff's notice of probable termination, stating that it had commenced construction of the project prior to the September 21, 2006 deadline. In our November 15 Order, we concluded that Homestead had failed to demonstrate that it had timely commenced project construction and accordingly terminated its license.

### **Discussion**

8. The Commission generally regards project construction to have commenced with the start of work on machinery or facilities considered to be significant, permanent elements of the project. The acts that constitute the commencement of construction will vary from project to project, depending largely on the existing facilities, *i.e.*, whether the proposed project is at an existing dam and/or has an existing powerhouse. In cases such as this, where a proposed project uses an existing dam and there is no existing powerhouse, the start of construction can be met by the manufacture of turbines or generators where the actual time for manufacture of new turbines or generators is equal to or greater than the period of physical construction at the site and the licensee can

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<sup>5</sup> Order Granting Extension of Time to Commence Project Construction, issued March 16, 1989 (unpublished).

<sup>6</sup> See 121 FERC ¶ 61,153 at P 3-4.

substantiate actual construction of turbines or generators in accordance with engineering specifications for the particular project and pursuant to an enforceable contract.<sup>7</sup>

9. In response to Commission staff's notice of probable termination of Homestead's license, Homestead acknowledged that under established Commission precedent the *purchase* of existing turbines or generators (like the second-hand generators involved here) could not constitute the start of project construction, but argued that beginning the *remanufacture* of those second-hand generators after their purchase in order to render them usable for this project should constitute the start of construction. Homestead reasoned that the generators were significant, permanent elements of the project, and the remanufacturing work was substantial. Homestead further alleged that the remanufacture of existing equipment had commenced prior to the statutory deadline by beginning the manufacture of braces needed to stabilize the generators' rotating poles.

10. Our November 15 Order concluded that, even if we were to accept the remanufacture of existing equipment as meeting the start-of-construction deadline, Homestead had failed to provide any documentary evidence to establish that the manufacture of the stabilizing braces had begun before the September 21, 2006 deadline. We therefore terminated Homestead's license as required by FPA section 13.

11. On rehearing, Homestead continues to press its argument that the remanufacture of existing equipment should qualify as the start of project construction, but still has not provided any evidence that in fact it began such remanufacture before the September 21, 2006 deadline. We therefore deny Homestead's request for rehearing.<sup>8</sup>

12. Finally, Homestead points out that the November 15 Order failed to follow recent Commission practice of making the order's effective date 30 days from its issuance date and instead made the order effective the day it was issued. It requests that we make the November 15 Order effective 30 days after issuance of this order.

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<sup>7</sup> 121 FERC ¶ 61,153, *supra*, P 7, citing, *Cascade Water Power Development Corporation*, 69 FERC ¶ 61,167 at 61,643 (1994); *UAH-Braendly Hydro Associates*, 46 FERC ¶ 61,178 at 61,591 (1989); *Geoffrey Shadroui*, 70 FERC ¶ 61,237 at 61,279 (1995); and *Atlantic Power Development Corp.*, 40 FERC ¶ 61,253 at 61,857 (1987).

<sup>8</sup> Even if Homestead had demonstrated that it began construction of the project equipment (which it did not), the fact remains that Homestead has not demonstrated that the appropriate test for the start of construction in this case is the beginning of equipment remanufacture, as opposed to beginning on-site construction. See 121 FERC ¶ 61,153 at P 11. On rehearing, Homestead alleges, but provides no supporting evidence, that the remanufacture would take longer than on-site construction.

13. We see no reason to change the November 15 Order's effective date. We make license termination orders effective 30 days after issuance so that interested persons other than the licensee (which of course has direct knowledge of the proceeding) can receive notice that the license is terminated and that the project site is available for competition. Three competing preliminary permit applications have been filed for the project site, including two filed within days of the issuance of the November 15 Order and one, filed by Homestead, one month after the issuance of the November 15 Order.<sup>9</sup> Therefore, competition has not been stymied by making the November 15 Order effective upon issuance. Consequently, we will deny rehearing on this point.

The Commission orders:

The rehearing, filed in this proceeding on December 17, 2007, by Homestead Energy Resources, LLC, is denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>9</sup> The three preliminary permit applications were filed in: (1) Project No. 13077-000, by BPUS Generation Development LLC, on November 16, 2007; (2) Project No. 13081-000, by Robertson Energy Group LLC, on November 21, 2007; and (3) Project No. 13085-000, by Homestead, on December 17, 2007.