

124 FERC ¶ 61,250
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.

Public Utility District No. 1 of Chelan County,
Washington

Project No. 2145-089

ORDER GRANTING APPROVAL UNDER SECTION 22
OF THE FEDERAL POWER ACT

(Issued September 18, 2008)

1. On July 17, 2008, the Public Utility District No. 1 of Chelan County, Washington (District), licensee for the 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 that provides for the sale of power from the Rocky Reach Project to Alcoa, Inc. (Alcoa), and its subsidiary Alcoa Power Generating, Inc. (APGI), beyond the term of the District's existing license for the project. For the reasons discussed below, we grant the application.

Background

2. The District's 1,237-megawatt (MW) Rocky Reach Project is located on the Columbia River. The original 50-year license for the project was issued in 1956 and expired on June 30, 2006.² Since the expiration of the original license, the project has operated under annual licenses that permit continued operation of the project under the

¹ 16 U.S.C. § 815 (2000).

² 18 FPC 25 (1957).

terms and conditions of the original license until the Commission issues a new license or otherwise orders disposition of the project.³ The District's application for a new license is currently pending before the Commission.⁴

3. The District's 622-MW Rock Island Project No. 943, located downstream of the Rocky Reach Project, was originally licensed in 1930⁵ and relicensed in 1989 for a term of 40 years, i.e., until December 31, 2028.⁶

4. In 1957, the District and Alcoa entered in a power sales contract that expires on October 31, 2011, for the sale of a percentage of the output generated by the Rocky Reach Project. In 1997, the Commission, under the authority of section 22 of the FPA, approved the extension of the 1957 contract beyond the 2006 expiration date of the license.⁷

5. The District, Alcoa, and APGI have entered into a new agreement (Agreement), executed on July 14, 2008, providing for the sale of a percentage of the power produced at the Rocky Reach and Rock Island Projects to Alcoa and APGI. Under the Agreement, Alcoa and APGI must pay a percentage of each project's costs, including costs for operation and maintenance, financing, working capital and capital costs, during the term of the Agreement. The Agreement also requires Alcoa and APGI to make a one-time payment to the District of \$21 million dollars. No specific amount of energy is guaranteed under the Agreement.

6. The Agreement has a 17-year term beginning on November 1, 2011, and terminating on October 31, 2028. The Agreement thus would not extend beyond the

³ See Notice of Authorization for Continued Project Operation issued on July 11, 2006.

⁴ The District filed its application for a new license on June 24, 2004. No competing applications were filed. On March 17 2006, it filed for Commission approval a comprehensive settlement agreement that requests that the project be relicensed generally consistent with the settlement's terms. The Commission is currently awaiting a biological opinion under the Endangered Species Act from the U.S. Fish and Wildlife Service.

⁵ 10 FPC 229 (1930).

⁶ 46 FERC ¶ 61,033 (1989).

⁷ *Public Utility District No. 1 of Chelan County, Washington*, 78 FERC ¶ 61,125 (1997). The same order approves the sale by the District of Rocky Reach power to four other entities, also for terms ending on October 31, 2011.

2028 expiration of the Rock Island Project license. However, because the Agreement would extend beyond the term of the current annual license for the Rocky Reach Project, the District has requested approval of the Agreement under section 22 of the FPA.

7. On July 18, 2008, the Commission issued public notice of the section 22 application, and established a deadline of August 18, 2008, for comments and motions to intervene due by August 18, 2008.⁸ The Commission received no filings in response to the notice.

Discussion

8. 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]

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

⁸ 73 Fed. Reg. 43,736 (July 28, 2008).

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). The District 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).

section 22 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

9. The District explains that the Agreement's extension beyond the expiration date of the current license would provide significant benefits to the District, Alcoa, and APGI regarding the future disposition of the project's power resource. The District expects to have a power surplus relative to the needs of Chelan County during the term of the Agreement and must sell a significant amount of the project's surplus power to service the substantial amount of debt for the two projects associated with recent construction of fish bypass facilities at Rocky Reach and modernization and other capital improvements at the Rocky Reach and Rock Island Projects. It states that the Agreement will enhance its ability to maintain a high bond rating and its efforts to obtain future bond financing for modernizing the two projects, covering relicensing costs, and other expenses.

10. The District also explains that the Agreement provides Alcoa and APGI with a reliable, low-cost, long-term, resource to help sustain Alcoa and APGI's ability to continue electricity-intensive aluminum smelting at their Chelan County Wenatchee Works, a facility critical to sustaining and increasing jobs in a county where unemployment is currently high. It adds that, since the current power sales contract for the Rocky Reach Project will expire in 2011, Alcoa and APGI have only a short period to secure resources to meet their future power needs; and Commission approval of the Agreement would provide certainty regarding Alcoa and APGI's access to power from the Rocky Reach Project.

11. No entity other than the District filed an application for a new license for the Rocky Reach Project, and Alcoa and APGI have expressed no concerns about potential new licensees. No entity filed comments following our issuance of public notice of the District's application. Moreover, we have no reason to conclude that the public interest would not be served if in the future the license were to be transferred to another entity subject to the existence of the Agreement.

12. For the above reasons, we find that approval of the contract under section 22 of the FPA is in the public interest.

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).

The Commission orders:

(A) Public Utility District No. 1 of Chelan County, Washington's application filed July 17, 2008, for approval of the "Power Sales Agreement by and between Public Utility District No. 1 of Chelan County, Washington, and Alcoa Inc. and Alcoa Power Generating Inc.," dated July 14, 2008, as it pertains to the sale of power from the Rocky Reach Project No. 2145 to Alcoa Inc. and Alcoa Power Generating Inc. for a term commencing November 11, 2011, and terminating on October 31, 2028, 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.

(C) This order constitutes final agency action. Requests for rehearing may be filed within 30 days from the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2008).

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.