

130 FERC ¶ 61,219
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer and John R. Norris.

City of Angoon, Alaska	Project No. 13366-001
Petersburg Municipal Power and Light	Project No. 13364-001
City and Borough of Wrangell, Alaska	Project No. 13363-001
Cascade Creek, LLC	Project No. 12619-003

ORDER DENYING REHEARING

(Issued March 18, 2010)

1. On November 5, 2009, Commission staff issued a preliminary permit to the City of Angoon, Alaska (Angoon), for the Ruth Lake Project No. 13366-000, and denied competing preliminary permit applications by Petersburg Municipal Power and Light (Petersburg) for Project No. 13364-000, the City and Borough of Wrangell, Alaska (Wrangell) for Project No. 13363-000, and Cascade Creek, LLC (Cascade Creek) for Project No. 12619-002 (November 5 Order).¹ On December 7, 2009, Petersburg filed a request for rehearing. For the reasons discussed below, we deny rehearing.

I. Background

2. Section 7(a) of the FPA requires the Commission to give preference to preliminary permit applications filed by states and municipalities, provided the plans for the same are deemed equally well adapted to conserve and utilize in the public interest the water resources of a region.² Section 7(a) further states that “the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans.”³

¹ *City of Angoon, Alaska*, 129 FERC ¶ 62,101 (2009).

² 16 U.S.C. § 800(a) (2006).

³ *Id.*

3. In accordance with the FPA, the Commission's regulations specify detailed selection criteria for determining preference among competing preliminary permit applications. If a municipality files an application in competition with a non-municipal entity, all else being equal, the Commission will favor the municipality.⁴ If the remaining competing applicants are municipalities, then the Commission will favor the applicant "whose plans are better adapted to develop, conserve, and utilize in the public interest the water resources of the region," taking into consideration the ability of each applicant to carry out its plans.⁵ If the Commission cannot find that one applicant's plans are best adapted to develop the water resources of a region, then the Commission will favor the applicant with the first-filed application.⁶

4. On February 3, 2009, all four parties in this proceeding filed preliminary permit applications that the Commission considered filed at 8:30 a.m.⁷ On July 23, 2009, the Commission issued *Notice Announcing Preliminary Permit Procedures* for a drawing to establish priority among the three municipal applicants – Angoon, Petersburg, and Wrangell – to be used in the event the Commission concluded that none of the three applicants' plans were better adapted than the others.⁸ The drawing was held on August 12, 2009, and the results were noticed the same day establishing the following order of priority: (1) Angoon; (2) Petersburg; (3) Wrangell.

5. In the November 5 Order, consistent with FPA section 7(a), Commission staff found that the three municipal applicants – Angoon, Petersburg, and Wrangell – should receive preference over the non-municipal entity, Cascade. In comparing the competing

⁴ 18 C.F.R. § 4.37(b)(3) (2009).

⁵ 18 C.F.R. § 4.37(b)(1) (2009).

⁶ 18 C.F.R. § 4.37(b)(2) (2009).

⁷ See 18 C.F.R. § 385.2001(a)(2) (any document is considered filed, if in paper form, on the date stamped by the Secretary's Office, or, if in electronic form after regular business hours, on the next regular business day). All three municipalities filed their applications electronically on February 2, 2009, as follows: Petersburg (5:03:34 p.m.); Wrangell (5:04:24 p.m.); Angoon (5:13:59 p.m.). The municipalities also made paper filings on February 3, 2009, which were time stamped as follows: Wrangell (8:30 a.m.); Angoon (8:31 a.m.); Petersburg (8:33 a.m.). Because each municipal applicant made an electronic filing between the time that the Commission closed for business on February 2 and when it opened for business on February 3, each municipality was deemed to have filed an application at 8:30 a.m. on February 3.

⁸ 128 FERC ¶ 61,077 (2009).

municipal applications, Commission staff determined that none of the municipal applicants' plans were better adapted than the others because none had submitted detailed plans to support its proposal.⁹ Because all three municipal applications were considered filed at the same time, none of the applications could be considered the first filed. Therefore, Commission staff issued the permit to Angoon, who had first priority as a result of the drawing.

II. Discussion

A. Abuse of the Municipal Preference

6. Under the FPA and the Commission's permit preference regulations, the Commission will favor a municipal permit applicant over a non-municipal entity, provided the municipality's plans are deemed equally well adapted to those of the non-municipal entity.¹⁰ However, municipal preference may not be used for the benefit of non-municipal entities, as in the case of hybrid applicants that submit a joint municipality/non-municipal entity application.¹¹ An abuse of municipal preference occurs when a municipality and a non-municipal entity coordinate their actions in a manner that uses the preference available to the municipality alone to place the non-municipal entity in a competitively advantageous position to which it would not otherwise have been entitled.¹² The Commission has a longstanding policy not to investigate the potential abuse of municipal preference at the preliminary permit stage because of the drain on staff resources and the administrative delay such investigations would entail.¹³ We have ample authority to fashion an effective remedy in the licensing proceeding should a permittee abuse its municipal preference.¹⁴

⁹ *Angoon*, 129 FERC ¶ 62,101 at P 10.

¹⁰ 16 U.S.C. § 800(a) and 18 C.F.R. § 4.37(b)(3), respectively.

¹¹ *Energeology, Inc.*, 37 FERC ¶ 61,020 (1986) (municipal permittee cannot file joint license application with non-municipal entity); *City of Fayetteville Pub. Works Comm'n*, 16 FERC ¶ 61,209 (1981) (permit application filed jointly by municipality and non-municipal entity is not entitled to municipal preference).

¹² *Energeology*, 37 FERC ¶ 61,020.

¹³ *City of Summersville, W. Va.*, 19 FERC ¶ 61,032 (1982); *Fayetteville*, 16 FERC ¶ 61,209.

¹⁴ *See, e.g., Orofino Falls Hydro Limited P'ship*, 27 FERC ¶ 61,434 (1984) (dismissing license application filed jointly by municipal permittee and non-municipal entity, barring applicants from filing, or competing in any way, for the site for a period of

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7. In the November 5 Order, Commission staff gave preference to the three municipal applicants – Angoon, Petersburg, and Wrangell – over the non-municipal entity, Cascade. On rehearing, Petersburg argues that the Commission violated FPA section 7(a) by failing to investigate whether Angoon is a hybrid applicant with a non-municipal entity, and therefore abusing its municipal preference. Petersburg argues that the Commission’s policy of refusing to investigate abuse of municipal preference at the preliminary permit stage should not apply in this case because there is substantial evidence of abuse by Angoon and there would be no significant administrative delay in issuing the permit to Petersburg. Petersburg cites as evidence of abuse that Cascade is listed as the author of Angoon’s application and that Angoon stated in a pleading that it was working with Cascade to develop the Ruth Lake project. Finally, Petersburg suggests that we should strictly scrutinize conventional permits – as we currently do for hydrokinetic permits¹⁵ – when an applicant’s filings indicate the possibility of a hidden hybrid.

8. Petersburg’s assertion that Angoon has abused its municipal preference because its permit application identifies Cascade as a preparer and its pleading states that Cascade and Angoon may be working together does not persuade us to change our longstanding policy not to investigate allegations of hidden hybrid applications at the permit stage.¹⁶ The reason for that policy, that it is not a good use of administrative resources to conduct what could be time-consuming, complex investigations at the permit stage, remains valid. In any event, Petersburg does not provide convincing evidence that there is an abuse of municipal preference here. In *City of Fayetteville Pub. Works Comm’n*, we acknowledged the practical reality that municipalities may engage private entities in a contractual relationship for professional expertise concerning development of a hydropower project.¹⁷ We explained that municipal status would not be jeopardized by contractual arrangements the municipality may make with non-municipal entities for assistance in financing, studying, constructing, or operating a project so long as the

one year, and reopening the site for further competition).

¹⁵ See *Preliminary Permits for Wave, Current, and Instream New Technology Hydropower Project, Notice of Inquiry and Interim Policy Statement*, FERC Stats. & Regs. ¶ 35,555 (2007) (Hydrokinetic Policy Statement).

¹⁶ “Hidden hybrid” is the term used to describe an application in which a non-municipal entity attempts to circumvent our policy of disallowing municipal preference when a municipality and a non-municipal entity file as joint applicants by concealing the existence of the non-municipal partner and filing applications in the municipality’s name only. See *Fayetteville*, 16 FERC ¶ 61,209.

¹⁷ 16 FERC ¶ 61,209.

municipality retains in the contractual relationships the requisite control over the operation of the project and does not relinquish any property or other rights necessary for project purposes.¹⁸

9. Here, Angoon did not file a joint application with a non-municipal entity, and therefore is not a hybrid permit applicant. Moreover, Petersburg has provided no evidence that Angoon will lack requisite control over the project. Consequently, Angoon is entitled to municipal preference. Indeed, the use of a hidden hybrid to abuse municipal preference is self-defeating because, as stated in the permit, the permittee is the only party entitled to priority for a license application, and the license application must evidence the applicant's intent to be the sole licensee and to hold all proprietary rights necessary to construct, operate, and maintain the proposed project.¹⁹ Angoon must make such a showing at the license stage, and should it fail to do so, would risk having its application dismissed. We deny rehearing on this issue and reaffirm our longstanding policy not to investigate allegations of hidden hybrid applications at the permit stage.

B. Preference for Best Adapted Plan

10. Under the Commission's permit preference regulations, if more than one municipality has filed a permit application, then Commission staff will favor the applicant whose plans are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans.²⁰ On rehearing, Petersburg argues that its application presents the best adapted plan and points to the assertions in its application that it has the need and market for the power, it has invested significant resources to move forward with the project, it has proven its ability to carry out its plans, and its proposal has received significant community support.²¹

11. Petersburg argues that the Commission had no other option under the FPA and our implementing regulations but to determine which application is better adapted, and to solicit additional information if such a determination could not be made. We disagree. Section 7(a) of the FPA states that the Commission *may* give preference to the application best adapted to develop the water resources of the region. The use of "may"

¹⁸ *Id.*

¹⁹ *Angoon*, 129 FERC ¶ 62,101 at P 25.

²⁰ 18 C.F.R. § 4.37(b)(1) (2009).

²¹ Petersburg Municipal Power and Light, April 20, 2009 Motion to Intervene, Protest, Comments, and Better Adapted Statement at 9-18.

instead of “shall” clarifies that any such preference is at the Commission’s discretion. The Commission’s implementing regulations state that we will favor the applicant with the best adapted plans, but because permit applications are by definition preliminary and speculative, an assertion that one application is the best adapted must be supported by the results of detailed studies and agency consultation. In adopting the current permit regulations, the Commission recognized that its prior practice of requiring competing permit applicants to compare their plans of development to those of the initial applicant and then for initial applicants to rebut these comparisons was not helpful in determining whether one set of plans is better adapted than another because plans are too rudimentary at this stage of the process.²²

12. The Commission has consistently stated that absent the results of the detailed studies to be conducted under a permit, it cannot, except in unusual cases, determine that one applicant’s plans are better adapted than another’s plans.²³ In this case, all of the applicants propose almost identical projects and none have submitted plans based on detailed studies or agency consultation. Furthermore, Petersburg’s assertions that its proposal is the best adapted have previously been determined to be factors that are either not dispositive or not relevant at the preliminary permit stage.²⁴ In addition, Petersburg’s *ipse dixit* statements, unsupported by documentary evidence, do not amount to substantial evidence. Accordingly, rehearing is denied because Petersburg did not submit detailed studies nor the results of agency consultation to allow Commission staff to determine if its plan is better adapted than the others to develop the water resources of the region.

C. Preference for the First-Filed Application

13. Under the Commission’s permit preference regulations, if Commission staff cannot determine that one applicant’s plans are better adapted than the others, then the

²² *Application for License, Permit, and Exemption from Licensing for Water Power Projects*, Order No. 413, FERC Stats. & Regs. ¶ 30,632, at 31,269 (1985).

²³ *See, e.g., Wind River Hydro, LLC*, 115 FERC ¶ 61,009 (2006); *Sullivan Island Associates*, 58 FERC ¶ 61,129 (1992).

²⁴ *Robert Hoe*, 54 FERC ¶ 61,130, at 61,429 (1991) (neither the ability of the applicant to finance the project nor the likely speed of subsequent development of the licensed project is a determinative consideration at the permit stage); *Hudson River-Black River Regulating Dist.*, 33 FERC ¶ 61,122, at 61,261 (1985) (refusing to anticipate public interest and factual issues on the merits of a proposed project at the permit stage because such issues are properly addressed in the context of a licensing proceeding); *John J. Hockberger, Sr.*, 20 FERC ¶ 61,087, at 61,187 (1982) (geographical distance from a site or ultimate location of power consumption are not relevant at the permit stage).

Commission will favor the applicant with the first-filed application.²⁵ In this case, the Commission determined that the three municipal applicants had the exact same filing time, and therefore a first-filed applicant could not be determined. On rehearing, Petersburg argues that the Commission could have determined which municipal application was first filed by the order in which they were electronically received after business hours.

14. All else being equal, the first of competing applications delivered to the Commission's docketing office has typically been awarded the permit. This may not have been a perfect solution, but it was impartial and easily applicable. The advent of electronic filing has complicated this issue. Now, the Commission may receive electronic filings not just during business hours, but also between 5:01 p.m. and 8:29 a.m., at which time the Commission's offices are closed.²⁶ It also still receives physical filings, beginning at 8:30 in the morning. The filing received from the first person in line will typically receive a time stamp of 8:30 a.m., while filings received from those further in line may receive later time stamps.

15. We reject Petersburg's proposal to determine which application is first-filed based on the electronic filing time after business hours. This would only encourage a race to file ever closer to 5:00 p.m. and may result in applicants making multiple electronic filings to ensure that a filing is as close as possible after 5:00 p.m. yet not too early, because any permit application received while an existing permit is still in effect will not be accepted.²⁷ The November 5 Order acknowledged Wrangell's and Angoon's concern that rural applicants without the highest speed internet access could be disadvantaged if an electronic filing situation encouraged a race to file.²⁸ Because the Commission considers each municipal application to have been filed at 8:30 a.m., we do not believe that any applicant was technologically disadvantaged in this proceeding. However, Petersburg's proposal to use the earliest after business hours electronic filing time would encourage a race to file closest to 5:00 p.m., and would raise concerns about the electronic filing capabilities of competing applicants. Therefore, we reject Petersburg's proposal and deny rehearing on this issue.²⁹

²⁵ 18 C.F.R. § 4.37(b)(2) (2009).

²⁶ The Commission's business hours are from 8:30 a.m. to 5:00 p.m. *See* 18 C.F.R. § 375.101(c) (2009).

²⁷ 18 C.F.R. § 4.33(a)(1) (2009).

²⁸ *Angoon*, 129 FERC ¶ 62,101 at P 14.

²⁹ Petersburg also argues that the Commission acted arbitrarily and capriciously in
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16. Instead, we will exercise our discretion and continue the current practice of treating all electronic filings that are received between 5:01 in the evening and 8:30 the next morning as having been filed at 8:30 in the morning, regardless of when they are actually electronically received.³⁰ Any electronic filing that is received after 8:30 in the morning will be considered to have been filed as of whatever time stamp it receives in the Secretary's office. With respect to paper filings, we direct our Secretary's office to stamp all filings that are made by persons who are waiting in line when the docket office opens for business at 8:30 a.m. as having been received at 8:30 a.m.³¹ Any filings made by those who are not in line at 8:30 a.m. will be time stamped by the Secretary's office as they are received. Again, this fair, sensible procedure is well within our discretion.

17. Treating the electronic and paper filings as described above will have a number of advantages. It will discourage entities from making multiple electronic filings, as has recently been the case by entities attempting to ensure that their electronic filing is considered the first filed, or at least as having been filed at the same time as competing filings. With respect to paper filings, time stamping all filings from entities waiting in line when the Commission's offices open as having been received at 8:30 a.m. will eliminate the need for entities to see being first in line as an advantage, with what has in some cases been the unfortunate and unseemly consequence of people waiting overnight in line in an effort to be first. Generally, the method described above should eliminate game-playing with regard to the filing of hydroelectric applications.

D. Drawing to Establish Priority

18. The Commission's regulations give no further direction to determine permit preference if municipal preference, best adapted plan and ability to carry out plan, and first to file do not result in a single permit application remaining. Consequently, in the underlying proceeding, we had to determine how to break ties among competing applications that were equal under our regulations. Therefore, we directed the Secretary of the Commission to conduct an impartial drawing to determine the priority of the

issuing a permit to Angoon because Angoon's application does not qualify for municipal preference, Petersburg's application was the best adapted to develop the water resources of the region, and Petersburg's application was the first filed. We have previously discussed each of these arguments separately and dismissed each one of them.

³⁰ This is the case because our regulations provide that "[a]ny document received after regular business hours is considered filed on the next regular business day." 18 C.F.R. § 385.2001(a)(2) (2009).

³¹ The Secretary's office can develop a sensible method for determining who is in line at 8:30 a.m.

applications. Like the first-to-file tiebreaker, we recognize that this may not be a perfect solution, but it is as impartial and transparent as the first to file preference.

19. Section 309 of the FPA gives the Commission “the power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions” of the FPA.³² In *Niagara Mohawk Power Corp. v. Fed. Power Comm’n*, the court stated that the FPA is a statute that “entrusts a broad subject-matter to administration by the Commission, subject to Congressional oversight, in the light of new and evolving problems and doctrines.”³³ The court further explained that the phrase “necessary and appropriate” is not restricted to procedural minutiae, and authorizes an agency to use means of regulation not spelled out in detail, provided the agency’s action conforms with the purposes and policies of Congress and does not contravene any terms of the FPA.³⁴

20. On rehearing, Petersburg argues that section 309 of the FPA does not authorize the Commission to ignore the requirements of the FPA and its implementing regulations and create a whole new procedure.³⁵ Petersburg cites *New England Power Co. v. Fed. Power Comm’n* for the proposition that FPA section 309 does not confer on the Commission independent authority to act.³⁶ In that case, the court rejected the Commission’s imposition of fees upon companies under Parts II and III of the FPA where the FPA had explicitly called for annual charge fees pursuant to Part I but made no mention of fees pursuant to Parts II or III.³⁷ The court found the statutory omission fatal and rejected the Commission’s attempt to impose fees pursuant to Parts II and III of the FPA. The Commission has committed no such *ultra vires* act here. In contrast, the FPA gives the Commission explicit authority to issue permits,³⁸ to establish and limit the nature of

³² 16 U.S.C. § 825h (2006).

³³ 379 F.2d 153, 158 (D.C. Cir. 1967).

³⁴ *Id.*

³⁵ We note that in an earlier argument, Petersburg argued that we should use as a tie breaker the after business hours electronic filing time to determine which application should receive priority. Although rejected, this procedure would be a new procedure under our regulations and contrary to our electronic filing rules. *See* 18 C.F.R. § 385.2001(a)(2) (2009).

³⁶ 467 F.2d 425, 431 (D.C. Cir. 1972), *aff’d* 415 U.S. 345 (1974).

³⁷ *Id.*

³⁸ *See* 16 U.S.C. §§ 798, 800(a) (2006).

permits,³⁹ to prefer states and municipalities in issuing permits,⁴⁰ and, at the Commission's discretion, to give preference to the best adapted application.⁴¹ A selection process for determining to whom to issue a permit is solidly within the mandate of the FPA's preliminary permit sections.⁴²

21. As this order has explained, Commission staff has diligently followed the directive of the FPA and the permit preference formula in our regulations. After first giving preference to the municipal applicants, Commission staff considered whether any of the applicants' proposed plans were better adapted to develop the water resources of the region. Because none of the applicants' plans were based on the results of detailed studies or agency consultation, a best adapted plan could not be selected and Commission staff next looked to which applicant had the first-filed application. Three municipal applicants were found to have identical filing times. Consequently, the Commission exercised its gap-filling powers to effectuate the FPA's goal of encouraging hydropower development by proposing an impartial drawing to establish priority where a decision could not be made based on the existing preference criteria.

³⁹ 16 U.S.C. § 798 (2006) (“[e]ach preliminary permit under this Part shall be for the sole purpose of maintaining priority of application for a license. . . . Such permits shall not be transferable, and may be canceled by order of the Commission . . .”).

⁴⁰ 16 U.S.C. § 800(a) (2006) (“the Commission shall give preference to applications therefore by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted . . .”).

⁴¹ *Id.* (“the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region . . .”).

⁴² Impartial drawings are used in other contexts as well. In *Mobile Oil Exploration Co. v. FERC*, 814 F.2d 998, 1000 (5th Cir. 1987), the court held that it had jurisdiction over the D.C. Circuit to hear the matter at issue by virtue of a coin toss. The court explained that “in light of today’s instantaneous communications and mobile society, it can be incongruous to attempt to resolve venue issues between competing parties by a first-filed rule.” Other federal agencies also use random selection processes. The Federal Aviation Administration uses a lottery to determine the order of slot selection (i.e. gates) by airlines at individual airports. *See* 14 C.F.R. § 93.225 (2009). The U.S. Department of Agriculture uses a lottery to allocate the quantity of raisins that may be diverted by an applicant as part of a raisin diversion program. *See* 7 C.F.R. § 989.156 (2009). In each of these circumstances, the agency or court has found that where all else is equal, an impartial drawing may be the fairest method of allocation.

22. Petersburg also argues that the Commission acted arbitrarily and capriciously in holding the drawing because Angoon and Wrangell have “stacked the decks,” thereby making the drawing unfair. Petersburg explains that Angoon has stated in its pleadings that it is working with entities interested in the hydroelectric project, including Wrangell, and consequently Angoon and Wrangell should have been counted as a single entry in the drawing. We disagree. Angoon and Wrangell did not submit a joint application for a preliminary permit. Three separate preliminary permit applications were submitted by the municipal applicants and there is no reason why each applicant should not be considered a separate entity. Moreover, Petersburg does not provide substantial evidence to support its allegation. Petersburg’s implication that Angoon’s discussions and potential agreements with other entities at the permit stage will result in joint development of the site at the licensing stage is much too speculative. As previously explained in the context of abuse of municipal preference, should Angoon file a joint license application with another entity, whether a municipality or not, the joint application will not be eligible for any permit-based priority.⁴³ Because the drawing correctly treated all three municipal applicants as individual entities, rehearing is denied.

23. However, we recognize that such a lottery is unprecedented in the Commission’s preliminary permit determinations and that with the advent of electronic filing and a potential increased interest in new sites thanks to new technologies, instances of intense competition for preliminary permits may increase. After issuance of the preliminary permit, our staff notified Angoon that the Commission requires progress reports every six months.⁴⁴ As discussed above, the circumstances of this case resulted in a lottery. Because of the intense competition at this site, and the fact that a winner could not be awarded absent a lottery, the Commission’s policy against site banking must be enforced here.⁴⁵ Therefore, we will require staff to carefully monitor the progress made by the permittee, and will be prepared to cancel the permit if the permittee does not exercise

⁴³ See *Fayetteville*, 16 FERC ¶ 61,209.

⁴⁴ *Angoon*, 129 FERC ¶ 62,101 at 64,339, Article 4.

⁴⁵ See, e.g., *Public Utility District No. 1 of Pend Oreille County, Washington*, 124 FERC ¶ 61,064 at P 31 (2008) (“the essence of our policy against site banking is that an entity that is unwilling or unable to develop a site should not be permitted to maintain the exclusive right to develop it”); *Electric Plant Board of the City of Augusta, Kentucky*, 116 FERC ¶ 61,237 at P 13-17 (2006) (policy against site banking applies in context of preliminary permits, as well as other cases); *Mt. Hope Water Power Project LLP*, 116 FERC ¶ 61,232 at P 8-13 (affirming application of policy against site banking in permit cases). See also *Idaho Power Co. v. FERC*, 767 F.2d 1359 (9th Cir. 1985) (holding that Commission conclusion that site banking is inconsistent with the FPA is “not only clearly reasonable” but also supported by the terms of the FPA).

diligence in studying the project it has proposed.⁴⁶ We note that the burden will be on the applicant to show an appropriate level of progress.

24. Given that the preliminary permit was issued to Angoon consistent with the FPA and the Commission's regulations, we deny Petersburg's request for rehearing.

The Commission orders:

The request for rehearing filed by Petersburg Municipal Power and Light on December 7, 2009, is denied.

By the Commission. Commissioner Moeller is concurring with a separate statement.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴⁶ *Angoon*, 129 FERC ¶ 62,101 at 64,339, Article 2.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

City of Angoon, Alaska
Petersburg Municipal Power and Light
City and Borough of Wrangell, Alaska
Cascade Creek, LLC

Project No. 13366-001
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(March 18, 2010)

MOELLER, Commissioner *concurring*:

Hydropower is a clean, domestic energy source that serves the energy needs of millions of Americans while also reducing fossil-fuel emissions. Recent advancements in turbine technologies have turned previously uneconomic sites into potentially profitable projects; as such, we can expect increased competition for sites with hydropower potential. Hydroelectric development is especially attractive in Alaska, where many cities rely heavily (sometimes exclusively) on high-cost, diesel-powered sources of electricity; hydropower provides a lower-cost, cleaner alternative.

In the case of Ruth Lake, the previous permit-holder held the site for two consecutive permits without making significant progress. This prevented other interested entities from applying for a license for six years. While we wish to give interested permit-holders adequate time to study and consider sites for potential hydropower development, the Commission should not allow time to elapse unnecessarily when there are multiple interested parties and intense competition for development of a site. The Commission expects that entities who receive preliminary permits will actively pursue the project. As noted in this order, our staff will be closely monitoring the development activities at Ruth Lake, and we will not hesitate to cancel the permit if sufficient progress is not being made.

On the whole, I am delighted by the increased interest in developing hydroelectric projects, and I look forward to seeing in the near future more communities enjoying the benefits of hydropower.

Philip D. Moeller
Commissioner