

135 FERC ¶ 61,046
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Grand Coulee Project Hydroelectric Authority

Project No. 13681-001

ORDER DENYING REHEARING

(Issued April 21, 2011)

1. On December 14, 2010, Commission staff dismissed the Grand Coulee Project Hydropower Authority's (Authority) preliminary permit application for the North Dam Pumped Storage Project No. 13681 (North Dam Project) because the project proposed to use the same water resource being studied under a preliminary permit issued to BPUS Generation Development LLC (BPUS) for the Banks Lake Pumped Storage Project No. 13296 (Banks Lake Project).¹ On January 12, 2011, the Authority filed a request for rehearing of the dismissal. For the reasons discussed below, we deny rehearing.

I. Background

2. In 2009, Commission staff issued a preliminary permit to BPUS to study the feasibility of the 1,040-megawatt (MW) Banks Lake Project No. 13296.² The proposed project would include construction of a new upper reservoir and would use as its lower reservoir Banks Lake, which is a component of the U.S. Bureau of Reclamation's (Reclamation) Columbia Basin Project.³ The permit expires February 29, 2012.

¹ *Grand Coulee Project Hydropower Authority*, 133 FERC ¶ 62,245 (2010).

² *BPUS Generation Development LLC*, 126 FERC ¶ 62,168 (2009).

³ The Columbia Basin Project produces power at Grand Coulee Dam and at the Grand Coulee Pump-Generating Plant (Pump-Generating Plant). The project also provides irrigation flows for 671,000 acres in portions of Grant, Lincoln, Adams, and Franklin counties, Washington. The flow of the Columbia River is impounded by Grand Coulee dam to form the Franklin D. Roosevelt Lake (Roosevelt Lake) reservoir. The Pump-Generating Plant pumps water from Roosevelt Lake into a feeder canal, which

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3. On March 8, 2010, the Authority filed an application for a preliminary permit to study the feasibility of its proposed 900-MW North Dam Project. The proposed project would use Banks Lake as its upper reservoir and Roosevelt Lake (also a component of Reclamation's Columbia Basin Project) as its lower reservoir.⁴

4. Citing to section 4.33(a)(1) of the regulations, Commission staff dismissed the Authority's preliminary permit application on December 14, 2010, concluding that its proposed project would use the same water resource, Banks Lake, as the preliminary permit issued to BPUS for Project No. 13296. The Authority sought rehearing, arguing that staff erred in its conclusion and that, in any event, issuance of a permit for its Project No. 13681 is in the public interest.

II. Discussion

5. Section 4.33(a)(1) of the Commission's regulations states that the Commission will not accept an application for a preliminary permit for project works that "[w]ould develop, conserve, and utilize, in whole or in part, the same water resources that would be developed, conserved and utilized by a project for which there is an unexpired preliminary permit."⁵

6. On rehearing, the Authority argues that its proposed North Dam Project would use water resources different from BPUS' Banks Lake Project. The Authority explains that the water in Banks Lake is already allocated, so the Authority would have to purchase, and have pumped into Banks Lake from the Columbia River, any water it would use in its North Dam Project. Thus, the Authority claims, there would be no water resource mutually utilized by the two projects.

carries the water to an upper reservoir, Banks Lake, where it is available for irrigation or for power production back through the Pump-Generating Plant.

⁴ The proposed project would have the following facilities: (1) a new underground powerhouse with four turbine/generator units rated at 150 MW each and two turbine/generators with pumping capacity rated at 150 MW each for a total installed capacity of 900 MW; (2) intakes at both the upper and lower reservoirs; (3) a 1.5-mile-long horizontal power tunnel connecting the lower reservoir and a 350-foot-deep vertical shaft at the upper reservoir; and (4) a two-mile-long, 500-kilovolt transmission line.

⁵ 18 C.F.R. § 4.33(a)(1) (2010). In applying this rule, the dispositive consideration is not a permit application's project boundary, but rather a project's proposed use of the same water resource as another project. *Streamline Hydro, Inc.*, 33 FERC ¶ 61,361, at 61,712 (1985).

7. The Authority's argument is unpersuasive. That both projects would use water from Banks Lake is not in dispute. Although the Authority states that it would pump additional water from the Columbia River into Banks Lake for use by its North Dam Project, when that water enters Banks Lake, it would intermingle with the existing waters of Banks Lake, becoming part of the same water resource. Thus, we affirm the Director's finding that both projects propose to use, in whole or in part, the same water resource (Banks Lake).

8. On rehearing, the Authority also argues that the Director erred in dismissing its permit application because the permit applications for its and BPUS' projects do not conflict and are not mutually exclusive. The Authority asserts that its application does not present an inherent conflict with BPUS' issued permit.⁶

9. We are not persuaded by the Authority's argument. As the Commission has explained:

the development that is eventually proposed under a license application may differ in important respects from the development originally proposed in a permit application. It is for that very reason that we do not issue more than one permit for the development of the same water resource. A permittee must have the flexibility to propose for licensing the most comprehensive development of the water resource identified in its permit application.^[7]

10. We believe that it is in the public interest to allow BPUS to study the feasibility of its Banks Lake Project unconstrained by another preliminary permit that proposes to study the same resource. Furthermore, even if we were to issue a permit to the Authority

⁶ The Authority cites to two recent orders in support of its position, *McGinnis, Inc.*, 133 FERC ¶ 61,143 (2010); *McGinnis Inc.*, 133 FERC ¶ 61,144 (2010). However, those cases are not on point. Rather, they address a situation where the Commission has determined that two permit applicants are not proposing to study the use of all or part of the same water resource. In *McGinnis*, the Commission concluded that a hydrokinetic project that would make use of water flowing downstream of a conventional hydroelectric project's tailrace would not use the same water resources as a conventional project that would use the head created at a dam. *McGinnis, Inc.*, 133 FERC ¶ 61,143 at P 10; and *McGinnis Inc.*, 133 FERC ¶ 61,144 at P 10. The Authority also cites to *McGinnis, Inc.*, 129 FERC ¶ 61,229 (2009), but the issue in that case involved analysis under section 4.33(a)(2) of our regulations for a hydrokinetic project located downstream of a licensed conventional project.

⁷ *Ashuelot Hydro Partners, Ltd.*, 30 FERC ¶ 61,048 (1985).

on the basis of its assertion that it may be able to develop a project compatible with the Banks Lake Project, it would have no way of knowing the exact configuration of BPUS' project until that application for a license was filed (and acted on by the Commission). Thus, the Authority would hold a permit, but be unable to design its project until, at the earliest, late in its permit term.⁸ We will not entertain the Authority's permit application under these circumstances.⁹

11. For the above reasons, we deny rehearing and affirm the dismissal of the Authority's permit application.

The Commission orders:

The request for rehearing filed by the Grand Coulee Project Hydroelectric Authority on January 12, 2011, in Project No. 13681-001 is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸ *See id.* at 61,075-76.

⁹ The Authority argues that the dismissal order erred in its citation to *Russell Canyon Corp.*, 58 FERC ¶ 61,288 (1992), because that case involved two preliminary permit applications proposing construction of a new upper reservoir at the same location, whereas Banks Lake already exists. We disagree. In that case, the Commission concluded that permit applications for pumped storage proposals, while not proposing to use the same water resource, could nevertheless involve competition primarily for the reservoir sites as opposed to the water resource to be developed. This rationale could also apply where, as with the Authority's proposal here, the reservoir sites are already in existence. *See Eagle Mountain Energy Co.*, 62 FERC ¶ 61,066, at 61,321 (1993).