

140 FERC ¶ 61,037
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Alabama Power Company

Project No. 2146-137

ORDER DENYING REHEARING

(Issued July 19, 2012)

1. On April 3, 2012, Commission staff issued a notice of an application for a license amendment filed by Alabama Power Company (licensee) for the Coosa River Hydroelectric Project No. 2146. On April 25, 2012, Mr. Pat Kelleher filed a timely motion to intervene in the proceeding. The licensee opposed the intervention, and by notice issued May 18, 2012, Mr. Kelleher's motion to intervene was denied. On June 15, 2012, Mr. Kelleher filed a timely request for rehearing of the notice denying intervention. For the reasons discussed below, the Commission denies the request for rehearing.

I. Background

2. The Coosa River Project is located on the Coosa River in Cherokee, Etowah, Calhoun, St. Clair, Talladega, Shelby, Coosa, Chilton, and Elmore Counties, Alabama.¹ On March 1, 2012, and as supplemented on March 28, 2012, Alabama Power filed an application to amend its license to authorize a non-project use of project lands and waters on Logan Martin Lake (one of the project's reservoirs) in Talladega County. Specifically, the licensee seeks authorization to allow Lake Point Development, LLC (Lake Point) to construct a 20-foot-wide and approximately 187-foot-long concrete boat ramp and associated facilities for use by residents of the adjacent Lake Point subdivision.

3. Commission staff issued notice of the application, setting May 3, 2012, as the deadline for filing comments and motions to intervene. Mr. Kelleher filed a timely motion to intervene and comments on the application. As evidence of his interest in the

¹ The original license was issued in 1957, with an expiration date of July 31, 2007. *Alabama Power Company*, 18 FPC 265 (1957). In July 2007, Alabama Power Company filed a relicensing application, which is pending before the Commission.

proceeding Mr. Kelleher, a resident of the State of Washington, stated that he is a “member of the public” who “hunts, fishes and recreates at FERC licensed projects.” In addition, his comments urged the Commission to ensure that the proposed boat ramp and associated facilities have unrestricted public use and appropriate parking.

4. On May 7, 2012, the licensee filed a timely answer in opposition to Mr. Kelleher’s motion to intervene.² The licensee argued that Mr. Kelleher failed to establish any direct interest in the proceeding or that his intervention is in the public interest, as required by the Commission’s regulations. The licensee noted that, as part of the application process, it has consulted with the relevant state and federal resource agencies as well as affected private landowners, and that none oppose the proposed amendment.

5. On May 18, 2012, the Commission Secretary issued a notice denying Mr. Kelleher’s motion to intervene. The notice explained that Rule 214(b)(2) of the Commission Rules of Practice and Procedure states in relevant part that a motion to intervene must show in sufficient detail that the movant has “an interest which may be directly affected by the outcome of the proceeding[.]”³ Alternatively, the movant must show that its participation is in the public interest.⁴ Because Mr. Kelleher did not assert that he hunts, fishes, and recreates at the Coosa River Hydroelectric Project, or that he has an interest in the Lake Point subdivision, the notice explained that he had not shown a sufficient direct interest in the outcome of the proceeding to satisfy the standard for intervention. Moreover, because he provided no explanation for why his participation in

² Timely and unopposed motions to intervene are automatically granted. 18 C.F.R. § 385.214(c)(1) (2011). If an answer in opposition to a motion to intervene is filed within 15 days of the motion to intervene, the movant becomes a party only when the motion is expressly granted. 18 C.F.R. § 385.214(c)(2) (2011).

³ 18 C.F.R. § 385.214(b) (2011). Under Rule 214(b)(2), a motion to intervene must:

state the movant’s interest in sufficient factual detail to demonstrate that:
(i) The movant has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action; (ii) The movant has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a: (A) Consumer, (B) Customer, (C) Competitor, or (D) Security holder of a party; or (iii) The movant’s participation is in the public interest.

⁴ *Id.*

the proceeding would be in the public interest, the notice also rejected Mr. Kelleher's request for intervention on this ground.

II. Discussion

6. On rehearing, Mr. Kelleher argues that his participation is in the public interest. He states that the proposed license amendment concerns "public free access" to project lands, a subject in which he has an interest.⁵ Mr. Kelleher asserts that the meaning of "public interest" is so broad and undefined that the Commission intended to place "the bar to intervene on the ground" where a motion to intervene is timely filed.⁶ Accordingly, Mr. Kelleher asserts, since "participation is in the public interest as long as the motion to intervene is timely," it was "arbitrary and capricious" for the Commission to exclude him from intervening in the proceeding.⁷

7. We disagree. While the Commission prefers to liberally interpret the concept of "public interest" in the context of establishing grounds to intervene, Mr. Kelleher fails to identify any interest whatsoever in this specific proceeding, other than his general interest in public access to recreational development at Commission-licensed projects. He does not claim to own or recreate at property on or near the Lake Point subdivision or Logan Martin Lake, to have ever visited the project, or to have any future plans to do so. Accordingly, we find that his participation is not in the public interest.⁸

8. Mr. Kelleher's sole basis for intervention appears to be the precedential effect of Commission action in this proceeding on future Commission proceedings involving public access to project lands and waters. However, the Commission has consistently

⁵ Request for Rehearing at 3.

⁶ *Id.*

⁷ *Id.* Mr. Kelleher's pleading also cites a string of Commission orders which pertain to the Commission's disposition of untimely motions to intervene. However, as acknowledged in the May 18, 2012 notice, Mr. Kelleher's motion to intervene was timely.

⁸ Mr. Kelleher also states that Commission staff has "blindly sided with the Licensee in a manner that impacts the public interest," and that doing so "with no rationale is threatening to the public interest." *See* Request for Rehearing at 4. Mr. Kelleher provides no support for this claim; accordingly, we decline to address it.

found that an entity seeking the right to intervene must have a direct interest in a proceeding “and not merely the desire to shape precedent.”⁹

9. Moreover, we do not find that Mr. Kelleher’s participation in this proceeding will advance the public interest. He does not claim that no other entity in this proceeding represents his interest. Indeed, the Commission requires all licensees to develop suitable public recreational facilities and to provide adequate access to such facilities and to project waters.¹⁰ In acting on requests to allow non-licensees to use project lands or waters for non-project uses (e.g., private boat docks or marinas), the Commission considers whether the proposed use would interfere with licensed project purposes, include public recreation. Such determinations are particularly fact-specific. In the instant proceeding, the licensee has consulted with federal and state resource agencies as well as adjacent private property owners in the Lake Point Development area that may be affected by its proposed amendment. In our view, Mr. Kelleher, who resides some 3,000 miles from the project site and presumably has never been to the site, will not assist in informing the Commission in this proceeding.

10. Finally, while we agree with Mr. Kelleher’s assertion that the concept of “public interest,” at least in the context of establishing grounds to intervene, is broad and not easily defined, we disagree with his suggestion that participation is in the public interest as long as a motion to intervene is timely. Taken to its logical conclusion, any entity would be permitted to intervene in any Commission proceeding, which we find could lead to undue delay and expense in the Commission’s orderly review and processing of applications and filings.

11. For all of these reasons, we deny Mr. Kelleher’s request for rehearing.

⁹ *Kansas-Nebraska Natural Gas Company, Inc.*, 21 FERC ¶ 61,285 (1982); *See also, American Electric Power Service Corp. et al.*, 120 FERC ¶ 61,052, at PP 10-12 (entity seeking to intervene in site-specific matter must show direct interest rather than interest in possible precedential effect), *upheld on clarification*, 120 FERC ¶ 61,265, at P 9 (2007); *Duke Energy Shared Services, Inc., et al.*, 119 FERC ¶ 61,146 (2007) (entity seeking to intervene in site-specific matter must show direct interest rather than an interest in possible precedential effect).

¹⁰ 18 C.F.R. § 2.7(b) (2011).

The Commission orders:

The request for rehearing filed by Mr. Pat Kelleher on June 15, 2012, is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.