

140 FERC ¶ 61,038
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.

PPL Holtwood, LLC

Project No. 1881-076

ORDER DENYING REHEARING

(Issued July 19, 2012)

1. On March 29, 2012, Commission staff issued a notice of an application for a license amendment filed by PPL Holtwood, LLC (licensee) for the Holtwood Hydroelectric Project No. 1881. On April 30, 2012, Mr. Pat Kelleher filed a timely motion to intervene in the proceeding. The licensee opposed the intervention, and by notice issued May 22, 2012, Mr. Kelleher's motion to intervene was denied. On June 20, 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 Holtwood Project is located on the Susquehanna River in Lancaster and York Counties, Pennsylvania.¹ On March 15 and 19, 2012, PPL Holtwood, LLC filed two applications to amend its project boundary.²

¹ *Pennsylvania Power & Light Company, LLC*, 121 FERC ¶ 61,429 (1980). On February 25, 2000, Pennsylvania Power & Light Company filed a notice of its name change to PPL Electric Utilities Corporation, d/b/a/ PPL Utilities. On May 25, 2000, the Commission issued an order authorizing the transfer of PPL Utilities' license to PPL Holtwood, LLC. See *PPL Electric Utilities Corporation*, 91 FERC ¶ 62,141 (1980). The license was amended in 2009. *PPL Holtwood, LLC*, 129 FERC ¶ 62,092 (2009).

² On March 15, 2012, the licensee filed an application requesting approval of the following changes to the project boundary: (1) removal of 1.22 acres of land to convey to a private individual in exchange for 0.5 acres adjacent to the Pequea Creek boat launch that would be added to the project boundary and used to provide additional parking for

(continued...)

3. Commission staff issued a notice of the applications, setting April 30, 2012, as the deadline for filing comments and motions to intervene.³ Mr. Kelleher filed a timely motion to intervene.⁴ As evidence of his interest in the 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.” He stated that the licensee’s applications did not “provide any substantial evidence why lands should be removed from the protection of the Federal Power Act and the recreational enjoyment of future generations.”

4. On May 4, 2012, the licensee filed a timely answer in opposition to Mr. Kelleher’s motion to intervene.⁵ The licensee argued that Mr. Kelleher failed to establish that he has

the boat launch; (2) removal of a 33.8-acre parcel on which the Indian Steps Museum and Ulmer-Root-Haines Memorial Park and nature trail are located and convey land to the Conservation Society of York County, which currently owns the museum building; and (3) the addition of approximately 61 acres of land owned by the licensee to be used for the new powerhouse and other project purposes associated with the capacity-related amendment approved on October 30, 2009. On March 19, 2012, it filed an application requesting approval to remove 11 parcels totaling approximately 1,260 acres of land from the project boundary in order to convey that land to the Lancaster County Conservancy for long-term preservation and public use in accordance with the Pennsylvania Department of Natural Resources Lower Susquehanna Conservation Landscape Initiative.

³ The Commission’s Rules of Practice and Procedure provide that, if a filing deadline falls on a Sunday, Saturday, holiday, or other day when the Commission is not open for business, the filing deadline does not end until the close of business on the next business day. 18 C.F.R. § 385.2007(a)(2) (2012). The filing deadline was 30 days from issuance of the notice (i.e., April 28, 2012), which fell on a Saturday. Therefore, the filing deadline was the close of business Monday, April 30, 2012.

⁴ Mr. Kelleher efiled his motion to intervene on Sunday, April 29, 2012. Pursuant to Rule 2001(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.2001(a)(2) (2012), because Mr. Kelleher’s motion was received after normal Commission business hours (after 5:00 p.m., Friday, April 27, 2012), it is deemed filed at 8:30 a.m. on the next regular business day, in this case Monday, April 30, 2012.

⁵ Timely and unopposed motions to intervene are automatically granted pursuant to the Commission’s regulations. 18 C.F.R. § 385.214(c)(1) (2012). If an answer in opposition to a motion to intervene is filed within 15 days of the motion to intervene, the

(continued...)

a connection to the project or that his intervention is in the public interest, as required by the Commission regulations. The licensee noted that its application has received overwhelming support from a wide range of local resource agencies and non-governmental organizations.

5. On May 22, 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's 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[.]"⁶ Alternatively, the movant must show that its participation is in the public interest.⁷ Because Mr. Kelleher did not assert that he hunts, fishes, and recreates at the Holtwood Hydroelectric Project, 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 the proceeding would be in the public interest, the notice also rejected his 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.⁸ Mr. Kelleher asserts that the meaning of "public interest" is so broad and undefined that the Commission intended to place "the

movant becomes a party only when the motion is expressly granted. 18 C.F.R. § 385.214(c)(2) (2012).

⁶ 18 C.F.R. § 385.214(b) (2012). 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.

⁷ *Id.*

⁸ Request for rehearing at 3.

bar to intervene on the ground” where a motion to intervene is timely filed.⁹ 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.¹⁰

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 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.¹¹

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 public lands and waters. However, the Commission has consistently 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.”¹²

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

⁹ Request for rehearing at 4.

¹⁰ Request for rehearing at 3. 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 22 notice, Mr. Kelleher’s motion to intervene was timely.

¹¹ 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.

¹² *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 (2007) (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, at P 9 (2007) (entity seeking to intervene in site-specific matter must show direct interest rather than interest in possible precedential effect).

public recreation facilities and to provide adequate access to such facilities and to project waters.¹³ In acting on requests to change project boundaries, the Commission considers whether the proposed change would interfere with licensed project purposes, including 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 other interested stakeholders 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.

The Commission orders:

The request for rehearing filed by Mr. Pat Kelleher on June 20, 2012, is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹³ 18 C.F.R. § 2.7(b) (2012).