

142 FERC ¶ 61,117
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.

Placer County Water Agency

Project No. P-2079-072

ORDER GRANTING APPROVAL UNDER SECTION 22 OF THE FEDERAL
POWER ACT

(Issued February 21, 2013)

1. On July 17, 2012, the Placer County Water Agency (PCWA or licensee) of Placer County, California, licensee for the 223,753-kilowatt Middle Fork American River Project No. 2079, filed, pursuant to section 22 of the Federal Power Act (FPA),¹ an application for Commission approval of contracts for the sale of the project's power to Pacific Gas and Electric Company (PG&E), beyond the term of the existing license for the project. For the reasons discussed below, we grant the application.

Background

2. The Middle Fork American River Project consists of five developments: French Meadows, Hell Hole, Middle Fork, Ralston, and Oxbow, each with its own powerhouse. The project is located on the Middle Fork of the American River, the Rubicon River, Duncan Creek, and North and South Fork Long Canyon Creeks in Placer and El Dorado Counties, California.

3. The current license was issued on March 13, 1963, and will expire on February 28, 2013.² The project began operation in 1967. On February 23, 2011, the licensee filed a new license application, which is pending before the Commission.³

¹ 16 U.S.C. § 815 (2006).

² *Placer County Water Agency*, 29 FPC 460 (1963).

³ On July 23, 2012, Commission's staff issued a Draft Environmental Impact Statement for relicensing the project.

4. On April 30, 1963, the licensee entered into a power purchase contract with PG&E (original contract). The contract provided for the sale of the full electric power energy of four of five of the project's powerhouses to PG&E in return for fixed monthly and semi-annual payments from PG&E.⁴ The original contract provides that it will "remain in effect so long as [PCWA] shall hold a license under the Federal Power Act and other necessary rights for the project permitting full performance by it of this contract but not beyond 50 years from the date of this contract." Therefore, provided that the licensee maintained the requisite legal authority to continue to sell its output from the project to PG&E, the original contract would remain in effect for a term of 50 years, until April 30, 2013, which is two months beyond the expiration of the current license. PCWA now seeks approval of the original contract to the extent that it extends beyond the license's expiration date.

5. PCWA and PG&E entered into a new power sales contract on April 19, 2012 (new contract). The new contract provides for PCWA to sell the project's power from all five powerhouses to PG&E for agreed-upon contract rates. The delivery period of the new contract begins on May 1, 2013 (the day after termination of the original contract) and will end on December 31, 2017. Therefore, the entire delivery period under the new contract will occur after the February 28, 2013 expiration of the current license. The new contract provides that it will not be effective until it is approved by the Commission under section 22 of the FPA.

6. On October 25, 2012, the Commission issued public notice of PCWA's application, and established a deadline of December 10, 2012 for comments and motions to intervene. The Commission received no filings in response to the notice.

Discussion

Section 22 of the FPA

7. 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

⁴ The output from the fifth powerhouse (Hell Hole) is currently sold to PG&E under a separate contract dated June 3, 1981. That contract will expire in February 2013, prior to the commencement of service under the new contract (which includes the Hell Hole output) on May 1, 2013. The licensee is negotiating a two-month extension of the contract to cover March and April 2013. However, that contract extension has not yet been executed and thus is not included in PCWA's July 17, 2012 application.

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.⁵

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.⁶ The Commission has previously approved applications under 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 continued operation and maintenance of the project.⁷

⁵ Section 14 of the FPA, 16 U.S.C. § 807 (2006), 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). PCWA is a California public agency organized and existing pursuant to the Placer County Water Agency Act, Cal. Stat. of 1957, ch. 1234, as amended. Its responsibilities include the production of hydroelectric energy. Therefore, PCWA is a "municipality" within the definition of that term in section 3(7) of the FPA, 16 U.S.C. § 796(7) (2006), since it is an "agency of a state competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power."

⁶ *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).

⁷ *See, e.g., American Municipal Power – Ohio, Inc.*, 126 FERC ¶ 61,197 (2009); *Brazos River Authority*, 124 FERC ¶ 61,251 (2008); *Public Utility District No. 1 of Chelan County, Washington*, 124 FERC ¶ 61,250 (2008); *Public Utility District No. 2 of Grant County, Washington*, 112 FERC ¶ 61,230 (2005); *Public Utility District No. 1 of Pend Oreille County, Washington*, 87 FERC ¶ 61,095 (1999); *Public Utility District No. 1 of Douglas County, Washington*, 83 FERC ¶ 61,126 (1998); *Public Utility District No. 2 of Grant County, Washington*, 81 FERC ¶ 61,363 (1997); *Kings River Conservation District*, 9 FERC ¶ 61,340 (1979); *Sabine River Authority of Texas and Sabine River Authority, State of Louisiana*, 31 FPC 885 (1964), *reh'g denied*, 32 FPC 1288 (1964); and *Susquehanna Power Company and Philadelphia Electric Power Company*, 32 FPC 826 (1964).

8. In its application for section 22 approval, PCWA explains that approval of the original contract to the extent it extends beyond expiration of the license and the new contract will ensure that PCWA is able to sell the entire net output of the Middle Fork Project and thus generate enough revenue to operate and maintain the project. Moreover, approval of these contracts will allow PG&E to provide its ratepayers with a reliable source of power and provide it with a renewable source of energy to satisfy its renewable portfolio standards.

9. Finally, both the original contract and the new contract are expressly subject to PCWA receiving the Commission's authorization to continue operating the project after expiration of the current license on February 28, 2013. Thus, there is no risk of a future potential licensee having to assume PCWA's obligations under the contracts.

10. For the above reasons, we find that approval of the original power purchase contract and the new power purchase contract under section 22 of the FPA is in the public interest.⁸

The Commission orders:

(A) Placer County Water Agency of Placer County, California's application, filed July 17, 2012, for approval of the power purchase contract, dated April 30, 1963, is granted.

(B) Placer County Water Agency of Placer County, California's application, filed July 17, 2012, for approval of the new power purchase agreement, dated April 19, 2012, is granted.

(C) 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

⁸ As noted, section 22 provides that power sales contracts extending beyond the license termination date must be approved by both the Commission and the public service commission or other similar authority in the state in which the sale or delivery of power is made. PCWA states it was the appropriate state-approved authority when it entered into the original power sales contract with PG&E in 1963. Since 1975, contracts for sale of electrical energy from the project also require the consent of Placer County. (Cal. Water Code App. § 81-7.3). In 2006, Placer County and PCWA delegated the power to approve new contracts for the sale of electric energy from Middle Fork Project to the Middle Fork Project Finance Authority (Authority) (Appendix C of application). The Authority approved the new power sales contract on April 13, 2012, and PCWA directed its Board Chair to execute it on April 19, 2012.

determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body.

(D) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 825 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2012).

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.