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

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

Public Utility District No. 1 of Douglas County, Washington — Project No. 2149-154

ORDER ON REHEARING AND CLARIFICATION

(Issued May 16, 2013)

I. Introduction

1. Public Utility District No. 1 of Douglas County, Washington (Douglas PUD) has filed a timely request for rehearing of Commission staff's November 9, 2012 order issuing a new license for the 774.25 megawatt (MW) Wells Project No. 2149.[1] Douglas PUD seeks rehearing of Commission staff's decision to (1) relicense the project for a 40-year term, rather than a 50-year term as requested by Douglas PUD; and (2) include Article 204 in the license, addressing Douglas PUD's share of the United States' obligations under a treaty between it and Canada that requires compensation to Canada for the power benefits provided by Canadian storage projects. Douglas PUD also asks for certain corrections to the relicense order.

2. The Bonneville Power Administration (Bonneville) and the U.S. Army Corps of Engineers (Corps) timely filed a joint request for rehearing and request for clarification. Bonneville and the Corps assert there is an error in the language of Article 203 that addresses compensation for encroachment at the federally owned Chief Joseph Project. Bonneville and the Corps also request that the Commission clarify the extent of

[1] *Public Utility District No. 1 of Douglas County, Washington*, 141 FERC ¶ 62,104 (2012) (relicense order).

encroachment payments under Article 203. On December 14, 2012, Grant PUD filed a motion for leave to answer the Bonneville and Corps filing.[2]

3. Finally, Mr. Pat Kelleher timely requests rehearing, asking the Commission to address issues related to Douglas PUD's retail rates.

II. Background

4. The Commission issued an original license for the Wells Project in 1962, and the license expired on May 31, 2012.[3] The project, located in Douglas County, Washington, is one of six hydropower projects on a 200-mile stretch of the Columbia River, from river mile (RM) 597 to RM 397. These projects are known as the mid-Columbia projects, of which the Wells Project is an integral part. The two upstream-most projects are the federally owned Grand Coulee and Chief Joseph Projects. The four projects downstream of the federal projects, stretching for more than 100 river miles, are under Commission license: (a) Douglas PUD's Wells Project; (b) Public Utility District No. 1 of Chelan County's (Chelan PUD) Rocky Reach Project No. 2145; (c) Chelan PUD's Rock Island Project No. 943; and (d) Public Utility District No. 2 of Grant County's (Grant PUD) Priest Rapids Project No. 2114.

5. The mid-Columbia projects are operated in a highly coordinated manner to make the best use of flows for generation and to meet fishery and other environmental resource needs.[4]

6. In 1979, the Commission issued an order that initiated a proceeding (Mid-Columbia Proceeding) to consider whether to modify the operations and flows of the mid-Columbia project licenses to provide "certain minimum flows and spills . . . for the protection of the [C]hinook, sockeye, and coho salmon and steelhead trout resources" and

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[2] Rule 713(d)(1) of the Commission's Rules of Practice and Procedure prohibits answers to requests for rehearing. 18 C.F.R. § 385.713(d) (2012). Because Douglas PUD's answer provides information regarding ongoing negotiations between it and Bonneville and the Corps, we will consider it.

[3] *Public Utility District No. 1 of Douglas County, Washington,* 28 FPC 128 (1962).

[4] *See* relicense order, 141 FERC ¶ 62,104 at PP 10-25, for a more detailed description of project operations.

"to consider what fish measures should be required for the remainder of the license terms."[5]

7. In 2003, Douglas PUD proposed amending its license to include the Habitat Conservation Plan (HCP) for the purpose of settling the Wells portion of the Mid-Columbia Proceeding. The HCP was designed to implement a long-term, comprehensive management plan to protect certain anadromous fish species (spring and summer/fall Chinook salmon, sockeye salmon, coho salmon, and steelhead) and their habitat affected by the project. The objectives of the HCP are to achieve no net impact for each anadromous fish species and their habitat, which is to be accomplished through fish passage measures, hatchery programs, and fish habitat restoration work in tributary streams upstream of the project. The Commission approved the HCP in 2004.[6]

8. The relicense order required continued implementation the HCP,[7] which Douglas PUD had proposed in its license application.[8] The relicense order granted Douglas PUD a license term of 40 years, to coincide with the expiration of the Priest Rapids and Rocky Reach licenses.[9]

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[5] *Public Utility District No. 2 of Grant County, Washington, et al.*, 6 FERC ¶ 61,210, at 61,534 and 61,537 (1979) (1979 Order). *See also* Douglas PUD November 24, 2003 Application for Approval of the Wells Anadromous Fish Agreement and Habitat Conservation Plan and Adoption as an Amendment of License at 10 ("The history leading up to the HCP Agreement dates back to 1978, when National Marine Fisheries Service, Washington Department of Fish and Wildlife (Washington DFW), the Confederated Tribes and Bands of the Yakama Indian Nation ("Yakama") and other entities filed various petitions with the Commission seeking spill, improved flows, and other modifications of operations at the Project, as well as three other FERC licensed hydroelectric projects on the Columbia River in Washington State to protect downstream migrating juvenile fish.").

[6] *See Public Utility District No. 1 of Chelan County, Washington*, 107 FERC ¶ 61,280 (2004) (master order addressing Douglas PUD's Wells Project in addition to Chelan PUD's Rocky Reach Project and Rock Island Project); *Public Utility District No. 1 of Douglas County, Washington*, 107 FERC ¶ 61,283 (2004) (companion order specifically addressing Douglas PUD's Wells Project license).

[7] Relicense order, 141 FERC ¶ 62,104 at P 46.

[8] *Id.* P 27.

[9] *Id.* P 143.

III. Discussion

A. License Term

9. Section 15(e) of the Federal Power Act (FPA),[10] provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years. The Commission's general policy is to establish 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive measures.[11] When determining appropriate license terms, the Commission evaluates new measures to be included in the license, and does not consider requirements carried over from the prior license.[12] In addition, when issuing new and subsequent licenses for projects in the same river basin, the Commission will coordinate the expiration dates of the licenses to the maximum extent possible, to maximize future consideration of cumulative impacts in contemporaneous proceedings at relicensing.[13]

10. In the relicense proceeding, Douglas PUD requested a 50-year license, a request supported by the seven parties to the Aquatic Settlement Agreement and other entities.[14] The relicense order found that there was a moderate amount of redevelopment, construction, and environmental mitigation and enhancement measures in the new license. Further, the order found that a 40-year license would not only be consistent with the policy for projects with moderate mitigation and enhancement measures, but would also expire at the same time as the Priest Rapids and Rocky Reach Project licenses.[15]

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[10] 16 U.S.C. § 808(e) (2006).

[11] *See Consumers Power Company*, 68 FERC ¶ 61,077, at 61,383-84 (1994).

[12] *See, e.g., Public Utility District No. 1 of Chelan County, Washington,* 127 FERC ¶ 61,152, at P 10 (2009).

[13] *See* 18 C.F.R. § 2.23 (2012).

[14] *See* Douglas PUD May 27, 2010 Aquatic Settlement Agreement at 6 ("Douglas will seek a term of 50 years for the New Operating License. The Parties agree to support a 50-year term for the New Operating License.").

[15] The Commission issued Grant PUD a 44-year license for its Priest Rapids Project. *Public Utility District No. 2 of Grant County, Washington,* 123 FERC ¶ 61,049 (2008). The Commission issued Chelan PUD a 43-year license for its Rocky Reach

(continued…)

11. The Wells license includes moderate environmental mitigation and enhancement measures. Commission staff estimated that the annualized amount of measures included in the license total $1,953,240.[16] Consistent with the authorities cited above, Commission staff excluded measures included in the HCP because they were measures required by the old license.[17]

12. On rehearing, Douglas PUD argues that the relicense order incorrectly characterized the amount of mitigation and enhancement measures under the new license as moderate.[18] It asserts that the relicense order erroneously excluded the HCP costs from the license term analysis.[19] On this point, the relicense order referred to the Rocky Reach order on rehearing for the proposition that the HCP measures in prior licenses should be excluded when considering the amount of environmental mitigation and enhancement measures contained in the new license. The Rocky Reach order cited the *Consumers Power* and *Ford Motor Company*;[20] however, Douglas PUD addresses neither of these authorities in its rehearing request and provides no reasons why these precedents should not apply to the Wells Project license.

13. Douglas PUD argues that the HCP measures should be considered in determining an appropriate license term because they were the result of proactive efforts to comply with the Endangered Species Act (ESA) and the FPA, and that the exclusion of such measures would have a chilling effect on future proactive efforts.

Project. *Public Utility District No. 1 of Chelan County, Washington*, 126 FERC ¶ 61,138, *order on reh'g*, 127 FERC ¶ 61,152 (2009). Both of these licenses will expire in 2052.

[16] *See* October 25, 2011 Final Environmental Impact Statement (FEIS) at 220-22, Table 31.

[17] FEIS at 219 ("Measures implemented under the Wells HCP, which was previously required by the Commission per order 107 FERC ¶ 61,283 (2004), are *not* listed in the table because they are included in the no-action alternative."). Douglas PUD estimated that the annualized cost for continuation of existing HCP measures to be $9,584,344. Douglas PUD May 27, 2010 Application, Exhibit D at D-8.

[18] Douglas PUD Rehearing Request at 7-11.

[19] *Id.* at 9.

[20] 110 FERC ¶ 61,236 (2005).

14. As we explain above, Douglas PUD's obligations under its HCP are meant to address longstanding salmon and steelhead issues. Douglas PUD primarily entered into the HCP for purposes of resolving long-standing ESA issues, not for the purpose of resolving licensing issues early, meaning Douglas PUD had less discretion regarding the HCP than it implies. Douglas PUD was able to reap the monetary benefit of operating its project without these requirements for the more than 20 years that it took to develop appropriate protection measures for the fishery. Moreover, when it comes to determining the term under the relicense proceeding, Commission staff properly adopted a forward-looking approach that excluded measures adopted under the previous license, consistent with precedent.[21] Accordingly, Commission staff reasonably excluded the HCP measures from the license term analysis.

15. Douglas PUD cites the 50-year license issued for the Niagara Project and the St. Lawrence - FDR Project for the purpose of showing Commission staff has inconsistently labeled its license measures as moderate.[22] However, the other Commission-licensed projects on the mid-Columbia, i.e. Priest Rapids and Rocky Reach, provide a more suitable standard for comparing license terms than the two New York projects cited by Douglas PUD.

16. The measures contained in the 44-year Priest Rapids license and the 43-year Rocky Reach license were comparable to those Commission staff included in the license for Douglas PUD. Douglas PUD does not argue that the measures in its license exceed those contained in the Rocky Reach license or the Priest Rapids license.

17. Douglas PUD asserts that coordination with other mid-Columbia projects indicates the Commission staff prejudged the outcome of the license term determination. On the contrary, the relicense order relied on Commission precedent and applied Commission policy. The license term was determined in this proceeding based upon the record presented, and, for the reasons stated herein, the Commission has determined that Commission staff did not err by selecting a 40-year term.

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[21] *See Ford Motor Company, supra*. Indeed, under Douglas PUD's reasoning that the Commission should consider measures undertaken towards the end of an original license term in establishing a relicense term, licensees would have an incentive to defer undertaking critical measures until the approach of relicensing.

[22] *See New York Power Authority*, 118 FERC ¶ 61,206, at P 113 (2007), *order on reh'g*, 120 FERC ¶ 61,266 (2007) (Niagara Project); *New York Power Authority*, 105 FERC ¶ 61,102 (2003), *order on reh'g*, 107 FERC ¶ 61,259 (2004) (St. Lawrence - FDR Project).

18. On rehearing, Douglas PUD states the decision to select a license term contrary to the settlement parties' agreement was inconsistent with Commission policy supporting settlement agreements.[23]

19. In the Settlement Policy Statement, the Commission explained that "the Commission cannot automatically accept all settlements, or all provisions of settlements," and that "in reviewing settlements, the Commission looks not only to the wishes of the settling parties, but also at the greater public interest, and whether settlement proposals meet the comprehensive development/equal consideration standard."[24] In addition to the terms of a settlement, the Commission considers a number of factors in establishing the term of a license. For the reasons stated herein, the Commission has considered these factors and determined that a 40-year term is appropriate.

20. Finally, Douglas PUD argues coordination among the expiration dates of the mid-Columbia licenses is not required to address cumulative impacts.[25] Douglas PUD adds that the simultaneous expiration of the mid-Columbia licenses will place an undue burden on the resource agencies and tribes, citing comment letters from Washington State Department of Ecology (Washington Ecology) and Washington DFW.

21. Coordinating the license terms among the mid-Columbia projects is an important policy interest at stake in these proceedings. The 40-year license term serves that policy interest.[26] Douglas PUD's line of argument directly attacks the underlying policy rationale supporting coordination, which is codified at section 2.23 of the Commission's

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[23] Douglas PUD Rehearing Request at 11-12.

[24] *Settlements in Hydropower Licensing Proceedings Under Part I of the Federal Power Act, Settlement Policy Statement,* 116 FERC ¶ 61,270, at PP 3-4 (2006).

[25] Douglas PUD Rehearing Request at 12-18.

[26] On rehearing, Douglas PUD states the order mistakenly assumed that its HCP expires in 2052. Douglas PUD Rehearing Request at 5-6. Douglas PUD is correct that its HCP expires 50 years from the Commission's June 21, 2004 approval of the HCP, i.e. June 21, 2054, which is roughly one and a half years after the expiration of the new license. 107 FERC ¶ 61,283 (2004). Although the relicense order erroneously stated the Douglas PUD HCP expires along with the Chelan PUD HCP, this error has no bearing on the license term issue because the Commission policy is to coordinate license expiration dates in a river basin, and the 40-year license complies with this policy. In any event, there is no logical support for Douglas PUD's argument that correcting the expiration date of the HCP from 2052 to 2054 supports a 50-year license.

regulations.[27] The Commission adopted the language of section 2.23 on December 14, 1994,[28] in a proceeding in which the Commission stated that its most fundamental principle on this issue was that cumulative impacts should be addressed at the time of licensing.[29] This serves administrative efficiency, as well as providing the best opportunity for consideration of linked environmental impacts.

22. Douglas PUD points to its success in achieving goals set forth in its HCP as support for the proposition that there are limited cumulative impacts among the mid-Columbia projects. However, achievement of goals under the HCP does not lessen the interconnectedness among the projects. There is no doubt that the six mid-Columbia projects, including the Wells Project, have the potential to result in cumulative impacts to aquatic resources on the Columbia River.

23. While Douglas PUD points to the commendable success of its HCP, it is difficult to imagine what specific issues will arise four decades from now when the mid-Columbia licenses are again ripe for relicensing. However, whatever issues arise over this time, the close proximity of the mid-Columbia projects and the interconnectedness in the way they are operated will make the simultaneous processing and consideration of potential environmental impacts desirable.

24. Finally, even without the coordination of Douglas PUD's license term with the expiration of the Priest Rapids and Rocky Reach licenses, the Commission would choose a term of 40 years given the moderate amount of new protection, mitigation, and enhancement measures required by Douglas PUD's license. Accordingly, we deny rehearing on this issue.

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[27] *See* 18 C.F.R. § 2.23 (2012) ("In issuing both new and original licenses, the Commission will coordinate the expiration dates of the licenses to the maximum extent possible, to maximize future consideration of cumulative impacts at the same time in contemporaneous proceedings at relicensing.").

[28] *Use of Reserved Authority in Hydropower Licenses to Ameliorate Cumulative Impacts*, 59 *Fed. Reg.* 66,718 (December 28, 1994), FERC Stats. & Regs. ¶ 31,010, at 31,219 (1994).

[29] *Id.* at 31,218 ("Our most fundamental principle is that issues of cumulative impacts ought to be examined at the time of relicensing to the fullest extent that such examination is feasible.").

B. Article 204, Canadian Storage

25. Under a 1961 treaty between the U.S. and Canada, Canada constructed three storage dams on the Columbia River to be used for flood control and optimum power generation in the United States.[30] The Canadian dams provide regulated streamflows that enable downstream hydroelectric projects such as the Wells Project to produce additional power benefits. The treaty requires the U.S. and Canada to share equally in the additional power benefits. Specifically, the U.S. must return to Canada one-half of the benefits resulting from the storage projects.

26. The original 1962 license for the Wells Project included Article 38:

> Article 38. The Licensee shall use the improved streamflow from Canadian storage projects for power production purposes, and make available to the Federal system for delivery to Canada, or for its account, the project's share of coordinated system benefits resulting from such improved streamflows, both dependable hydroelectric capacity and average annual usable hydroelectric energy, as determined to be due to Canadian interests under the procedures established pursuant to any treaty between the United States and Canada relating to cooperative development of water resources of the Columbia River Basin.[31]

27. In the relicensing proceeding, Bonneville and the Corps recommended that the Commission carry over to the relicense the Article 38 Canadian entitlement language.[32] Douglas PUD responded that it is unnecessary to include this language in the new license.[33] The relicense order included Article 204, which is identical to Article 38 of the original license.

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[30] Treaty between Canada and The United States of America Relating to Cooperative Development of The Water Resources of The Columbia River Basin (January 17, 1961), 15 U.S.T. 1555.

[31] 28 FPC 128, 133.

[32] Bonneville and the Corps October 7, 2010 Comments at 4.

[33] *See* Douglas PUD November 23, 2010 Reply Comments at 7.

28. On rehearing, Douglas PUD asks that Article 204 be deleted from the new license.[34] Douglas PUD states that the other mid-Columbia projects (Priest Rapids, Rock Island, and Rocky Reach) are subject to the same treaty requirements but do not include license articles like Article 204.

29. We agree with Douglas PUD. The mid-Columbia projects are obligated to meet the requirements regarding the allocation and delivery of the power benefits to which Canada is entitled under the 1961 treaty, not under the license. Enforcement of the treaty is not within the Commission's jurisdiction, and Douglas PUD will have to comply with it regardless of whether Article 204 is in the license or not. Accordingly, the Commission grants rehearing on this matter and deletes Article 204 from the license.

C. Article 203, Compensation for Chief Joseph Encroachment

30. The Corps' Chief Joseph Dam, which is located immediately upstream of the Wells Project, was constructed in the late 1940s to the late 1950s. Generating units 1-16 were completed and began operating in 1958, and generating units 17-27 were to be added later. When the Wells Project was first licensed in 1962, the license recognized that the Wells reservoir would encroach upon the Chief Joseph Project.[35] As a result, Article 32 was included in the 1962 license to require Douglas PUD to compensate the Corps for the reduced power generated at Chief Joseph as a result of the encroachment:[36]

> Article 32. With respect to compensation to the United States for losses caused to the Chief Joseph Project by encroachment upon its tailwater by the operation of the Licensee's project:

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[34] Douglas PUD Rehearing Request at 18.

[35] Encroachment occurs when the tailwater elevation of a hydroelectric project is affected by the forebay elevation of a downstream hydroelectric project. Energy production from a unit of water is directly proportional to operating head, which is the difference between the forebay elevation and tailwater elevation; the greater distance between a hydroelectric project's forebay elevation and tailwater elevation the greater the project's operating head which in turn increases energy production at the project. If the tailwater elevation is increased or the forebay elevation decreased, a hydroelectric project's generating capacity is reduced.

[36] 28 FPC at 132-33.

> (i) The licensee shall, prior to beginning of operation of the Wells power plant, enter into an agreement with the Chief of Engineers, Department of the Army, or his designated representative, to compensate the United States for encroachment on the Chief Joseph Project resulting from the operation of the Wells Project. The agreement will provide for replacement of power loss at Chief Joseph in time and kind, unless otherwise mutually agreed. The loss will be computed on the basis of using the same quantity of water at any given time through the units of the Chief Joseph powerhouse with and without the Wells Project. The difference in power output will be the loss to be replaced. In any computation pertaining to the power loss, the generating capacity will be limited to 125 percent of nameplate rating. The turbine and generator units to be used in computing the loss will be those in existence at Chief Joseph at the time the Wells Project is licensed, and
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> (ii) The licensee also shall compensate the United States for the increased cost of future turbines, units 17 through 27, required to generate the same power under reduced head conditions as a result of the encroachment of the Wells pool on Chief Joseph tailwater. Such compensation with be a capital sum of $294,000 payable to the Treasurer of the United States on or before operation of the initial installation at the Wells Project.

31. Pursuant to Article 32(i), in 1968 Douglas PUD and the Corps entered into an agreement to compensate for the power loss at units 1-16.[37] Douglas PUD also paid the $294,000, as required by Article 32(ii).[38]

32. In 1982, the Commission authorized Douglas PUD to raise the pool surface elevation by two feet from 779 to 781 feet mean sea level (msl).[39] The 1982 order

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[37] Douglas PUD November 23, 2010 Filing at 2.

[38] *Id.*

[39] *See Public Utility District No. 1 of Douglas County, Washington*, 20 FERC ¶ 62,577 (1982), *appeal denied*, 24 FERC ¶ 61,328 (1983), *reh'g denied*, 27 FERC ¶ 61,375, *reconsideration denied*, 28 FERC ¶ 61,272 ((1984).

recognized that the higher Wells reservoir would reduce the amount of electricity the Corps could generate at the Chief Joseph project.[40] Therefore, the 1982 order included Article 52, which required Douglas PUD to enter into an agreement with the Corps to compensate the Corps for the additional encroachment caused by raising the surface elevation.[41]

33. In 1982, Douglas PUD and the Corps entered into a new agreement, which supplemented the 1968 agreement.[42]

34. In the relicensing proceeding, Bonneville, the Corps, and Douglas PUD acknowledged that their existing encroachment agreements would expire upon the expiration of the 1962 license. They stated that they had reached an agreement in principle and requested the Commission issue a license consistent with those principles.[43]

35. The relicense order accordingly included Article 203, which provides:

> Article 203. Encroachment. With respect to compensation to the United States for the losses caused to the Chief Joseph Project by encroachment upon its tailwater by the operation of the Wells project:
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> (a) The licensee shall enter into an agreement with the Chief of Engineers, Department of the Army, or designated representative, to compensate the United States for encroachment on the Chief Joseph Project resulting from the operation of the Wells Project. For Chief Joseph Units 1-16, the licensee will provide encroachment payments representing the difference in Chief Joseph generation with

[40] 20 FERC at 63,954.

[41] *Id.* at 63,958.

[42] The 1982 supplement maintained the compensation: (1) for units 1-16 for elevations up to 781 feet; and (2) the additional encroachment for the incremental elevation change from 779 to 781 feet for units 17-27, and units 1-16 "taking into consideration only the incremental increase in generation due to uprating (authorized rewinds and new transformers with increased ratings)." Douglas PUD November 23, 2010 Filing at 3.

[43] Bonneville, the Corps, and Douglas PUD November 9, 2011 filing at 2-3.

> and without impact of the Wells Project in time and kind for the full Wells pool with updated efficiency curves. For Chief Joseph Units 17-27, the licensee will provide compensation for the excess water use between forebay elevations 779 and 781 feet mean sea level. Compensation will be based on the amount of water used by Chief Joseph Units 17-27 in excess of the hydraulic limit of the smaller units that would have been installed without the Wells Project. Encroachment compensation would not be automatically eliminated when Chief Joseph is spilling. The licensee will provide encroachment payments for water going through the turbines during instances when spill occurs at Chief Joseph, such as spilling for reserves or total dissolved gas management. The licensee will compensate the federal government for the mutually agreed incremental cost of the future unit replacements consistent with the licensee's 1963 compensation for the incremental cost of units 17-27.
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> (b) The licensee shall file the new encroachment agreement with the Commission for inclusion in the license.

36. On rehearing, Bonneville and the Corps explain that Article 203 deviates from the agreement in principle reached by Douglas PUD, Bonneville, and the Corps, and propose revisions to Article 203 to properly reflect the agreement in principle.[44] Douglas PUD agrees with Bonneville and the Corps proposed revisions.[45] We agree and will modify Article 203 accordingly.[46]

37. Bonneville and the Corps also request that the Commission clarify that Douglas PUD must compensate the U.S. for the full impact of its project on Chief Joseph dam as it exists today rather than as it existed in 1962.[47]

38. Douglas PUD agrees that an errata should be issued regarding the technical language of Article 203. Douglas PUD responds that it opposes the introduction of any

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[44] Bonneville and Corps Rehearing Request at 1.

[45] Douglas PUD December 14, 2012 Answer at 3.

[46] *Id.* at 4.

[47] Bonneville and Corps Rehearing Request at 1.

discussion of the settlement negotiations in the record of this proceeding, and asks the Commission to not issue the requested clarification.[48] Douglas PUD states that the matters described by Bonneville and the Corps involve issues and positions of the parties in negotiations, which are privileged and confidential.

39. The Commission declines to become involved in the substantive issues raised by Bonneville and the Corps. Article 203 requires Douglas PUD to reach an agreement and requires Douglas PUD to file that agreement with the Commission. Douglas PUD indicates that negotiations are ongoing and that an agreement is forthcoming. The Commission will therefore require Douglas PUD to file the encroachment agreement, or, if negotiations are not complete, a status report, within 6 months from the issuance date of this order.

D. Mr. Kelleher's Rehearing Request Regarding Retail Rates

40. Mr. Kelleher states he is aggrieved by the overcharging for residential electrical services in the mid-Columbia market, which he asserts is caused by Commission licensing actions. The Commission has no authority to dictate the pricing of Douglas PUD's retail power sales.[49] Thus, Mr. Kelleher's assertions are all retail rate issues beyond the jurisdiction of the Commission. Accordingly, rehearing is denied to the extent Mr. Kelleher asks the Commission to direct Douglas PUD's retail pricing.

E. Corrections

41. Douglas PUD requests that we correct: (1) the description of the project boundary; and (2) the description of the project works in Ordering Paragraph (B)(2)(g).

42. Regarding the project boundary, the relicense order stated that the project boundary "generally follows the 781 foot msl elevation contour line along the Wells reservoir."[50] Douglas PUD asks that we correct that description to reflect the boundary for the Wells reservoir as the higher of: "1) elevation 784-feet-msl; 2) four feet above the backwater for the one-in-ten year flood; or 3) three feet above backwater for the flood of

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[48] Douglas PUD December 14, 2012 Answer at 2.

[49] *See The Yakima Nation v. Public Utility District No. 2 of Grant County, Washington*, 101 FERC ¶ 61,197, at PP 13-19 (2002), *order on reh'g*, 103 FERC ¶ 61,073, at P 11 (2003).

[50] 141 FERC ¶ 62,104 at P 18.

record with the headwater at elevation 773-feet-msl."[51] However, the language Douglas PUD proposes is not found in the relicense application. In any event, Douglas PUD filed Exhibit G drawings on January 29, 2013, as required by Article 207 of its license. Those Exhibit G drawings were approved on May 8, 2013,[52] and establish the project boundary.

43. Regarding the description of project works, Douglas PUD points out that Ordering Paragraph (B)(2)(g) of the relicense order is incorrect. Therefore, we will modify the ordering paragraph to reflect the project's approved Exhibit A.

The Commission orders:

(A) The rehearing request filed on December 10, 2012, by Douglas PUD is granted with respect to Article 203 and Article 204 and denied in all other respects.

(B) The request for rehearing and clarification filed on December 10, 2012, by Bonneville and the Corps is granted to the extent set forth in this order and denied in all other respects.

(C) The rehearing request filed on December 5, 2012, by Mr. Kelleher is denied.

(D) Ordering Paragraph (B)(2)(g) is revised to read as follows:

> (g) 10 turbine/generating units each with a 77.425-MW generator for a total installed capacity of 774.25 MW;

(E) Article 203 is revised to read as follows:

> Article 203. Encroachment. With respect to compensation to the United States for the losses caused to the Chief Joseph Project by encroachment upon its tailwater by the operation of the Wells project:
>
> (a) The licensee shall enter into an agreement with the Chief of Engineers, Department of the Army, or designated representative, to compensate the United States for encroachment on the Chief Joseph Project resulting from the operation of the Wells Project. For Chief Joseph Units 1-16,

[51] Douglas PUD Rehearing Request at 19.

[52] 143 FERC ¶ 62,100 (2013).

the licensee will provide encroachment payments representing the difference in Chief Joseph generation with and without impact of the Wells Project in time and kind for the full Wells pool with updated efficiency curves. For Chief Joseph Units 17 – 27, the licensee will provide compensation for encroachment losses between forebay elevations 779 and 781 feet mean sea level. In addition, the licensee will provide compensation for the excess water use for forebay elevations 771 – 779 feet mean sea level. Excess water use compensation will be based on the amount of water used by Chief Joseph Units 17 – 27 in excess of the hydraulic limit of the smaller units that would have been installed without the Wells Project. Encroachment compensation would not be automatically eliminated when Chief Joseph is spilling. The licensee will provide encroachment payments for water going through the turbines during instances when spill occurs at Chief Joseph, such as spilling for reserves or total dissolved gas management. The licensee will compensate the federal government for the mutually agreed incremental cost of the future unit replacements consistent with the licensee's 1963 compensation for the incremental cost of units 17-27.

(b) Within 6 months of the date of issuance of this order, the licensee shall file the new encroachment agreement with the Commission for inclusion in the license, or, if negotiations are not complete, the licensee shall file a status report.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.