

153 FERC ¶ 61,040
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

PK Ventures I Limited Partnership

Project No. 4093-037

ORDER ON REHEARING

(Issued October 15, 2015)

1. On September 16, 2015, PK Ventures I Limited Partnership (PK Ventures) filed a request for clarification or, in the alternative, rehearing of Commission staff's August 18, 2015 order¹ approving the transfer of the license for the minor Bynum Project No. 4093, located on the Haw River in Chatham County, North Carolina, from Bynum Hydro Company (Bynum) to PK Ventures. We grant PK Venture's request for rehearing, to the extent discussed below.

Background

2. On May 31, 1985, Commission staff issued a 30-year license to Tuscarora Yarns, Inc., authorizing it to operate and maintain the Bynum Project.² By its terms, the license was set to expire on April 30, 2015. Commission staff subsequently approved the transfer of the license from Tuscarora Yarns, Inc. to Bynum on January 16, 1986.³ On December 16, 1986, PK Ventures filed with the Commission a letter stating it had acquired the Bynum Project, and requesting the Commission transfer the license to PK Ventures. As the letter was without the required supporting documentation,⁴ Commission staff was unable to take action on the transfer request, and Bynum remained the licensee for the Bynum Project. As of the date of this order, the project has not operated for a number of years.

¹ *Bynum Hydro Company, PK Ventures I Limited Partnership*, 152 FERC ¶ 62,118 (2015).

² *Tuscarora Yarns, Inc.*, 31 FERC ¶ 62,273 (1985).

³ *Tuscarora Yarns, Inc. and Bynum Hydro Company*, 34 FERC ¶ 62,155 (1986).

⁴ *See* 18 C.F.R. Pt. 9 (2015).

3. On April 30, 2010, PK Ventures filed a notice of intent to file an application to relicense the project, along with a pre-application document. The Commission issued public notice of the filing of the notice of intent on June 30, 2010, setting April 30, 2013, as the deadline for all applications for the project.⁵
4. Neither Bynum nor PK Ventures filed an application by the April 30, 2013 deadline. Therefore, in accordance with Commission regulations, on June 19, 2013, the Commission issued a notice giving interested entities (other than the licensee) 90 days from the date of the notice to file a notice of intent to file a relicense application.⁶ On September 16, 2013, McMahan Hydroelectric L.L.C. timely filed a notice of intent to file an application for a subsequent license, and timely filed an application on March 30, 2015. PK Ventures did not respond to the notice.
5. On August 18, 2014, Commission staff issued a Compliance Order to Bynum, licensee for the project.⁷ The order required Bynum to file a transfer application in order to bring current project ownership into accord with the requirements of the Federal Power Act (FPA).
6. PK Ventures filed a response to the Compliance Order on September 2, 2014, stating it was the owner of the project, as it had previously informed the Commission. PK Ventures did not file a transfer application.
7. Commission staff sent a letter to PK Ventures on January 16, 2015, stating that it was in violation of the August 18 Compliance Order for failing to provide documentation of project ownership, and for failure to file a proper application to transfer the project license. On February 18, 2015, PK Ventures filed a response which included documentation of its purchase of the Bynum Project. Commission staff subsequently determined that Bynum had been dissolved.
8. On August 18, 2015, Commission staff issued an order approving the transfer of the Bynum Project from Bynum to PK Ventures.⁸ Commission staff reasoned that although PK Ventures still failed to file a proper transfer application, it would treat its

⁵ Section 15(c)(1) of the Federal Power Act, 16 U.S.C. § 808(c)(1) (2012), requires that applications to relicense a project be filed at least 24 months before the expiration of the term of the existing license.

⁶ 18 C.F.R. § 16.25(a)(b) (2015).

⁷ *Bynum Hydro Company*, 148 FERC ¶ 62,147 (2015).

⁸ *PK Ventures*, 152 FERC ¶ 62,118 (2014).

recent filings as a transfer application “because of the need to bring the license into compliance” with the FPA, and so there would be an “entity responsible for the project” until another license is issued, or until the project’s disposal.⁹

9. Commission staff further found that as PK Ventures failed to file an application for subsequent license or exemption by the April 30, 2013 deadline or to file a response to the Commission’s June 19, 2013 notice, it was barred from filing a relicense application for the Bynum Project.¹⁰

10. On September 16, 2015, PK Ventures filed a request for clarification or, in the alternative, rehearing of the August 18, 2015 order. PK Ventures states that the license for the Bynum Project expired prior to the August 18, 2015 transfer order, and that therefore the transfer order is without legal effect, and PK Ventures is not the licensee for the Bynum Project.

Discussion

11. Section 16.21(b) of the Commission’s regulations states that after expiration of a license, if the licensee of a minor project not subject to section 14 or 15 of the FPA has not filed an application for a subsequent license or exemption, the Commission *may* issue an order requiring the licensee to continue to operate the project.¹¹ In this circumstance, the Commission has the discretion to choose whether or not to issue an annual license to the licensee.

12. The license for the Bynum Project expired on April 30, 2015, and Bynum, the licensee on record for the project, did not file an application for a subsequent license or exemption by the April 30, 2013 deadline. Given that Bynum has been dissolved, there would be no point in the Commission issuing an order directing it to continue project operations. Such an order might be appropriate if there were environmental or safety concerns regarding a project¹² and there was an extant licensee that the Commission

⁹ *PK Ventures*, 152 FERC ¶ 62,118 at P 12.

¹⁰ *Id.* P 13.

¹¹ 18 C.F.R. § 16.21(b) (2015) (emphasis added).

¹² *See* December 14, 2014 Dam Safety Report at 5, stating that the project has a low hazard potential.

could hold responsible: neither is the case here. Accordingly, it is in the public interest to allow the license to expire while the Commission considers McMahan's application.¹³

13. Because the project license expired before the transfer order was issued, there was no license to transfer to PK Ventures. Accordingly, PK Ventures is not the licensee for the Bynum Project, its request for rehearing on this matter is granted and the August 18, 2015 transfer order is rescinded.

14. PK Ventures asserts that it "is the valid and lawful owner of the project works and intends to protect its rights in such to the fullest extent of the law, including reservation of all rights regarding future operation of the project under appropriate instrument."¹⁴ We note that because PK Ventures failed to file a timely application after being made aware of the filing deadline in both the June 30, 2010 and the June 19, 2013 notices¹⁵ soliciting notices of intent and applications, PK Ventures is barred from filing a license or exemption application for this project while the Commission reviews McMahan's license application.¹⁶ In addition, PK Ventures may not operate the project without Commission authorization. However, PK Ventures may still fully participate in the licensing proceeding.

The Commission orders:

(A) PK Venture's September 16, 2015 request for clarification or, in the alternative, rehearing of the August 18, 2015 order approving the transfer of the license for the Bynum Project is granted to the extent set forth below.

¹³ Unless and until such time as the Commission issues a license for the project, jurisdiction over the project works lies with the State of North Carolina, which Commission staff has informed of the status of the project.

¹⁴ Request for rehearing at 2, n.3

¹⁵ *PK Ventures, Inc.*, 75 Fed. Reg. 39,224 (2010), *PK Ventures, Inc.*, 78 Fed. Reg. 38,308 (2013).

¹⁶ 18 C.F.R. § 16.25(a)(b) (2015).

(B) The August 18, 2015 order approving the transfer of the license for Bynum Project is rescinded.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.