

162 FERC ¶ 61,117  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;  
Cheryl A. LaFleur, Neil Chatterjee,  
Robert F. Powelson, and Richard Glick.

Carson Tahoe Energy, LLC

Docket No. CD18-1-001

ORDER DENYING REHEARING

(Issued February 15, 2018)

1. On November 14, 2017, Carson Tahoe Energy, LLC (CTE) filed a request for rehearing of Commission staff's October 19, 2017 letter order rejecting CTE's notice of intent to construct a qualifying conduit hydropower facility, the proposed CTE Site #1.<sup>1</sup> For the reasons discussed below, we deny rehearing.

**I. Background**

2. The proposed CTE Project would include a 470-kilowatt (kW) turbine/generating unit placed in an existing, abandoned excavated channel that, if operable, would bypass a damaged, abandoned dam located on the East Fork of the Carson River in Dresslerville, Nevada. Flows would be delivered to a proposed new powerhouse and then would be discharged directly into the East Fork of the Carson River.

3. On October 10, 2017, Mr. Ron Bingaman, on behalf of CTE, filed a notice of intent to construct the CTE Project. CTE sought a determination that the CTE Project would be a qualifying conduit hydropower project under section 30(a) of the Federal Power Act (FPA)<sup>2</sup> and thus would not be required to be licensed.

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<sup>1</sup> On January 18, 2018, CTE filed a supplement to the rehearing request. The supplement was filed after the thirty-day period for filing requests for rehearing specified in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l(a) (2012), and therefore is rejected. *See, e.g., The Electric Plant Board of the City of Paducah, Kentucky*, 121 FERC ¶ 61,091, at P 6 (2007).

<sup>2</sup> 16 U.S.C. § 823a(a)(1) (2012), as amended by the Hydropower Regulatory Efficiency Act of 2013 (2013 Act), Pub. L. 113-23, § 4, 27 Stat. 493 (2013).

4. Section 30(a)(3)(B) defines a qualifying conduit hydropower facility as one that meets specified qualifying criteria.<sup>3</sup> The qualifying criteria include a requirement that “the facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.”<sup>4</sup> “Conduit,” in turn, is defined as “any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.”<sup>5</sup>

5. On October 19, 2017, Commission staff rejected the notice of intent. Staff determined that the channel CTE proposed to use as the “conduit” for the CTE Project was abandoned, and not operated for the uses set forth in the statute. Thus, the addition of a hydroelectric facility at CTE Site #1 would make electric generation the primary purpose of the channel. Therefore, Commission staff determined that the channel did not meet the statutory definition of a conduit, and that the CTE Project would not be a qualifying conduit hydropower facility.

6. In its request for rehearing, CTE asserts that Commission staff erred in determining that the channel did not meet the definition of a conduit. CTE claims that the channel is in fact a conduit, as defined by the FPA and Commission regulations, as it is a non-federally owned, man-made water conveyance that “has not been...used primarily for electric generation” and has “been operating continually since its completion primarily providing water to downstream end users for pasture irrigation.”<sup>6</sup>

## II. Discussion

7. As discussed above, the FPA defines a conduit as “any...man-made water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.”<sup>7</sup> As explained below, we affirm the Commission staff’s October 19, 2017 rejection letter. We find that the abandoned channel the CTE Project would utilize has not been shown to be operated to distribute water for agricultural, municipal, or industrial consumption,

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<sup>3</sup> 16 U.S.C. § 823a(3)(B) (2012).

<sup>4</sup> 16 U.S.C. § 823a(C)(i) (2012).

<sup>5</sup> 16 U.S.C. § 823a(a)(3)(A) (2012).

<sup>6</sup> See Rehearing Request of Carson Tahoe Energy, LLC (CTE Rehearing Request), filed on November 17, 2017 in Docket No. CD18-1-000 at 5.

<sup>7</sup> *Id.* § 823a(a)(1).

and if the CTE Project were constructed, the primary purpose of the channel would be for the generation of electricity.

**A. CTE Has Not Shown that the Channel Is Operated for Agricultural, Municipal, or Industrial Consumption**

8. The FPA and Commission regulations state that an existing water conveyance must be “operated” for a consumptive use in order to be considered a conduit. In its request for rehearing, CTE claims that “the conduit has been operating continually since its completion primarily providing water to downstream end users for pasture irrigation.”<sup>8</sup> CTE states that for the majority (approximately 7-8 months) of the year, water flowing down the East Fork of the Carson River flows through the channel, and over the abandoned dam. However, during the dry (4-5) months of the year, water is unable to flow over the dam, and only flows downstream of the dam by virtue of the channel. CTE states that, without the channel, water would be unable to reach downstream end-users. Therefore, CTE asserts that the channel has been “operating continually” to distribute water downstream.

9. CTE’s above-description of the channel does not demonstrate that the channel is being operated for agricultural, municipal, or industrial consumption. Mr. Bingaman previously described the channel at issue here as being “abandoned and . . . not under any active management program.”<sup>9</sup> The current request for rehearing further states that “the conduit has sustained severe flood damage from erosion, rolling rocks and boulders over the decades with a considerable amount of deferred maintenance accumulating.”<sup>10</sup> Further, the channel has no gates or other control structures that would enable one to operate it. The record thus shows that the channel is abandoned.

10. The record further shows that the channel is not being operated for the distribution of water for agricultural or any other type of consumption. No irrigation

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<sup>8</sup> See CTE Rehearing Request at 5.

<sup>9</sup> Prior to filing the NOI for the CTE Project, on April 14, 2016, Mr. Bingaman, on behalf Sierra Green Energy, LLC (SGE), filed an NOI to construct a qualifying conduit hydropower facility, the SGE Site #2 Project. The SGE Project was essentially identical to the CTE Project, featuring a 250-kW turbine/generating unit located in the same channel that would be utilized in the CTE Project. Commission staff rejected the notice of intent for the same reasons as the rejection in this case. See April 14, 2016 Notice of Intent to Construct the SGE Site #2 Project, submitted by Sierra Green Energy, LLC, in Docket No. CD16-9-000; see also Commission Staff’s April 29, 2016 rejection letter in Docket No. CD16-9-000.

<sup>10</sup> See CTE Rehearing Request at 6.

intakes are present on or near the channel, nor is it connected to any irrigation system. The closest irrigation intake, 1,000 feet downstream of the channel, draws its water directly from the East Fork of the Carson River. Any role the channel plays in irrigation is entirely incidental.

**B. CTE Has Not Shown that the Channel Would Not be Used Primarily for Electricity Generation**

11. In its request for rehearing, CTE claims that the primary purpose of the channel is for irrigation, with “a small electrical power facility” that was “secondary” to this primary purpose.<sup>11</sup> We disagree. As an initial matter, both the dam and channel were approved, and constructed, to provide water for power generation. Nevada State Water Permit #2844, to which CTE refers in its rehearing request, approved the appropriation of water from the East Fork of the Carson River for the sole purpose of power production.<sup>12</sup> The dam and channel were constructed to create an intake which would transport the appropriated water to the previously existing powerhouse. The permit does not list irrigation as a primary or secondary purpose of the channel and does not appropriate any water for irrigation. In addition, as noted above, the record does not indicate that the channel has been operated for any purpose besides electrical generation. Accordingly, we cannot conclude that, with the addition of a hydroelectric facility, the channel would be operated primarily for a purpose other than the generation of electricity.<sup>13</sup>

12. As CTE has not shown that the channel is operated for agricultural, municipal, or industrial consumption, and would not be operated primarily for the generation of electricity, the channel does not meet the definition of a conduit. We therefore affirm that Commission staff correctly determined that, because the CTE Project did not propose to utilize a “conduit,” as that term is defined by the FPA and the Commission’s

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<sup>11</sup> CTE Rehearing Request at 4.

<sup>12</sup> See State of Nevada, Division of Water Resources Permit No. 2844, accessible at: <http://water.nv.gov/permitinformation.aspx?app=2844>.

<sup>13</sup> 16 U.S.C. § 823a(a)(3)(A) (2012).

regulations, it did not meet the qualifying criteria, and that staff appropriately rejected CTE's notice of intent. For the above mentioned reasons, we deny rehearing.<sup>14</sup>

The Commission orders:

The request for rehearing filed by Carson Tahoe Energy, LLC on November 14, 2017, is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>14</sup> CTE claims that because in one instance Commission staff referred to CTE as "SGE" in the body of the October 19, 2017 rejection letter, this demonstrates that staff was evaluating the merits of the SGE Project, Docket No. CD16-9-000, rather than the CTE Project. *See* CTE Rehearing Request at 1-2. This inadvertent error in no way undercuts the validity of staff's analysis of the CTE Project, which we have affirmed here. In any case, as we have noted, *see* n.13, *supra*, the same analysis supports rejection of both projects.