

153 FERC ¶ 62,088
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Utility District No. 1 of Klickitat County,
Washington

Project No. 13333-003

ORDER REJECTING REQUEST TO EXTEND TERM OF PRELIMINARY PERMIT

(Issued November 5, 2015)

1. On October 30, 2015, Public Utility District No. 1 of Klickitat County, Washington (Klickitat PUD) filed a request for a two-year extension of its successive preliminary permit for the proposed JD Pool Pumped Storage Project No. 13333 (JD Pool Project or project). The proposed project would be located in Klickitat County, Washington, and Sherman County, Oregon.

I. Background

2. In November 2008, Klickitat PUD filed an application to study the feasibility of the 1,500-megawatt, closed-loop JD Pool Pumped Storage Project. At that time, the proposed project would consist of: an embankment dam enclosing an upper reservoir, an earth embankment dam enclosing a lower reservoir, a steel penstock, an underground powerhouse, and 5 miles of transmission line.¹ The upper reservoir would be located in the Columbia Hills overlooking the Columbia River, near existing wind turbine generators and approximately 2,000 feet above the lower reservoir. The lower reservoir would be located at the site of a closed aluminum smelter, adjacent to the Columbia River near U.S Department of the Army Corps of Engineers John Day Dam. After rehabilitating or replacing the smelter's intake and pumping systems, the project would use water from the Columbia River for initial fill and make-up water. Water would be pumped to the upper reservoir during periods of off-peak energy demand using the project's reversible, pump/turbine generator units and would generate electricity by drawing on the water stored in the upper reservoir during peak energy demands.

3. On May 5, 2009, Commission staff issued Klickitat PUD its first preliminary permit for the JD Pool Project.² Upon expiration of its first permit, Klickitat PUD filed

¹ Since then, the project design has evolved to include two upper reservoirs created by two earth embankment dams and only a 3,000 foot-long transmission line.

² See 127 FERC ¶ 62,104 (2009) (issuing permit to Klickitat PUD and denying
(continued ...)

an application for a successive permit for the site. On November 16, 2012, Klickitat PUD received its successive preliminary permit for the project, which expired on November 2, 2015.³ On October 30, 2015, Klickitat PUD filed an application for a two-year extension of its successive permit and a request for a waiver of the Commission's 30-day filing deadline in section 4.82 of its regulations.

II. Discussion

4. Section 5(b) of the Federal Power Act (FPA), as amended by the Hydropower Regulatory Efficiency Act of 2013 (2013 Act), gives the Commission the authority to extend a preliminary permit term once for not more than two additional years, if the Commission finds that the permittee has carried out activities under the permit in good faith and with reasonable diligence.⁴

5. Section 4.82(c) of the Commission's regulations requires that a permittee file a request to extend its permit term at least 30 days before the permit's expiration⁵ and states that "[t]he Commission will not accept extension requests that are filed less than 30 days prior to the termination of the permit."⁶

6. Unless otherwise provided by law, the Commission, generally, has the authority to extend deadlines, including filing deadlines, for good cause.⁷ However, when a request for extension is filed after a deadline has passed, the movant must show extraordinary circumstances sufficient to justify the failure to act in a timely manner.⁸

competing application filed by Golden Green Energy Storage, LLC for Project No. 13292).

³ The permit was set to expire on October 31, 2015. Because October 31, 2015, was a Saturday, a day on which the Commission is closed, the expiration date for the permit was extended to the close of Commission business on the next business day, which was November 2, 2015. *See* 18 C.F.R. § 385.2007(a)(2) (2015).

⁴ Pub. L. No. 113-23, § 5, 127 Stat. 495 (codified as amended at 16 U.S.C. § 798(b)).

⁵ 18 C.F.R. § 4.82(c) (2015).

⁶ *Id.*

⁷ *See* 18 C.F.R. § 385.2008(a) (2015).

⁸ *See* 18 C.F.R. § 385.2008(b) (2015); *see also Green Wave Energy Solutions, LLC*, 132 FERC ¶ 61,254 (2010).

7. In rare circumstances, Commission staff has waived the filing deadline in section 4.82(c). As cited by Klickitat PUD in its waiver request, Commission staff waived the filing deadline for an extension request in *5440 Hydro, Inc.*⁹ However, in that case, staff waived the deadline because the effective date of the 2013 Act was after the 30-day deadline to file an extension, so it would have been impossible to file an extension request before the deadline.

8. Here, Klickitat PUD fails to adequately support its statement that extraordinary circumstances were present that prevented it from filing a timely request for an extension. Klickitat PUD explains that it did not file a timely extension request because, until mid-October, it was unsure whether it would continue to pursue the project at all. Klickitat PUD states that its Board of Commissioners had concerns about financing the project that were not resolved until the deadline to file an extension request had passed.

9. Financial concerns about a project's viability are an issue common to many projects. This is not an extraordinary circumstance, or a unique situation that merits a waiver. Klickitat PUD states that a renewed interest in financial support for the project started in July of 2015. Therefore, Klickitat PUD could have at least filed for an extension of the filing deadline before the deadline passed.

10. For the reasons above, Klickitat PUD's request for a waiver of the 30-day filing deadline in 18 C.F.R. § 4.82(c) is denied. As such, Klickitat PUD's request to extend the term of its successive permit is untimely and is rejected.

The Director orders:

(A) Klickitat PUD's motion for a waiver of the 30-day filing deadline in 18 C.F.R. § 4.82(c) (2015) is denied.

(B) Klickitat PUD's request to extend by two years the term of its successive preliminary permit for the JD Pool Pumped Storage Project No. 13333 is rejected.

⁹ 144 FERC ¶ 62,194 (2013).

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(C) This order is issued under authority delegated to the Director and constitutes final agency action. Any party may file a request for rehearing of this order within 30 days of the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 825*l* (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2015).

Vince Yearick
Director
Division of Hydropower Licensing

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