

122 FERC ¶ 61,032  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Public Utility District No. 1 of Douglas County,  
Washington

Project No. 2149-137

ORDER DISMISSING REHEARING REQUEST

(Issued January 17, 2008)

1. On October 11, 2007, the Director, Office of Energy Projects (Director), issued a study plan determination letter to Public Utility District No. 1 of Douglas County, Washington (District), licensee for the 774.3-megawatt Wells Hydroelectric Project No. 2149, located on the Columbia River in Douglas, Chelan, and Okanogan Counties, Washington. On November 8, 2007, the City of Pateros (City) filed a request for rehearing of the Director's determination letter. In this order, we dismiss the rehearing request as premature.

**Background**

2. On December 1, 2006, the District filed with the Commission a notice of its intent to apply for a new license for the Wells Project, pursuant to the integrated licensing process (ILP),<sup>1</sup> as well as a pre-application document (PAD).<sup>2</sup> In the PAD, the District provided, along with other material, general information and tables regarding socioeconomic resources in the project area by county. In its preliminary issues and

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<sup>1</sup> The ILP was established by the Commission in 2003 with the goal of creating efficiencies by integrating a potential license applicant's pre-filing consultation with the activities of the Commission and other agencies pursuant to the Federal Power Act, the National Environmental Policy Act (NEPA), and other applicable legislation. *See Hydroelectric Licensing Under the Federal Power Act*, Order No. 2002, 68 Fed. Reg. 51,070 (Aug. 25, 2003), FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,150 (2003).

<sup>2</sup> *See* 18 C.F.R. § 5.6 (2007) (requiring filing of PAD).

study list, which is a required part of the PAD, the District did not propose to perform a socioeconomic study.<sup>3</sup>

3. On January 29, 2007, Commission staff issued a notice and scoping document for the purpose of obtaining public comment on its initial determination of the issues to be studied in the proposed environmental assessment in the relicensing proceeding, and seeking comments and study requests from interested stakeholders.

4. The City filed comments and requested that the District conduct a study of the socioeconomic impacts of the Wells Project on Okanogan County and the Cities of Pateros, Brewster, and Bridgeport.<sup>4</sup> The City requested that the District conduct a cost-benefit analysis or similar study, to evaluate the impact that the construction of the Wells Project had on lost revenues from property, sales, excise, and hotel/motel taxes. The City wanted the District to identify: (a) factors that influence regional and local economics, including health care, agriculture, schools and other public entities, industry, and tourism; (b) future growth opportunities and estimated impacts of project operations on these resources; and (c) socioeconomic impacts resulting from the City's relocation and displacement when the Wells Dam was originally constructed and continued effects of the City's relocation and displacement.<sup>5</sup>

5. The District declined to propose a socioeconomic study in its proposed study plan, stating that such a study, by focusing on original project impacts (which had been mitigated during the term of the original license), would not be helpful in the development of license conditions on relicensing.<sup>6</sup> The District stated that any socioeconomic analysis should identify socioeconomic impacts specifically related to the project's continued operation, and that it was already addressing such impacts through other studies on recreation uses and needs, recreation access, and shoreline management.

6. On October 11, 2007, the Director issued his study plan determination letter, which did not require the District to conduct the socioeconomic study proposed by the City. On November 8, 2007, the City filed a request for rehearing of the Director's study

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<sup>3</sup> See PAD at 223-26.

<sup>4</sup> See letters filed by the City on April 4, 2007, at 2-4; August 15, 2007, at 2-12; and October 1, 2007, at 2-10.

<sup>5</sup> The original license was issued in 1962 (28 FPC 128), and the dam and reservoir were constructed by 1967. Portions of the City needed to be relocated as a result of the construction.

<sup>6</sup> See the District's Proposed Study Plan, filed May 16, 2007, at 17-18, and Revised Study Plan, filed September 14, 2007, at 22-25.

plan determination. On November 26, 2007, the District filed an objection to the rehearing request.<sup>7</sup>

### **Discussion**

7. As we recently reaffirmed,<sup>8</sup> an order is final, and thus subject to rehearing, only when it imposes an obligation, denies a right, or fixes some legal relationship as the consummation of the administration process. Thus, we have declined to accept requests for rehearing of a number of staff procedural actions.<sup>9</sup> We rely on our staff to run proceedings conducted under delegated authority, just as we do administrative law judges with respect to trial-type hearings, and it is only in very unusual circumstances that we find it appropriate to intervene in those proceedings before we are asked to review a substantive decision.

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<sup>7</sup> Despite its title, the District's filing is in effect an answer to a rehearing request. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2007), provides that no answers to rehearing requests will be entertained. The District has not shown good cause to waive this regulation. Therefore, its pleading is rejected.

<sup>8</sup> *Ketchikan Public Utilities*, 121 FERC ¶ 61,155 (2007), citing *City of Fremont v. FERC*, 336 F.3d 910, 913-14 (9th Cir. 2003); and *Papago Tribal Utility Authority v. FERC*, 628 F.2d 235, 239 (D.C. Cir. 1980).

<sup>9</sup> See, e.g., *City of Wadsworth, Ohio*, 120 FERC ¶ 61,172 (2007) (dismissing request for rehearing of notice of acceptance of applications); *Duke Power*, 117 FERC ¶ 61,303 (2006) (affirming dismissal as interlocutory of request for rehearing of environmental assessment); *Erie Boulevard Hydropower, L.P.*, 117 FERC ¶ 61,189 at P 75 (2006) (holding that staff letter transmitting historic properties appendix not subject to rehearing); *Duke Energy Corp.*, 110 FERC ¶ 61,376 (2005) (dismissing request for rehearing of staff decision not to extend environmental scoping process); *Granite County, Montana*, 101 FERC ¶ 61,062 (2002) (dismissing as interlocutory request for rehearing of notice granting late intervention); *PacifiCorp*, 90 FERC ¶ 61,325 (2000) (affirming notice dismissing as interlocutory request for rehearing of staff orders setting deadlines for filing of responses of information requests and for filing license amendment); *City of Hamilton, Ohio* (82 FERC ¶ 61,349 (1998) (finding requests for rehearing of order setting matter for trial-type hearing properly dismissed); *California Department of Water Resources*, 70 FERC ¶ 61,115 (1995) (concluding that staff decision to prepare EA, rather than environmental impact statement, not subject to rehearing).

8. As we recently explained in similar circumstances in *Alcoa Generating Inc.*,<sup>10</sup> the record in this proceeding is still being developed. There will be ample opportunity for the City to comment on the completeness of the material filed by the District, and of the Commission's environmental analysis. After the Commission takes action on the District's application, which has yet to be filed, the City will have a further opportunity to raise any issues it deems appropriate, including matters relating to the sufficiency of the record. We decline to address such issues at this preliminary stage.

9. In any event, the City's arguments with respect to requiring the District to perform the City's proposed socioeconomic study are without merit. The reasons given by the Director in his study determination letter for not requiring such a study are reasonable.<sup>11</sup> As the letter explained, the City did not demonstrate, as it is required to do, that the additional information is needed.<sup>12</sup> Much of the information the City seeks already exists (*i.e.*, demographics, tax statistics, property valuations, etc.), and the licensee is expected to analyze this information in its relicense application. Furthermore, as the Director noted, while tax-related issues are important for local communities, reviewing all tax information related to the project and surrounding communities is beyond the scope of this licensing.<sup>13</sup>

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<sup>10</sup> 121 FERC ¶ 61,279 (2007).

<sup>11</sup> In its Addendum – Statement of Issues, the City references a socioeconomic study conducted by the Public Utility District No. 1 of Chelan County in the Rocky Reach Project No. 2145 relicensing. That application was prepared using the Commission's Alternative Licensing Process (ALP) which allows the licensee and stakeholders considerable latitude in designing and conducting studies to the extent the participants (including the licensee) agree. Under the ALP, parties generally reach agreement regarding the studies to be performed. In ILP proceedings like this one, entities must show that the studies they request meet criteria set forth in the Commission's regulations. *See* 18 C.F.R. § 5.9(b)(2007), and the Commission staff ultimately determines which studies will be performed. Thus, while in the Rocky Reach proceeding the parties agreed pursuant to the ALP to conduct a socioeconomic study, here, staff was required to decide the contested issue. In this case, the Director accepted Commission staff's findings that the City did not satisfactorily address the study criteria of section 5.9(b) or demonstrate that additional information on socioeconomics was needed.

<sup>12</sup> *See* 18 C.F.R. § 5.9(b)(4)(2007).

<sup>13</sup> *See New York Power Authority*, 120 FERC ¶ 61,266 at P 33 (2007) (the Commission is not a taxing authority).

10. Moreover, as the Director noted, the City's emphasis on studying the past impacts of project construction is contrary to the Commission's use of the environment as it exists at the time of relicensing as the baseline for NEPA analysis.<sup>14</sup> As the District correctly noted in its study plan,<sup>15</sup> our initial license dealt with the impacts of project construction. Any new license will include environmental measures to deal with the effects of the project during the new license, not those that occurred under the previous license.

11. On rehearing, the City states that the Director did not consider that it was asking for a study of the "cumulative effect" and the "ongoing impacts" of the project, not the initial effect of the construction of the dam. However, the City's comments, study request, and rehearing request all refer to the initial construction of the dam and ask that the District identify the socioeconomic impacts from the relocation and displacement of the City when the project was built. In any case, as to the cumulative effect and ongoing impacts of the project on the City, the information requested by the Director in his letter should permit an appropriate analysis of these impacts. The Director's letter stated that staff expects the District to analyze existing available socioeconomic information in the context of the proposed operational and environmental measures of any future license.<sup>16</sup>

The Commission orders:

The rehearing request filed on November 8, 2007, by the City of Pateros, is dismissed.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>14</sup> See *American Rivers v. FERC*, 201 F.3d 1186 at 1195-99 (9th Cir. 2000)

<sup>15</sup> See n.6.

<sup>16</sup> On rehearing, the City expresses concern that the requirement is not clearly spelled out and leaves open to question the methodology that will be used by the District. If after reviewing the socioeconomic information filed by the District as part of its license application, the City believes there are deficiencies, it is free to analyze the information and file comments with the Commission at that time. If Commission staff believes, after reviewing the information requested from the District, that the information is inadequate, it may require the District to file additional information pursuant to 18 C.F.R. § 5.21 (2007).