

131 FERC ¶ 61,038  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Benton Falls Associates

Project No. 5073-091

NOTICE REJECTING REQUEST FOR REHEARING

(April 14, 2010)

On February 24, 2010, the Director of Hydropower Administration and Compliance issued an order amending Benton Falls Associates' (licensee) eel passage operation plan and approving its revised Exhibit L trash rack drawings for the Benton Falls Project No. 5073, located on the Sebasticook River, in Somerset and Waldo Counties, Maine.<sup>1</sup> On March 20, 2010, the Friends of the Kennebec Salmon and Douglas H. Watts (petitioners) filed a joint request for rehearing of the order. On March 26, 2010, the licensee filed an answer to petitioners' request for rehearing.

Under section 313(a) of the Federal Power Act, 16 U.S.C. § 825l (2006), a request for rehearing may be filed only by a party to the proceeding. The petitioners did not file a motion to intervene and thus are not parties to the proceeding. Therefore, the request for rehearing filed by the petitioners must be rejected.

Moreover, in post-licensing proceedings, the Commission will entertain interventions and requests for rehearing only when the filing or order entails a material change in the plan of the project development or in the terms and conditions of the license, or could adversely affect the rights of a property holder in a manner not contemplated by the license, or is being appealed by an agency or entity specifically given a consultation role with respect to the filing.<sup>2</sup>

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<sup>1</sup> 130 FERC ¶ 62,161 (2010) (order approving licensee's request to install a new trash rack with one-inch clear spacing on Unit No. 2, so the licensee could operate the unit in the evening during the downstream eel migration season).

<sup>2</sup> See *Puget Sound Energy, Inc.*, 112 FERC ¶ 61,116 (2005); *City of Tacoma, Washington*, 109 FERC ¶ 61,318 at 62,519 (2004); *City of Tacoma*, 89 FERC ¶ 61,058 at 61,193 (1999); and *Pacific Gas and Electric Company*, 40 FERC ¶ 61,035 at 61,099 (1987).

None of those conditions apply in the present proceeding. The proceeding at issue here addresses the licensee's request to modify its eel passage facility operations, an action contemplated by its downstream eel passage plan approved in 2006.<sup>3</sup> As such, the amendment does not constitute a material change in the plan of project development or affect the rights of property owners in a manner not contemplated by the license. Further, petitioners were not given a consultation role in the development of the eel passage plan. Therefore, in this case, the Commission could not entertain a motion to intervene had one been filed by petitioners.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection notice must be filed within 30 days of the date of issuance of this notice pursuant to 18 C.F.R. § 385.713 (2009).

Kimberly D. Bose,  
Secretary.

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<sup>3</sup> 117 FERC ¶ 62,131 (2006) (order approving upstream and downstream eel passage operation plan and effectiveness study).

Document Content(s)

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