

114 FERC ¶61,261  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

PacifiCorp

Project No. 2659-018

ORDER ON REHEARING AND CLARIFICATION

(Issued March 16, 2006)

1. On November 22, 2005, Commission staff issued an order that: amended PacifiCorp's annual license for the 6-megawatt Powerdale Hydroelectric Project No. 2659, located on the Hood River in Hood River County, Oregon; accepted surrender, with a delayed effective date, of the project's license; and dismissed PacifiCorp's application for a new license for the project.<sup>1</sup> On December 22, 2005, PacifiCorp filed a timely request for rehearing and clarification of the order. This order grants rehearing in part, and clarifies the prior order.

**Background**

2. The original license for the Powerdale Project was issued March 14, 1980, with an effective date of April 1, 1962, and a termination date of March 1, 2000. On February 25, 1998, pursuant to Part I of the Federal Power Act (FPA), PacifiCorp filed an application for a new license.<sup>2</sup> However, after Commission staff issued a final Environmental Assessment (EA) addressing the relicensing proposal, PacifiCorp informed the Commission that it considered the costs of project operation with the terms and conditions recommended in the final EA to be economically unacceptable. It then negotiated and filed a settlement agreement proposing to surrender the license with a delayed effective date.

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<sup>1</sup> 113 FERC ¶ 62,148 (2005).

<sup>2</sup> After expiration of the original license, project operations continued pursuant to annual licenses, pending disposition of PacifiCorp's application for a new license.

3. Based on the settlement proposal, Commission staff issued an order that: (1) amended the project's annual license to permit continued generation and to incorporate proposed protection, mitigation, and enhancement measures for a period lasting until April 1, 2010; (2) required the licensee to cease generation of power on April 1, 2010; (3) provided for removal of project works and implementation of associated protection and mitigation measures by February 29, 2012; and (4) dismissed the application for a new license.
4. The order did not adopt sections of the settlement proposing certain specified land transactions because PacifiCorp did not supply sufficient information to permit a determination of whether the transactions would occur within the project boundary, and/or come within the terms of the project's existing land use article. Rather, the order required PacifiCorp to submit revised Exhibit G drawings delineating the location of the referenced lands, and noted that PacifiCorp may request a further amendment to the annual license to permit the land transactions, supported by information permitting the Commission to make the necessary determinations.<sup>3</sup>
5. On rehearing, PacifiCorp requests: (1) a change in the date by which it must cease generation; (2) permission to implement its proposed land transactions to the extent they are consistent with the existing land use article in the project's annual license; and (3) clarification that the required Exhibit G revision is not intended as a requirement that lands be brought within the project boundary. PacifiCorp also requests clarification of the order's definition of the term "in-water work."

## **Discussion**

### **1. Deadline for Cessation of Operations**

6. PacifiCorp's settlement did not propose a specific date on which it would cease generation and other operations at the project, but Appendix B of the settlement provides for decommissioning activities to begin on April 1 and be completed by November 15, 2010.<sup>4</sup> Accordingly, ordering paragraph (C) of the November 22 Order required PacifiCorp to cease operations by April 1, 2010.<sup>5</sup>

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<sup>3</sup> 113 FERC ¶ 62,148 at P 32, n.39.

<sup>4</sup> See settlement at Appendix B, section 2.0.

<sup>5</sup> See ordering paragraph (C), 113 FERC at 64,434.

7. PacifiCorp maintains that the settlement's reference to April 1 through November 15 for decommissioning activities was meant simply as a description of the construction season and was not intended to require cessation of generation on April 1 if ceasing at a later date would still permit timely completion of the decommissioning activities. PacifiCorp further argues that, in executing the settlement, it contemplated that it would likely cease generating on April 15, 2010, and it requests that the Commission change the cessation deadline to that date.

8. An additional 14 days of generation should not prevent PacifiCorp from completing its decommissioning activities by the November 15, 2010 deadline. Accordingly, we will change the deadline for cessation of operations to April 15, 2010.

## **2. Land Transactions**

9. PacifiCorp's settlement proposed that it be permitted to enter into six land transactions during the period prior to surrender of the project.<sup>6</sup> The surrender order did not adopt the proposal because, as noted above, PacifiCorp did not supply sufficient identification and description of the land or the transactions.

10. On rehearing, PacifiCorp states that each of the proposed land transactions would normally be allowed pursuant to Article 37, the standard land use article of the project's existing license, without prior Commission approval. Therefore, it maintains, the Commission's refusal to amend the project's annual license to adopt the settlement language permitting these transactions improperly restricts them. It requests that the Commission grant rehearing to allow PacifiCorp to implement the transactions "to the extent such activities are consistent with the existing land use article in the project's annual license." It also requests clarification that, to the extent the transactions occur on non-project lands, the Director's order is not intended to restrict them.

11. As PacifiCorp notes, Article 37 of the license provides that certain kinds of land transactions may be conducted without prior Commission approval. To the degree that the proposed land transactions in the settlement's Appendix E come within the ambits of Article 37, amendment of the annual license to specifically authorize them is

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<sup>6</sup> See the settlement's Appendix E, which proposes that PacifiCorp may, in relation to certain specified land parcels: (1) enter into an agricultural lease agreement; (2) grant a perpetual public trail right-of-way easement; (3) trade one land parcel with, or grant an easement to, an individual in exchange for fee simple ownership or an access easement over the individual's property; and (4) renew three land use permits.

unnecessary. Furthermore, to the degree that any of the transactions pertain to non-project lands, the Commission does not have jurisdiction, and the surrender order does not apply to them.

### **3. Project Boundary**

12. Ordering paragraph (D) of the surrender order requires PacifiCorp to submit revised Exhibit G drawings that: (1) enclose all principal project works necessary for operation and maintenance of the project within the project boundary; and (2) delineate the location of lands referenced in section 3.14 of the settlement. Section 3.14 provides that PacifiCorp shall continue to own lands identified in the settlement's Appendix D until March 29, 2012, and shall not dispose of them except for conveyances conducted in accordance with section 4.4 (post-surrender conveyances) and Appendix E (conveyances before effectiveness of the surrender) of the settlement.

13. PacifiCorp states that the majority of the lands referenced in the settlement's Appendix D are outside the project boundary and asks that the Commission clarify that the required revision of Exhibit G drawings "to delineate the location of lands referenced in section 3.14 of the settlement..." is meant to show the existing boundary and the boundaries of the referenced lands simply for reference—that the Commission is not requiring that the lands located outside the boundary be brought within it. We so clarify.

### **4. Definition of "In-Water" Work**

14. In PacifiCorp's settlement, it proposed to conduct in-water decommissioning work between July 15 and August 31, 2010, unless a time period outside of that is approved by the Oregon Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service. The Director's order adopted the proposal, but in doing so, noted that "in-water work" refers to construction-related activities occurring within the wetted portion of the stream channel.<sup>7</sup> On rehearing, PacifiCorp expresses concern that the Commission's definition of "in-water work" could include dam removal or other decommissioning actions performed in areas that have been dewatered for that decommissioning work.<sup>8</sup> It asks us to clarify that such actions in dewatered areas will not be considered in-water work.

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<sup>7</sup> See 113 FERC ¶ 62,148 at P 15, n. 23.

<sup>8</sup> It argues that the agreement explicitly excluded such actions from the definition of "in-water work" in order to permit such activity to extend beyond the July 15-August 31 period to the period between August 31 and November 15.

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15. The “wetted” portion of the stream channel refers to areas containing flowing or standing water. Any portion of the channel that has been dewatered in order to permit dam removal and other decommissioning activities would no longer be considered a part of the “wetted” stream channel.

The Commission orders:

(A) The request for rehearing and clarification filed by PacifiCorp on December 22, 2005, is granted as discussed herein.

(B) Ordering paragraph (C) of the order issued November 22, 2005, is revised to read: “The licensee shall cease generation of power by April 15, 2010.”

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.