

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Utility District No. 1
of Snohomish County, Washington

Project Nos. 12688-001
12689-001
12690-001
12691-001
12692-001
12698-001

NOTICE DISMISSING FILING AS DEFICIENT

(March 22, 2007)

On February 22 and March 9, 2007, Commission staff issued a total of six orders granting Public Utility District No. 1 of Snohomish County, Washington (Snohomish), preliminary permits to study the feasibility of developing six proposed tidal power projects to be located in passages and inlets in Puget Sound, the San Juan Islands, and the Strait of Juan de Fuca, in Kitsap, San Juan, Skagit, and Island Counties, Washington.¹ On March 16, 2007, the National Marine Fisheries Service (NMFS) filed a timely request for rehearing, seeking clarification of the orders.

NMFS' rehearing request is deficient because it fails to include a Statement of Issues section separate from its arguments, as required by Rule 713 of the Commission's Rules of Practice and Procedure.² Rule 713(c)(2) requires that a rehearing request must

¹118 FERC ¶ 62,141 (2007); 118 FERC ¶ 62,142 (2007); 118 FERC ¶ 62,143 (2007); 118 FERC ¶ 62,144 (2007); 118 FERC ¶ 62,145 (2007); 118 FERC 62,188 (2007).

² 18 C.F.R. § 385.713(c)(2) (2006). *See Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, 70 Fed. Reg. 55,723 (September 23, 2005), FERC Statutes and Regulations ¶ 31,193 (2005). *See also*, Order 663-A, effective March 23, 2006, which amended Order 663 to limit its applicability to rehearing requests. *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663-A, 71 Fed. Reg. 14,640 (March 23, 2006), FERC Statutes and Regulations ¶ 31,211 (2006).

Project No. 12688-00, et al.

2

include a separate section entitled "Statement of Issues" listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying.³ Under Rule 713, any issue not so listed will be deemed waived. Accordingly, NMFS' rehearing request is dismissed.⁴

In any event, NMFS's request for rehearing is without merit. NMFS asks for clarification as to whether the preliminary permits authorize Snohomish to install and operate test or pilot (i.e. demonstration) tidal power generating facilities. A preliminary permit does not authorize a permittee to undertake any construction activities. As explained in the six permit orders, the "impression that the Commission might allow the placement of test units under the preliminary permit is misplaced. Placement of test units is not authorized by the issuance of a permit pursuant to the [Federal Power Act]...."⁵ Clarification of the orders is therefore unnecessary.

Philis J. Posey
Acting Secretary

³ As explained in Order No. 663, the purpose of this requirement is to benefit all participants in a proceeding by ensuring that the filer, the Commission, and all other participants understand the issues raised by the filer, and to enable the Commission to respond to these issues. Having a clearly articulated Statement of Issues ensures that issues are properly raised before the Commission and avoids the waste of time and resources involved in litigating appeals regarding which the courts of appeals lack jurisdiction because the issues on appeal were not clearly identified before the Commission. *See* Order No. 663 at P 3-4.

⁴ *See, e.g., South Carolina Electric & Gas Company*, 116 FERC ¶ 61,218 (2006); and *Duke Power Company, LLC*, 116 FERC ¶ 61,171 (2006).

⁵ *E.g.,* 118 FERC ¶ 62,143 (2007). The purpose of a preliminary permit is to maintain priority of application for a license during the term of the permit while the permittee conducts investigations and secures data necessary to determine the feasibility of the proposed project and, if the project is found to be feasible, prepares an acceptable development application. *See National Wildlife Federation v. FERC*, 801 F.2d 1505, 1508 (9th Cir. 1986).