



United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Northwest Region
500 N.E. Multnomah Street, Suite 607
Portland, Oregon 97232

January 9, 2003

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FEDERAL ENERGY REGULATORY COMMISSION

ORIGINAL

VIA OVERNIGHT MAIL

Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 1st Street, N.E.
Washington, D.C. 20426

Re: Portland General Electric, Project No. 477-024
Application for License Amendment and Surrender for the Bull Run Project

Dear Mr. Salas:

Enclosed for filing in the above-referenced proceeding is the Department of the Interior's Motion to Intervene and the Certificate of Service for the above-referenced matter.

Thank you for your assistance in this matter. I may be reached at (503) 231-2142 (telefax 503-231-2166) if you have any questions.

Sincerely,

For the United States
Department of the Interior

Nolan Shishido
Attorney for U.S. Department of the Interior
Office of the Regional Solicitor
Pacific Northwest Region

Enclosures

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PORTLAND GENERAL ELECTRIC)
)
)
APPLICATION FOR LICENSE AMENDMENT) PROJECT NO. 477-024
AND LICENSE SURRENDER FOR THE)
BULL RUN HYDROELECTRIC PROJECT)
_____)

I. MOTION TO INTERVENE

By a notice dated November 21, 2002, the Federal Energy Regulatory Commission (Commission) has solicited comments, motions to intervene, and protests on the licensee's application for license amendment and surrender pursuant to a settlement agreement and decommissioning plan for the Bull Run Hydroelectric Project. The United States Department of the Interior (Department) hereby moves pursuant to 18 C.F.R. § 385.214 (Rule 214) to intervene in this proceeding.

Service of process and other communications concerning this proceeding should be made to:

Nolan Shishido, Attorney
Office of the Regional Solicitor
Pacific Northwest Region
U.S. Department of the Interior
500 N.E. Multnomah, Suite 607
Portland, Oregon 97232

Anne Badgley, Regional Director
Fish and Wildlife Service
Region 1
Attention: Estyn Mead
911 N.E. 11th Avenue
Portland, Oregon 97232

Kemper McMaster, Manager
Fish and Wildlife Service
Oregon State Office
Attention: Ann Gray
2600 S.E. 98th Ave. Suite 100
Portland, Oregon 97266

Elaine Marquis-Brong, State Director
Bureau of Land Management
Oregon/Washington State Office
Attention: Eric Hoffman
P.O. 2965
Portland, Oregon 97208

Brad Keller, Natural Resources Administrator
Bureau of Land Management
Salem District Office
Mary's Peak Resource Area
1717 Fabry Road, SE
Salem, OR 97306

Terence N. Martin
U.S. Department of the Interior
Office of Environmental Policy and Compliance
1849 C Street N.W., MS-2340-MIB
Washington, D.C. 20240

II. MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

On November 12, 2002, the licensee filed an application to amend and surrender the licence for the Bull Run Project pursuant to a settlement agreement and decommissioning plan. On November 21, 2002, the Commission issued a notice of the proposed request and solicited comments, motions to intervene, and protests.

A. THE DEPARTMENT'S INTEREST

The Commission's rules provide that a party seeking intervention must state its interest in the proceeding as well as its position to the extent known. 16 C.F.R. § 385.214 (Rule 214). The Department represents a number of significant public

interests based upon statutory authorities and responsibilities, and its trust responsibility to Indian tribes. The interests include the following.

The Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, authorizes the Secretary of the Interior (Secretary) to assist and cooperate with federal and private agencies to assure that fish and wildlife conservation measures receive "equal consideration" and are coordinated with other features of water projects. 16 U.S.C. § 661; 16 U.S.C. § 803(j). The consultation is to take place "with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof. . . ." 16 U.S.C. § 662(a). The Fish and Wildlife Act of 1956, as amended, requires the Secretary to determine the policies and procedures necessary to implement fish and wildlife laws efficiently and in the national public interest. 16 U.S.C. § 742f(a). With the Departmental staff, the Secretary is authorized to develop and recommend measures to assure a maximum sustainable production of fish and to "take such steps as may be required for the development, advancement, management, conservation, and protection of fish and wildlife resources." Id. Pursuant to Section 10(j) of the Federal Power Act, the Secretary, acting through the Fish and Wildlife Service, has the authority to recommend license conditions in order to adequately and equitably protect, mitigate damages to, and enhance, fish and

wildlife including related spawning grounds and habitat. 16 U.S.C. § 803(j). Under Section 18 of the Federal Power Act, the Secretary has the authority to prescribe fishways to be maintained and operated by the licensee. 16 U.S.C. § 811.

Acting through the Fish and Wildlife Service and other Departmental officials, the Secretary also has special authorities and responsibilities to protect and manage the nation's fish and wildlife resources under the Fish and Wildlife Act, supra; the Bald and Golden Eagle Act, 16 U.S.C. §§ 668-669(d); the Endangered Species Act, as amended, 16 U.S.C. §§ 1531-1543; and the Migratory Bird Treaty Act, 16 U.S.C. §§ 703-711.

The Secretary primarily through the Bureau of Indian Affairs has been delegated the authority to manage "all Indian affairs and . . . all matters arising out of Indian relations." 25 U.S.C. § 2. Pursuant to that authority and the United States' trust responsibility to Indian tribes, the Secretary of the Interior is responsible for the protection of the fishing rights of Indian tribes, as reserved by and secured to the tribes in treaties with the United States or executive orders.

In surrender proceedings, the Department through its affected bureaus has special responsibilities where, as here, part of the project is located on lands administered by a departmental bureau. See 18 C.F.R. § 6.2.

The above authorities manifest a Congressional intent that

the Department represent the national public interest and Indian trust interests in the protection of fish, wildlife, and other resources, that may be affected by activities by the licensee under the license for this project. No other party to these proceedings has such authority or responsibility to represent all these unique and significant public interests.

B. ANTICIPATED POSITION OF THE DEPARTMENT

The Department has a particular interest in this proceeding as both the Bureau of Land Management and the Fish and Wildlife Service are parties to the settlement submitted by the licensee. The licensee has worked cooperatively with the Fish and Wildlife Service, the Bureau of Land Management, and other parties in the development of the proposed application and settlement. The settlement and decommissioning plan resolve the issues raised by the surrender and decommissioning of the Project. The Department anticipates that it will seek to ensure that any order on the application for license amendment and surrender will be consistent with the Department's interests as stated above.

C. CONCLUSION

The Department represents substantial public interests not represented by any other party to this proceeding. For the above reasons, the Department seeks to intervene in this proceeding.

RESPECTFULLY SUBMITTED this 9th day of January, 2003.

For the United States Department
of the Interior



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**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

PORTLAND GENERAL ELECTRIC)
) **PROJECT NO. 477-024**
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APPLICATION FOR LICENSE AMENDMENT)
AND LICENSE SURRENDER FOR THE)
BULL RUN HYDROELECTRIC PROJECT)
_____)

CERTIFICATE OF SERVICE

I hereby certify that I have this date mailed by overnight or first class mail, postage prepaid, the Department of the Interior's Motion to Intervene in the above captioned matter to the following parties:

Honorable Magalie R. Salas
(Original and 8 copies - via overnight mail)
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888 1st Street, N.E.
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Washington, D.C. 20426

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State Director
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Attn: Eric Hoffman
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Kemper McMaster, Manager
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Brad Keller
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Dated the 9th of January 2003.


Colleen Gooding