

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Idaho Power Company

Project No. 1971-093

ORDER DEFERRING ACTION

(Issued October 27, 2004)

1. On September 7, 2004, Idaho Power Company filed a timely request for rehearing of a Commission order granting a petition by American Rivers and other groups (collectively “American Rivers”).¹ The petition asked the Commission to consult formally with the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA Fisheries), pursuant to the Endangered Species Act (ESA)² with respect to the ongoing impacts of the Hells Canyon Project No. 1971 on listed salmonid species and their habitat.³
2. On October 26, 2004, Idaho Power filed a request for the Commission to defer action on the request for rehearing. The company states that it is engaged in settlement discussions with resource agencies and other intervenors regarding both interim and long-term issues raised by American Rivers’ petition and by Idaho Power’s pending relicense application for the Hells Canyon Project. According to the company, there is now a possibility that the issues raised by its request for rehearing can be resolved amicably, in which case its request for rehearing would become moot. According to Idaho Power, deferral would prevent the waste of the Commission’s and the parties’ resource that would be occasioned by any appeal of an order on rehearing.

¹ The groups filing the petition were: American Rivers, Northwest Environmental Defense Center, Oregon Natural Resources Council, Pacific Coast Federation of Fishermen’s Associations, Trout Unlimited, Institute for Fisheries Resources, Federation of Fly Fishers, and Sierra Club.

² 16 U.S.C., § 1531 *et seq.*

³ See 108 FERC ¶ 61,158 (2004).

3. We are strongly in favor of settlements, particularly in cases as hotly contested and complex as the Hells Canyon proceedings. At the same time, we believe that it is not good policy to defer indefinitely action on matters that have been presented to us for resolution. Therefore, we will grant Idaho Power's request, and defer acting on its rehearing request for rehearing until December 1, 2004. If a settlement has not been reached by the point, we will be prepared to act.

The Commission orders:

The request for deferral of action, filed by Idaho Power Company on October 26, 2004 is granted, until December 1, 2004.

By the Commission. Commissioner Kelliher concurring with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

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KELLIHER, Commissioner, concurring

I support the order, and believe it is appropriate for the Commission to grant the parties additional time to resolve issues relating to Idaho Power Company's license application and American Rivers' petition to initiate formal consultation. However, I would have granted more time than allowed under the order. It is Commission policy to encourage settlements. Unfortunately, it is very unlikely that a settlement can be reached in the short time allowed by the order, a mere 35 days. By not granting the parties sufficient time, we may actually preclude the prospect of a settlement.

Joseph T. Kelliher