

171 FERC ¶ 61,045  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick, Bernard L. McNamee,  
and James P. Danly.

Public Utility District No. 1 of Chelan County,  
Washington

Project No. 943-131

ORDER GRANTING APPROVAL UNDER SECTION 22  
OF THE FEDERAL POWER ACT

(Issued April 16, 2020)

1. On October 16, 2019, the Public Utility District No. 1 of Chelan County, Washington (Chelan PUD), licensee for the Rock Island Hydroelectric Project No. 943 (Rock Island Project), filed, pursuant to section 22 of the Federal Power Act (FPA),<sup>1</sup> an application for Commission approval of an agreement that provides for the sale of power from the Rock Island Project to Avista Corporation (Avista) beyond the term of Chelan PUD's existing license for the project.<sup>2</sup> For the reasons discussed below, we grant the application.

**I. Background and Proposal**

2. The 412.41-megawatt (MW) Rock Island Project is located on the Columbia River in Chelan and Douglas counties, Washington.<sup>3</sup> The current project license was issued effective January 1, 1989, and expires on December 31, 2028. Chelan PUD explains that it has entered into long-term energy, capacity, and other related product contracts with Avista and other entities, because the electric load in Chelan County has been insufficient to consume the entire output from the projects.

---

<sup>1</sup> 16 U.S.C. § 815 (2018).

<sup>2</sup> *Public Utility District No. 1 of Chelan County, Washington*, 46 FERC ¶ 61,033 (1989).

<sup>3</sup> The Rock Island Project was originally licensed as a 622.5 MW project. The Rock Island Project license has been amended several times since 1989, most recently in 2018 to authorize the present authorized capacity. See *Public Utility District No. 1 of Chelan County, Washington*, 165 FERC ¶ 62,108 (2018).

3. Chelan PUD currently sells power to Avista from two licensed projects. On June 23, 2017, Chelan PUD and Avista executed a contract (the Agreement) for the sale to Avista of a percentage of the power produced at the Rocky Reach Hydroelectric Project No. 2145 (Rocky Reach Project)<sup>4</sup> and the Rock Island Project. Chelan PUD notes that the Agreement is an extension of a preexisting contact between the parties. Under the Agreement, the Rock Island Project will provide Avista with five percent of the output from the Rock Island and Rocky Reach Projects. The Agreement stipulates that Avista must pay monthly equal payments to Chelan PUD for the output<sup>5</sup> provided by the projects, as determined by dividing the purchase price for each calendar year by twelve.<sup>6</sup>

4. Although the Agreement was executed in 2017, the power sales under it would not commence until January 1, 2021. According to the Agreement, sales from both projects would end on December 31, 2030, which will be two years after the expiration of the Rock Island Project license, but within the term of the license for the Rocky Reach Project. Because the Agreement will extend beyond the term of the current license for the Rock Island Project, Chelan PUD has requested approval of the Agreement under section 22 of the FPA.<sup>7</sup>

5. On January 9, 2020, the Commission issued public notice of the application.<sup>8</sup> The notice established February 10, 2020, as the deadline for filing comments and interventions. Washington Department of Fish and Wildlife filed, after the deadline, a

---

<sup>4</sup> Rocky Reach Project's existing license was issued effective February 1, 2009, and expires on January 31, 2052. *Public Utility District No. 1 of Chelan County, Washington*, 126 FERC ¶ 61,138 (2009).

<sup>5</sup> The output is defined in the Agreement as "an amount of Energy [energy production], Capacity [generation potential], and certain related rights available from the Rocky Reach Project and the Rock Island Project . . . ." Chelan PUD October 16, 2019 Application, Attachment A at 2-4 (Application).

<sup>6</sup> Application, Attachment A at 9.

<sup>7</sup> Since the Agreement will expire during the current license term for the Rocky Reach Project, Chelan PUD asserts that no authorization, pursuant to section 22 of the FPA, will be needed with respect to this Agreement for the Rocky Reach Project.

<sup>8</sup> 85 Fed. Reg. 2734 (Jan. 16, 2020).

notice to intervene, which was denied.<sup>9</sup> No timely motions, protests, or comments were filed.

## II. Discussion

6. Section 22 of the FPA provides in pertinent part:

That whenever the public interest requires or justifies the execution by the licensee of contracts for the sale and delivery of power for periods extending beyond the date of termination of the license, such contracts may be entered into upon the joint approval of the [C]ommission and of the public-service commission or other similar authority in the State in which the sale or delivery of power is made, . . . and thereafter, in the event of failure to issue a new license to the original licensee at the termination of the license, the United States or the new licensee, as the case may be, shall assume and fulfill all such contracts.<sup>[10]</sup>

7. The legislative history of section 22, which is not extensive, indicates that the Commission is to use its sound discretion in approving contracts extending beyond the term of the license.<sup>11</sup> The Commission has previously approved applications under section 22 to accommodate situations where, in the absence of a power sales contract extending beyond the license termination date, the licensee would be unable to sell the project power and thereby finance the project.<sup>12</sup>

---

<sup>9</sup> See Secretary's March 9, 2020 Notice Denying Late Intervention.

<sup>10</sup> 16 U.S.C. § 815. Section 14 of the FPA, 16 U.S.C. § 807 (2018), provides that the United States shall have the right upon or after expiration of any license to take over a project, upon payment of the licensee's net investment therein. However, hydropower projects licensed to municipalities are not subject to such federal take-over. See the Act of August 15, 1953, 67 Stat. 587, as amended on July 31, 1959, 73 Stat. 271, 16 U.S.C. § 828b (2018). Chelan PUD is a municipal corporation organized under the laws of the State of Washington.

<sup>11</sup> See debate on H.R. 3184, which was introduced in the 66<sup>th</sup> Congress by Representative Esch and became the Federal Water Power Act of 1920. 58 Cong. Rec. 2240-41 (July 1, 1919).

<sup>12</sup> See, e.g., *Placer County Water Agency*, 142 FERC ¶ 61,117 (2013); *American Municipal Power – Ohio, Inc.*, 126 FERC ¶ 61,197 (2009); *Brazos River Authority*, 124 FERC ¶ 61,251 (2008); *Public Utility District No. 1 of Chelan County, Washington*, 124 FERC ¶ 61,250 (2008); *Public Utility District No. 2 of Grant County, Washington*, 112 FERC ¶ 61,230 (2005); *Public Utility District No. 1 of Pend Oreille County*,

8. In its application for section 22 approval, Chelan PUD states that the Agreement will enhance its ability to maintain a high bond rating; service long-term debt; and contribute revenue to cover relicensing, major rehabilitation efforts, public projects, and operations and maintenance costs of the projects.<sup>13</sup> Chelan PUD notes that the ongoing rehabilitation project at the Rock Island Project will allow it to provide Avista and other customers with “low-cost, carbon-free and highly reliable electric service, and lake and river access.”<sup>14</sup> Chelan PUD also explains that the Agreement’s extension beyond the expiration date of the current license for the Rock Island Project would provide significant benefits to Chelan PUD, its customer-owners, and Avista, by providing financial stability during the relicensing process, including support for the associated costs of relicensing.

9. In previous orders we have considered how the contracts might affect the interests of the purchasing entities if a new license were issued to an entity other than the current licensee.<sup>15</sup> In those cases, the Commission found that the interests of the purchasing entities were protected either because the contracts stated that they would remain in effect only so long as the current licensee remained the licensee or because the agreement extended only a few years beyond the current license term. Here, the Agreement extends only two years after the current license term, and states that if Chelan PUD is unable to operate the Rock Island Project, due to the inability to obtain a new license, then the purchaser (i.e., Avista) would be entitled to a reduction equal to 28.6% of the purchase price for the years 2029 and 2030.<sup>16</sup> We have no reason to conclude that the public

---

*Washington*, 87 FERC ¶ 61,095 (1999); *Public Utility District No. 1 of Douglas County, Washington*, 83 FERC ¶ 61,126 (1998); *Public Utility District No. 2 of Grant County, Washington*, 81 FERC ¶ 61,363 (1997); *Kings River Conservation District*, 9 FERC ¶ 61,340 (1979); and *Sabine River Authority of Texas and Sabine River Authority, State of Louisiana*, 31 FPC 885 (1964).

<sup>13</sup> Application at 5-6. Specifically, Chelan PUD states that the Agreement will continue to support major investment projects at the Rock Island Project, including the rehabilitation and modernization of certain turbine generating infrastructure and equipment in both Powerhouse 1 and Powerhouse 2. *Id.* at 5.

<sup>14</sup> Application at 5.

<sup>15</sup> See *Public Utility District No. 1 of Chelan County, Washington*, 114 FERC ¶ 61,314 (2006); *Public Utility District No. 2 of Grant County, Washington*, 112 FERC ¶ 61,230 (2005).

<sup>16</sup> Application, Attachment A at 21.

interest would not be served if in the future the license were to be transferred to another entity subject to the existence of the Agreement.

10. For the above reasons, we find that approval of the power purchase contract under section 22 of the FPA is in the public interest.<sup>17</sup>

The Commission orders:

(A) Public Utility District No. 1 of Chelan County, Washington's application, filed October 16, 2019, for approval of the power sales agreement between Chelan PUD and Avista, dated June 23, 2017, as it pertains to the sale of power from Rock Island Project to Avista for a term commencing January 1, 2021, and expiring on December 31, 2030, is granted.

(B) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body.

(C) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in § 313(a) of the Federal Power Act, 16 U.S.C. § 825/ (2018), and the Commission's regulations at 18 C.F.R. § 385.713 (2019). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

( S E A L )

---

<sup>17</sup> As noted, section 22 provides that power sales contracts extending beyond the license termination date must be approved by both the Commission and the public service commission or other similar authority in the State in which the sale or delivery of power is made. Chelan PUD states it is an appropriate state authority for this purpose, as the Chelan PUD Board of Commissioners is authorized by state law to set rates for Chelan PUD power sales. On February 18, 2014, the Chelan PUD Board of Commissioners approved a resolution authorizing Chelan PUD's General Manager to purchase and sell energy and capacity as provided in the Agreement. Application, Attachment B at 3-5.

Kimberly D. Bose,  
Secretary.