

167 FERC ¶ 61,242
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Public Utility District No. 2 of Grant County,
Washington

Project No. 2114-300

ORDER DENYING REHEARING

(Issued June 20, 2019)

1. On February 19, 2019, Commission staff issued an order approving a Recreation Resource Management Plan update (Recreation Plan Update) filed by Public Utility District No. 2 of Grant County, Washington (Grant PUD), licensee for the Priest Rapids Hydroelectric Project No. 2114 (Priest Rapids Project).¹ On March 21, 2019, Pat Kelleher filed a timely request for rehearing of the February 19 Order. For the reasons discussed below, we deny Mr. Kelleher's request for rehearing.

I. Background

2. The Priest Rapids Project is located on the mid-Columbia River in portions of Grant, Yakima, Kittitas, Douglas, Benton, and Chelan Counties, Washington, and includes both the Priest Rapids and Wanapum dams and associated reservoirs. The project has a combined authorized capacity of 1,410 megawatts and occupies 34,571 acres.

3. The Commission issued a new 44-year license for the project on April 17, 2008.² As relevant here, the license requires the operation and maintenance of various developed and previously undeveloped recreation facilities, including boat launches, campgrounds,

¹ *Public Utility District No. 2 of Grant County, Washington*, 166 FERC ¶ 62,076 (2019) (February 19 Order).

² *Public Utility District No. 2 of Grant County, Washington*, 123 FERC ¶ 61,049 (2008) (License Order). The project was originally licensed in 1955 for a 50-year term. *Public Utility District No. 2 of Grant County, Washington*, 14 F.P.C. 1067 (1955).

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and picnic areas.³ Article 418 of the license approved a Recreation Plan that Grant PUD had filed with its license application, with modifications, and required, among other things, that Grant PUD file for Commission approval periodic updates to the Recreation Plan.⁴ The plan must be reviewed and updated every 12 years, after consultation with the U.S. Fish and Wildlife Service, Washington Department of Fish and Wildlife, Washington Recreation and Conservation Office, the U.S. Department of the Interior's Bureaus of Land Management and Reclamation, the Wanapum Indians (Wanapum), the Confederated Tribes and Bands of the Yakama Nation, and Kittitas County. As part of the review and update of the plan, the licensee must assess the adequacy of existing project recreation facilities to meet current recreation needs at the project. The update must also describe, as appropriate, any additional measures or modifications to the facilities that are needed and a schedule for implementing such changes.

4. On March 31, 2017, as supplemented on April 28, 2017, Grant PUD filed a Recreation Plan Update.⁵ The update included: a description of existing recreation facilities, along with a status of the recreation improvements required by Article 418; a summary of the studies used to inform a recreation needs assessment; an implementation plan for additional improvements; requests for specific amendments and details related to specific recreation areas; and an updated recreation facilities table.

³ License Order, 123 FERC ¶ 61,049 at ordering para. (B). As a result of a series of amendments approved following the issuance of the project license in 2008, there are currently 17 developed and undeveloped recreation sites at the Wanapum Development and 8 at the Priest Rapids Development. *See* February 10 Order Modifying and Approving in Part Amendments to Articles 418 and 419, 138 FERC ¶ 62,114 (2012); September 20 Order on Rehearing and Amending License Article 418, 140 FERC ¶ 61,201 (2012); April 10 Order Amending Recreation Resource Management Plan Under Article 418, 143 FERC ¶ 62,022 (2013); April 29 Order Amending Recreation Resource Management Plan Under Article 418, 143 FERC ¶ 62,070 (2013); February 20 Order Modifying and Approving Recreation Resource Management Plan Under Article 418, 146 FERC ¶ 61,102 (2014); August 1 Order Amending Recreation Resource Management Plan Pursuant to Article 418, 148 FERC ¶ 62,097 (2014); and September 21 Order Modifying and Approving, in Part, Amendment to Recreation Resources Management Plan Under Article 418, 156 FERC ¶ 62,205 (2016).

⁴ License Order, 123 FERC ¶ 61, 049 at 61,335 (“The licensee shall file for Commission approval periodic updates to the Priest Rapids Recreation Resource Management Plan. The first update shall be due April 1, 2015, and subsequent updates shall be filed every 12 years thereafter during the term of the license.”).

⁵ Although the update was due by April 1, 2015, Commission staff granted several extensions of time. *See* February 19 Order, 166 FERC ¶ 62,076 at P 5.

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5. The February 19 Order found that the Recreation Plan Update complied with the requirements of Article 418. Among other things, the order approved certain recreation site improvements, required Grant PUD to file a report documenting completion of the additional improvements, and to file monitoring reports to ensure that recreation needs are being met at various recreation sites. Additionally, the order responded to stakeholder comments, including Mr. Kelleher's comments regarding the inadequacy of parking spaces and the need for swimming access at the Vantage Boat Launch, recommendations for new recreation facilities, project boundary issues, the process by which the licensee prepared the Recreation Plan Update, and access to the Priest Rapids dam tailrace.⁶

6. On March 21, 2019, Mr. Kelleher filed a request for rehearing of the February 19 Order, generally arguing that staff acted arbitrarily and capriciously in approving Grant PUD's Recreation Plan Update. Mr. Kelleher specifically alleges that staff erred in issuing the order without: (1) using publicly available information to assess the condition of certain project facilities; (2) requiring the licensee to amend the project boundary to include the Wanapum Heritage Center; and (3) ensuring adequate public access to project waters and other facilities.

II. Discussion

7. It is unclear from Mr. Kelleher's request for rehearing the exact nature of the errors he alleges in the February 19 Order. Moreover, Mr. Kelleher does not make clear how he is aggrieved by the Order. We nonetheless address his arguments below as we construe them.

8. Mr. Kelleher first argues that staff acted arbitrarily and capriciously by using publicly available information to inform the decision to approve Grant PUD's Recreation Plan Update,⁷ but failing to do so to determine the condition of project facilities at the Vantage Boat Launch, primarily the restroom facilities and "exclusive private camping."⁸

⁶ *Id.* PP 26-26 and 31-37.

⁷ As discussed in the February 19 Order, in response to Mr. Kelleher's comment that the licensee reduced the number of parking spaces for vehicles at the Vantage Boat Launch by converting the vehicle parking spaces into trailer spaces, staff noted that it used publicly available information to confirm that the Vantage Boat Launch has included spaces for vehicles with trailers since at least 2006, which conforms to the approved Recreation Plan. *Id.* P 27.

⁸ Kelleher March 21, 2019 Rehearing Request at 3-7.

Mr. Kelleher misunderstands Commission staff's review of the Recreation Plan Update.⁹ Article 418 required the licensee to assess the adequacy of existing project recreation facilities to meet current recreation needs at the project and to update the Commission on any additional measures or modifications that may be needed. In response to Mr. Kelleher's comments regarding the adequacy of the number of parking spaces at the Vantage Boat Launch, staff confirmed through accurate and publicly available historical aerial photographs that the licensee had not reduced the number of parking spaces, as alleged by Mr. Kelleher, and explained this in the February 19 Order.¹⁰

9. Additionally, Mr. Kelleher alleges for the first time on rehearing, that the Wanapum Heritage Center is a project facility that was constructed by Grant PUD pursuant to Article 417 of the project license, and that staff should have required the licensee to amend the project boundary to include the Wanapum Heritage Center. This assertion is untimely and we thus need not consider it, since parties may not raise issue for the first time on rehearing.¹¹ Nonetheless, as noted in the February 19 Order, the

⁹ Although Mr. Kelleher argues that Commission staff failed to use publically available information, he does not provide any detail on what public information he believes staff should have considered. For the first time on rehearing, Mr. Kelleher provides two photographs to support his contention that restroom facilities at the Priest Rapids Project are in poor condition and that there is unauthorized camping. Even if the photographs were provided to the Commission during the review of the Recreation Plan Update, it is unclear how the two unlabeled photographs would inform staff's determination of whether to approve the Recreation Plan Update.

¹⁰ Mr. Kelleher's complaints regarding the condition of restroom facilities at the boat launch were addressed in a separate proceeding. Commission staff reviewed comments filed by Mr. Kelleher on May 29, 2018, and August 7, 2018, alleging poor maintenance of the restroom facilities at the Vantage Boat Launch. In an August 20, 2018 letter to Mr. Kelleher, staff responded that the facilities were currently closed due to severe vandalism that occurred before the start of the 2018 recreation season. *See* August 20, 2018 Letter from Division of Hydropower Administration and Compliance to Mr. Kelleher. As a result, the licensee provided six portable toilets as a temporary measure until the repairs are made and the restrooms reopened. Staff found that since adequate temporary sanitation facilities were provided during the closure of the permanent facilities, Grant PUD was operating in compliance with its license. Grant PUD stated that it planned to begin repairs to the restroom building in early spring 2019.

¹¹ *See, e.g., Transcontinental Gas Pipe Line Co., LLC*, 161 FERC ¶ 61,250, at P 58 (2017) ("As a rule, we reject requests for rehearing that raise a novel issue, unless we find that the issue could not have been previously presented."). Rule 713(c)(3) of our Rules of Practice and Procedure states that any request for rehearing must "[s]et forth the

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Wanapum Heritage Center is not a project recreation facility and is not required to be included in the project boundary.¹² As discussed in the February 19 Order, the Heritage Center was constructed by the licensee and is operated by the Wanapum Tribe. The Heritage Center is part of the licensee's ongoing commitment to the Wanapum and includes provisions to ensure the identification, protection, and management of cultural resources.¹³ However, contrary to Mr. Kelleher's assertion, Article 417 does not mandate construction of the Wanapum Heritage Center.¹⁴

10. Mr. Kelleher also asserts that staff acted arbitrarily and capriciously by not resolving alleged issues regarding motorized boat access to the Priest Rapids dam tailrace, appearing to contend that the Wanapum need to access project waters to launch motorized boats from below the Priest Rapids Dam.¹⁵ Mr. Kelleher has made no showing that he has any interest in tribal affairs and thus is not aggrieved by any portions of the Recreation Plan or that update that affect the tribe. In any case, the Recreation Plan Update does not change the recreational uses at the Priest Rapids Dam tailrace recreation area and there is no evidence in the record to support modifying the Recreation Plan's treatment of public boat launches within the project boundary.¹⁶ Significantly, the

matters relied upon by the party requesting rehearing, if rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order." 18 C.F.R. § 385.713(c)(3) (2018).

¹² February 19 Order, 166 FERC ¶ 62,076 at P 19.

¹³ See *id.* P 19 (citing Commission staff's order approving MOA pursuant to Article 417, 138 FERC ¶ 62,292 (2012)).

¹⁴ The Heritage Center was developed under a memorandum of agreement between the licensee and the Tribe.

¹⁵ The Wanapum Indian Village is located within the project boundary, across the Priest Rapids Dam tailrace from the site identified for recreation development in the recreation plan.

¹⁶ As the February 19 Order explained, Grant PUD was required to provide the Wanapum Tribe with an opportunity to comment on the Recreation Plan Update during the consultation period prior to filing. The Wanapum did not provide any comments during the consultation period, nor did they file comments in response to the Commission's notice of the filing of the Recreation Plan Update. Due to its cultural significance (it has been proposed for designation as a traditional cultural property), the Wanapum have been involved in matters regarding the Priest Rapids tailrace recreation area. In fact, in an amendment proceeding, the licensee agreed with the Wanapum to limit the recreation available at the site to existing uses (i.e., confining vehicular use to

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Wanapum Tribe provided no comments on the Recreation Plan Update and accordingly do not appear to support Mr. Kelleher's argument.

11. Last, Mr. Kelleher alleges that the residents of the nearby Town of Beverly do not have sufficient swimming access. As with the issue regarding tribal access, Mr. Kelleher does not show that he has any cognizable interest in this issue. Additionally, there is no license requirement for swimming near the Town of Beverly. However, as discussed in the February 19 Order, several project recreation sites that provide a variety of recreation opportunities, including picnicking, fishing, boating, viewing interpretive exhibits, and hiking/walking, are readily accessible by the residents of Beverly, including Wanapum Overlook (4.3 miles from the town); Wanapum Dam Upper and Lower Boat Launches, Grant PUD Visitors Center, and Wanapum Dam Turbine Park (all approximately 3.7 miles away); and Burkett Lake Recreation Area (1 mile away).¹⁷ Swimming access is available at the Priest Rapids Recreation Area approximately 11.7 miles south of Beverly and the Sand Hollow Recreation Area approximately 14.7 miles north of Beverly. Further, the Commission did not receive any comments from residents of Beverly during the public comment period, such that there is no evidence that the residents of Beverly are not satisfied with the extent of their access to project facilities.

The Commission orders:

The request for rehearing filed in this proceeding by Mr. Pat Kelleher on March 21, 2019, is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

existing roads and providing signage regarding public use), and to not implement additional development at the tailrace recreation area. *See Public Utility District No. 2 of Grant County, Washington*, 146 FERC ¶ 61,102 (2014).

¹⁷ February 19 Order, 166 FERC ¶ 62,076 at P 34.