

168 FERC ¶ 61,182
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Island in the Sky Hydro, LLC

Project No. 14805-001

ORDER DENYING REHEARING

(Issued September 19, 2019)

1. On June 17, 2019, Commission staff issued an order cancelling Island in the Sky Hydro LLC's (Island Hydro) preliminary permit for the Island Hydroelectric Project No. 14805 (Island Project).¹ The proposed project would be located on the Blackstone River, in Central Falls, Providence County, Rhode Island. On July 17, 2019, Island Hydro filed a request for rehearing of the June 17 Order. For the reasons discussed below, the request for rehearing is denied.

I. Background

2. On April 3, 2017, Commission staff issued Island Hydro a three-year preliminary permit to study the feasibility of the Island Project.² The proposed project would use an existing dam, impoundment, powerhouse, and appurtenant facilities owned by the State of Rhode Island and would have an estimated annual generation of 4,630 megawatt-hours.

3. Article 4 of the preliminary permit requires Island Hydro to submit a progress report every six months. On May 10, 2019, Commission staff issued a letter to Island Hydro notifying it of its failure to file a fourth progress report by the due date of March 31, 2019.³ The May 10 Letter stated that failure to file the fourth progress report

¹ *Island in the Sky Hydro, LLC*, 167 FERC ¶ 62,177 (2019) (June 17 Order).

² *Island in the Sky Hydro, LLC*, 159 FERC ¶ 62,001 (2017).

³ Commission May 10, 2019 Letter (May 10 Letter).

(continued ...)

within 30 days would result in the probable cancellation of the permit pursuant to section 5 of the Federal Power Act (FPA).⁴

4. Island Hydro did not file a response or the fourth progress report, and, on June 17, 2019, Commission staff issued an order cancelling Island Hydro's preliminary permit for failure to file the report.⁵

5. On July 17, 2019, Island Hydro filed a request for rehearing of the June 17 Order. Island Hydro argues that the permit should be reinstated due to extraordinary circumstances and in light of the significant progress it has made in developing a license application.

II. Discussion

6. Island Hydro states that it failed to file its fourth progress report or respond to the May 10 Letter because an unnamed consultant responsible for the filing was involved in a serious car accident in early April. Thus, Island Hydro concludes that extraordinary circumstances warrant reinstatement of the permit.

7. Island Hydro also asserts that it has made significant progress in preparing a development application. Specifically, Island Hydro notes that it filed a draft pre-application document (PAD) with its rehearing request; has conducted preliminary energy modeling, site layouts, and outreach to relevant agencies; and developed preliminary protection, mitigation, or environmental enhancement measures. Subsequent to the filing of its rehearing request, Island Hydro filed a Notice of Intent (NOI) and PAD, both of which are required to initiate the Commission's pre-filing process.⁶

8. The Commission's long-standing policy is to grant requests for rehearing of canceled preliminary permits only when warranted by extraordinary circumstances.⁷

⁴ 16 U.S.C. § 798(d) (2018).

⁵ June 17 Order, 167 FERC ¶ 62,177.

⁶ See Island Hydro August 16, 2019 Notice of Intent and Pre-Application Document.

⁷ See *Columbia Basin Hydropower*, 165 FERC ¶ 61,258, at P 12 (2018); *BOSTI Hydroelectric LLC*, 156 FERC ¶ 61,044 (2016); *Taft Hydropower, Inc.*, 42 FERC ¶ 61,241 (1988). The "extraordinary circumstances" standard stems from Rule 2008 of the Commission's Rules of Practice and Procedures, which states, "If any motion for extension of time is made after the expiration of a specified time period, the decisional authority may permit performance of the act required or allowed, if the movant shows (continued ...)"

9. Here, Commission staff's May 10 Letter was addressed to Mr. Ronald L. Johnson, who is both Island Hydro's president and the only person Island Hydro has identified as its authorized agent for purposes of administration of the preliminary permit.⁸ As Mr. Johnson was not the consultant involved in the car accident, Mr. Johnson could have responded to Commission staff's May 10 Letter with, at the very least, an explanation as to why Island Hydro could not file the required fourth progress report in a timely manner. Instead, Mr. Johnson was unresponsive. Moreover, the report was due on March 31, some time before the referenced car accident, so that Island Hydro's tardiness cannot be explained by that incident. We therefore find that Island Hydro has not demonstrated extraordinary circumstances sufficient for us to reinstate its permit and we deny Island Hydro's request for rehearing. Nevertheless, because the holding of a preliminary permit is not a prerequisite to the filing of a license application, Island Hydro may continue to pursue a license under the FPA.

The Commission orders:

Island Hydro's July 17, 2019 request for rehearing is denied.

By the Commission. Commissioner Glick is dissenting with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

extraordinary circumstances sufficient to justify the failure to act in a timely manner." 18 C.F.R. § 385.2008 (2019). *See also The Nuclear Energy Group, Inc.*, 28 FERC ¶ 61,324, at 61,599 (1984) ("[T]he public interest requires the time limits established by our regulations for [preliminary permit] proceedings to be strictly enforced.").

⁸ *See* Island Hydro November 14, 2016 Preliminary Permit Application, Initial Statement, at 7.

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GLICK, Commissioner, *dissenting*:

1. I would grant rehearing and reinstate the preliminary permit. Island in the Sky Hydro has, in my opinion, adequately explained its failure to respond to Commission staff's letter and, under the circumstances, I do not see the benefit to anyone of canceling its preliminary permit.

2. I also do not agree with the suggestion in today's order that the Commission should overturn Commission staff's determination only if it finds that there are extraordinary circumstances.¹ I can perhaps appreciate a relatively high standard for granting rehearing if the Commission *itself* had issued the underlying order. But today's order is the Commission's first opportunity to address this issue. Under those circumstances, I believe that the Commission should take a fresh look on rehearing—akin to *de novo* review—and decide the issue using our best judgment rather than departing from Commission staff's decision “only when warranted by extraordinary circumstances.”²

For these reasons, I respectfully dissent.

Richard Glick
Commissioner

¹ *Island in the Sky Hydro, LLC*, 168 FERC ¶ 61,182, at P 8 (2019).

² *Id.*