

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

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Catamount Metropolitan District

Project No. 14368-001

ORDER ON REHEARING AND DENYING STAY

(Issued December 18, 2014)

1. On August 13, 2013, the Director of the Office of Energy Projects issued an order granting an exemption from the licensing requirements of Part I of the Federal Power Act (FPA)¹ to the Catamount Metropolitan District (District) for the Catamount Hydroelectric Project No. 14368.² The project is located on the Yampa River in Routt County, near the City of Steamboat Springs, Colorado.

2. The District filed a timely request for rehearing of the exemption order, requesting that the Commission revise certain operational conditions of the exemption to be consistent with how the District operates the dam and reservoir. Yampa Realty Holdings, LLC (Yampa Realty) also filed a timely request for rehearing, arguing that the District's exemption application was deficient and that the exemption order and Commission staff's final environmental assessment (EA) did not take a "hard look" at the project's noise impacts on the surrounding area. Yampa Realty also requests that the Commission stay the exemption order until the Commission performs a comprehensive noise analysis. As discussed below, we are granting in part the District's request for rehearing and denying Yampa Realty's requests for rehearing and for stay of the exemption order.

I. Background

3. The Public Utility Regulatory Policies Act of 1978, as amended in 2013, authorizes the Commission to exempt from the licensing requirements of Part I of the FPA any proposed small hydroelectric project with an installed capacity of 10 megawatts

¹ 16 U.S.C. §§ 792-823 (2012).

² *Catamount Metropolitan District*, 144 FERC ¶ 62,130 (2013) (exemption order).

(MW) or less, which generates electricity using the water power potential of an existing dam or a natural water feature (e.g., a natural lake, waterfall, or the gradient of a natural stream).³

4. On March 1, 2012, the District filed an application to exempt its proposed 695-kilowatt (kW) Catamount Hydroelectric Project. The project consists of the existing 69-foot-high Lake Catamount dam, which has a 120-foot-long primary spillway on the west side of the dam and a 54-inch-diameter low-level combination drain and irrigation outlet on the east side of the dam. The dam creates the existing 522-acre Lake Catamount, with a normal water surface elevation of 6,900 feet above mean sea level (msl). The District would install a new multi-level intake on the west side of the dam to supply water to a new 18-foot-wide by 36-foot-long powerhouse that would have one 695-kW turbine generating unit.

5. In its application, the District proposed to continue to operate the reservoir as it had in the past. The District explained that it could not store and release water for hydroelectric operations because all of Lake Catamount's storage water rights are adjudicated by the Colorado Water Court for irrigation, municipal, recreational, industrial, and commercial uses.⁴ The District also stated that during the late fall it lowers the level of Lake Catamount about 5 to 7 feet to protect the dam from ice damage.⁵ In the spring, after lake ice and snow pack melt, the District restores Lake Catamount to its normal water surface elevation at 6,900 feet msl.

6. On March 6, 2012, the Commission issued a notice accepting the District's application for filing; indicating the application was ready for environmental analysis; and soliciting motions to intervene, comments, final terms and conditions, recommendations, and prescriptions.⁶ The notice also stated that Commission staff

³ See sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2705 and 2708 (2012), *amended by*, the Hydropower Regulatory Efficiency Act of 2013, Pub. L. No. 113-23, § 3, 127 Stat. 493 (2013).

⁴ See the District's April 27, 2013 letter. See also Application at 34, containing Colorado Department of Water Resources' August 4, 2011 consultation letter, stating that the project cannot increase water releases from the Lake Catamount dam for hydroelectric operations.

⁵ Application at 7 and 9.

⁶ 77 Fed. Reg. 14,770 (March 13, 2012).

intended to accept the District's pre-filing consultation as satisfying the pre-filing consultation requirements of section 4.38 of the Commission's regulations.⁷

7. Yampa Realty filed a timely motion to intervene and comments.⁸ Yampa Realty stated that it owns a 512-acre ranch along the Yampa River, below the existing Lake Catamount dam, and plans to build a ranch house on the property. With the powerhouse, transformer, and tailrace being located below the dam, Yampa Realty estimates that the ranch's property line would be about 450 feet below the project and the site of the proposed ranch house would be within 600-700 feet from the project facilities.⁹ As pertinent here, Yampa Realty raised concerns that the construction and operation of the project would result in adverse noise impacts to Yampa Realty's property. Yampa Realty asked that the District study noise impacts that would result from the project's construction and operation.¹⁰ Specifically, it contended that, to do an appropriate analysis, the District must determine (by on-site measurement or engineering analysis): (1) noise emissions from construction equipment; (2) noise emissions from the turbine and other generating equipment; (3) architectural design details of the powerhouse, including insulation materials; (4) external noise mitigation; (5) traffic noise from project employees; and (6) noise and seismic vibration measurements at sensitive locations.¹¹ It asserted that noise impacts must be studied before construction and again after the project is constructed.

8. On August 21, 2012, Commission staff issued an EA on the proposed project. Yampa Realty filed comments on the EA, contending that Commission staff erred by not analyzing the project's impacts on noise and visual resources.¹² On August 13, 2013, Commission staff issued a final EA that, among other things, analyzed the project's

⁷ 18 C.F.R. § 4.38 (2014).

⁸ See Yampa Realty's Request for Rehearing at 2 and its April 5, 2012 Motion to Intervene and Comments at 2.

⁹ See Yampa Realty's April 5, 2012 Motion to Intervene and Comments at 2-3 (estimating that the ranch house would be located about 700 feet below the project) and Yampa Realty's Request for Rehearing at 2 (estimating that the ranch house would be located about 600 feet below the project).

¹⁰ See Yampa Realty's April 5, 2012 Motion to Intervene and Comments at 6-7.

¹¹ See Yampa Realty's May 4, 2012 Comments at 34-36.

¹² See Yampa Realty's September 20, 2012 Comments on the EA.

impacts on noise and visual resources, concluding that noise from the proposed project should not be perceptible on Yampa Realty's downstream property.¹³ In addition, the final EA found that while the project would cause a temporary impact to visual resources during project construction, the project would not cause visual impacts during project operation because the proposed powerhouse would blend in with the existing dam.¹⁴

9. Also on August 13, 2013, Commission staff issued the exemption order, and the District's and Yampa Realty's requests for rehearing followed on September 12, 2013.¹⁵

10. On February 6 and February 7, 2014, the District and Yampa Realty, respectively, filed motions to hold their requests for rehearing in abeyance while they discussed Yampa Realty's issues regarding noise and water quality. At the end of June 2014, the parties asked for an additional 60 days (i.e., until August 23, 2014) to continue negotiations.¹⁶ The parties have filed no further updates, so it appears that they have been unable to resolve their issues.

II. Discussion

A. Request to Modify Articles 26 and 27(d)

11. Article 26 of the exemption states, in pertinent part:

The exemptee shall operate the project in a run-of-river mode to protect aquatic resources in Lake Catamount and the Yampa River. The exemptee shall act to minimize the fluctuation of the reservoir surface elevation by maintaining a discharge from the project so that at any point in time, flows as measured on Yampa River immediately downstream of the project, approximate the sum of inflows to the project reservoir except in late fall when the reservoir may be drawn

¹³ Final EA at 26.

¹⁴ *Id.* at 27.

¹⁵ On November 27, 2012, Colorado Division of Water Resources filed comments in support of the District's request for rehearing.

¹⁶ *See* Yampa Realty's June 23, 2014 filing and the District's June 24, 2014 filing.

down no more than 7 feet to protect the dam from ice and in early spring when the reservoir is returned to normal levels.¹⁷

12. In addition, Article 27(d) requires the District to file an intake operation plan for Commission approval that, among other things, describes how the project will be operated during the fall drawdown and spring refill.

13. On rehearing, the District argues that Article 26 does not recognize the way the District operates the reservoir and at times could require the District to operate the project inconsistently with its existing rights and obligations decreed by the Colorado Water Court.¹⁸ The District explains that, while it will be able to generally comply with Article 26, from time to time situations may arise where it must be able to make releases from the project that are greater than the inflows to the project in order to satisfy its obligations under Colorado Water Law. The District also states that the timing requirement (i.e., late fall and early spring) for the annual drawdown for icing and subsequent refill is too restrictive because seasonal conditions and other factors may warrant a later or earlier drawdown. For these reasons, the District requests that the Commission revise Article 26 to allow for certain exceptions to the article's run-of-river, reservoir elevation, and drawdown and refill requirements, specifically, when water is stored in or released from the reservoir (1) to meet existing water storage and release rights, (2) for downstream beneficial uses, (3) to protect from icing, (4) for maintenance activities, or (5) as required by the State of Colorado or Division Engineers.

14. The exemption application proposed no changes to reservoir operations, and the EA analyzed the potential impacts of the proposed project using current reservoir operations and determined that there would be no resultant significant adverse environmental impacts.¹⁹ The intent of Article 26 is to require the District to continue to operate the reservoir as it has in the past, not to impose new operational requirements. We therefore grant rehearing on this issue and modify Article 26 to address the District's concerns. We are also making conforming changes to Article 27(d) to remove the timing restrictions on the annual drawdown and refill.

¹⁷ Article 26 also allows the District to temporarily modify project operations during an operating emergency beyond its control or for short periods if specified agencies agree.

¹⁸ The District's Request for Rehearing at 1.

¹⁹ See final EA at 3 and 29.

15. However, we are further modifying Article 26 to require the District to maintain documentation detailing when it deviates from run-of-river operation due to the exceptions specified in Article 26. If the District must deviate from run-of-river operation to a greater extent than is specified in Article 26, the District must file a report with the Commission within 30 days of the incident.

B. Compliance with the Commission's Pre-Filing Consultation Requirements

16. Section 4.38 of the Commission's regulations requires potential applicants for an exemption to prepare their application using the Commission's three-stage consultation process with federal and state agencies, Indian tribes, and members of the public.²⁰

17. In the first stage of consultation, the applicant must provide relevant resource agencies and Indian Tribes with detailed project information (referred to as its initial consultation document) and request feedback on project design, project impacts, reasonable alternatives, and potential studies. The applicant must also hold a joint meeting with the resource agencies and invite public participation.²¹

18. In the second stage of consultation, the applicant must conduct all reasonable studies and obtain all reasonable information requested by the resource agencies, and provide the agencies with copies of the draft application and the results of all studies, and must allow sixty days for the agencies to file comments on the draft application.²²

19. In the third stage, the applicant files its final development application (containing documentation of its consultation efforts) with the Commission and sends a copy of the application to all resource agencies, Indian Tribes, and consulted members of the public.²³

20. If a resource agency or Indian tribe waives, in writing, compliance with any requirement of three-stage consultation, a potential applicant does not have to comply with that requirement as to that agency or tribe.²⁴

²⁰ 18 C.F.R. § 4.38 (2014).

²¹ 18 C.F.R. § 4.38(b) (2014).

²² 18 C.F.R. § 4.38(c) (2014).

²³ 18 C.F.R. § 4.38(d) (2014).

²⁴ 18 C.F.R. § 4.38(e) (2014).

21. On rehearing, Yampa Realty contends that the District's March 2012 exemption application was patently deficient and should have been rejected by the Commission because the District did not conduct the first and second stages of pre-filing consultation. Yampa Realty states that, because the District prepared and filed its application pursuant to the provisions of a Memorandum of Understanding (MOU) between the Commission and the State of Colorado, the District received "blanket waivers of consultation requirements" that deprived Yampa Realty of a meaningful ability to present its concerns, to have those concerns analyzed as part of the consultation process, and to have its concerns addressed in the application.²⁵

22. We disagree. In August 2010, the Commission entered into an MOU with the State of Colorado to simplify procedures for authorizing the development of small-scale hydropower projects in Colorado. Through the MOU, Colorado established a pilot program in which it agreed to pre-screen exemption applications to ensure that they met the Commission's and Colorado's requirements for an exemption.²⁶ The Commission and the State of Colorado agreed that the Commission would waive the first and second stages of consultation for all projects pre-screened by the State of Colorado, if all relevant resource agencies and Indian tribes agreed to do so in writing.

23. In July 2011, the District provided copies of its initial consultation document²⁷ to federal and state agencies, an Indian tribe, and members of the public for review and comment.²⁸ The District also requested waiver of first and second stage consultation.

²⁵ Yampa Realty's Request for Rehearing at 5.

²⁶ Proposed projects eligible for Colorado's pilot program must, among other things: (1) meet the Commission's requirements for exemption; (2) be added to existing infrastructure (i.e., water delivery system); (3) not change the primary purpose or operation of the system; (4) not increase stream diversions; and (5) not adversely affect water quality, fish passage, threatened or endangered species, and cultural and recreational resources. Through its pre-screening process, the State of Colorado: provided applicants with a consultant for guidance and education, reviewed draft hydropower applications for completeness and compliance with the Commission's regulations, and submitted the applications to the relevant resource agencies for review and comment.

²⁷ The District termed its initial consultation document as the "Lake Catamount Metropolitan District Hydroelectric Project Hydropower Exemption Application."

²⁸ The District sent its initial consultation document to: U.S. Fish and Wildlife Service, Colorado Department of Water Resources, Colorado Parks and Wildlife, Colorado Department of Public Health and Environment, Colorado Historical Society,

Between July and October 2011, the District received response letters from the resource agencies.²⁹ None of the agencies requested studies. All agreed to waive first and second stage consultation.³⁰ In addition, American Rivers, Routt County, and the Catamount Ranch & Club filed comments in support of the project.³¹

24. On November 22, 2011, the District held a joint meeting that was attended by Colorado Parks and Wildlife and two adjacent landowners. The District published notice of the meeting in a local newspaper for two consecutive weeks before the meeting,³² and notified the local homeowners' association of the time and place of the meeting.³³ Following the joint meeting, the District posted meeting minutes for review and comment on its website. The public, including Yampa Realty, was given ample opportunity to participate and request studies regarding the District's proposal. Although Yampa Realty did not participate in the pre-filing consultation, it has had ample notice of, and opportunity to participate in, the exemption proceeding, as evidenced by its timely motion to intervene, subsequent comments, and the present request for rehearing.

25. Moreover, the Commission clearly stated its intent to accept the District's pre-filing consultation as satisfying the requirements of section 4.38 in its public notice accepting the exemption application. Yampa Realty responded to the public notice by

the Ute Indian Tribe, Trout Unlimited, American Rivers, Routt County, Catamount Residential Homeowners Association, and Catamount Ranch & Club.

²⁹ The Ute Indian Tribe did not respond.

³⁰ The U.S. Fish and Wildlife Service, Colorado Department of Water Resources, Colorado Parks and Wildlife, and Colorado Department of Public Health and Environment agreed to waive first and second stage consultation. Although the Colorado Historical Society did not specifically waive consultation, it responded that there are no historic or cultural properties at the project and had no further involvement in the exemption proceeding.

³¹ The District's list of consulted entities included: the U.S. Fish and Wildlife Service, Colorado Department of Water Resources, Colorado Parks and Wildlife, Colorado Department of Public Health and Environment, and Colorado Historical Society.

³² See Application at 40.

³³ *Id.*

filing comments and a motion to intervene, but did not raise issue with the District's consultation until its request for rehearing, at which point its contentions were untimely.

26. For the above reasons, we find that Commission staff properly granted waiver of stage one and stage two consultation. We therefore deny rehearing on this issue.

C. Project's Impacts on Noise

27. On rehearing, Yampa Realty argues that the exemption order and the final EA did not take a "hard look" at the project's noise impacts on the surrounding area, specifically on its proposed ranch house. Yampa Realty states that the final EA's finding of no adverse impact caused by noise was flawed because it relied on a study that had no correlation to the Catamount Project and did not evaluate low frequency noise. Yampa Realty states that Commission staff should instead have performed a comprehensive site-specific noise analysis that evaluated the noise characteristics of the project's turbine, generating unit, and other sound generating equipment (e.g., the project's transformer, power line, and heating and cooling fans); the sound absorbing or transmitting properties of the powerhouse; and the architectural characteristics of the powerhouse.

28. We disagree. The final EA used a noise survey and analysis carried out for a proposed hydropower project with a 600-kW turbine (Bruar Study),³⁴ to make assumptions regarding noise emissions from the similarly sized 695-kW Catamount Project Kaplan turbine. The study used a well-established formula for the attenuation of sound³⁵ that calculated the distance at which average noise emissions from the proposed project's powerhouse would reach the sound level of the existing environment at a nearby residence. The Bruar Study's formula used the maximum interior noise level of the powerhouse that would result from each of three alternative turbine generator configurations (with capacities similar to the Catamount Project) and decreased that noise level by a certain value based on whether the powerhouse walls would be insulated or uninsulated to determine the distance where the sound from the powerhouse would reach ambient noise levels. In addition, although Yampa Realty objected to the use of this study, which we conclude is consistent with sound science and therefore credible, it

³⁴ Bruar Hydro Scheme. Report No. P-575/Noise Survey r1: *Noise Survey and Preliminary Analysis*. December 2011, available at: http://sepa.org.uk/water/water_regulation/advertised_applications/idoc.ashx?docid=f26d8def-dbf8-4b7f-ad22-1ef83f11d95c&version=-1.

³⁵ Sound attenuates or decreases in intensity as it travels over a distance. The final EA's formula for calculating attenuation is: $\text{Attenuation} = (20 \log R) + 8$, where R = distance in meters.

proposed no other study as an alternative. For these reasons, we find that the final EA's use of the Bruar Study was reasonable.³⁶

29. Using the assumptions and calculations in the Bruar Study, the final EA determined that, at 80 feet away from the proposed powerhouse, noise (both high frequency and low frequency) from the project would decrease to a level that would be almost equal to the ambient sound level (i.e., the sound of the existing environment), and at a distance of 220 feet, the sound from the powerhouse would be below the ambient sound level. Therefore, the project should have no effect on Yampa Realty's proposed ranch house.³⁷

30. Yampa Realty contends that, even assuming the EA's use of the study was reasonable, the final EA, without explanation, modified the Bruar Study's estimates of the maximum interior noise level of the powerhouse so as to be able to conclude that Yampa Realty's property would not be affected by noise from the project. Specifically, Yampa Realty contends that the final EA used a maximum interior noise level of the Catamount Project's powerhouse of 90 decibels A-scale (dba),³⁸ as opposed to the Bruar Study's more conservative estimate of 100 dba. In addition, Yampa Realty states that the final EA assumed that uninsulated powerhouse walls would decrease the interior noise level of the powerhouse by 20 dba (the Bruar Study's best case scenario), instead of using 10 dba, the study's worst case scenario.

³⁶ Yampa Realty also objects to our use of the study because it evaluated a project located in the United Kingdom. However, the Bruar Study used the same considerations (e.g., maximum powerhouse interior noise levels, guidelines for ambient noise level, and the formula for calculating the attenuation of noise) to calculate decreases in noise as those used in the United States.

³⁷ See final EA at 26.

³⁸ Decibel scale is a logarithmic scale used to quantify sound level. The A-weighted scale is a standardized weighting scales commonly used to adjust sound levels for human hearing (the scale puts more weight on the range of frequencies that the average human ear perceives). 100 dba is equivalent to a garbage truck or a jet flyover at 1000 feet; 90 dba is equivalent to a motor cycle or a power lawnmower, 80 dba is equivalent to a kitchen garbage disposal, 70 dba is equivalent to a vacuum cleaner, 60 dba is equivalent to conversational speech, 50 dba is equivalent to the noise level in an average home, and 40 dba is equivalent to a quiet library. Available at: <https://www.chem.purdue.edu/chemsafety/Training/PPETrain/dblevels.htm>.

31. While we believe that the assumptions in the final EA were reasonable, for purposes of considering Yampa Realty's argument, we have reexamined the issue using the Bruar Study's more conservative assumptions regarding interior noise levels and the effect of powerhouse walls on noise levels. Assuming a maximum interior noise level in the powerhouse of 100 dba,³⁹ the powerhouse structure, without insulation, would likely reduce the noise level to about 90 dba outside of the powerhouse.⁴⁰ With these adjustments, we estimate that, at a distance of 413 feet from the powerhouse, noise from the project would decrease to a level at or below the sound of the existing environment (ambient sound level).⁴¹ Therefore, we do not expect Yampa Realty's proposed ranch house, located approximately 600-700 feet from the proposed project, to experience noise effects from the project.

32. Finally, Yampa Realty argues that the final EA failed to single out for study the effects of low frequency noise on its proposed ranch house, although it provides no information or evidence to support its contention that low frequency noise could be a problem at the project. Yampa Realty contends that staff's use of the average sound levels emanating from the powerhouse fails to capture the loudest sounds, which tend to be low frequency sounds, and had staff taken these sounds into account, staff would have used a higher sound level in determining the distance at which the noise from the powerhouse would reach ambient sound levels.⁴²

³⁹ The study estimated that the turbines would have a maximum noise output of 95 dba plus 5 dba to account for continuous noise emissions from other sound generating equipment. We used these numbers in our estimate.

⁴⁰ This analysis is conservative compared to other available noise measurements. For example, the California Hydrodivestiture study collected noise level measurements of various hydropower powerhouses in California and showed that the majority of powerhouses have interior noise levels from the low 80 dba to a high of 90 dba. Noise levels outside of the operating powerhouses were generally found in the low 60 dba range. California Public Utility Commission, Draft Environmental Impact Report, November 2000, *available at*: <http://www.cpuc.ca.gov/environment/info/aspen/pgehydro/DEIR%20Files%5CTable%20of%20Contents.pdf>.

⁴¹ The final EA estimated that the ambient sound level of the existing environment is 40 dba. *See* final EA at 26.

⁴² Yampa Realty's Request for Rehearing at 32.

33. We disagree. Our conservative use here of a higher noise level of 100 dba should account for any low frequency sound level peaks that may occur at the proposed powerhouse. While noise issues rarely occur at hydroelectric projects, in one recent instance where the sound level of the full frequency spectrum emanating from a small hydroelectric project facility was measured, the noise levels were uniform across the frequency spectrum at about 70-75 dba, with the exception of one small 85 dba peak.⁴³ We believe that using a level of 100 dba, which is 10-20 dba higher than noise levels measured at other hydroelectric projects,⁴⁴ provides a conservative estimate of project noise and accounts for any unanticipated peaks in low frequency noise. As discussed above, our analysis shows that it is unlikely that the project will cause noise impacts at Yampa Realty's ranch house. We therefore deny rehearing on this issue.

34. We disagree with Yampa Realty's contention that the final EA did not take a "hard look" at the potential environmental effects of the Catamount Project as required by the National Environmental Policy Act of 1969 (NEPA).⁴⁵ The Council on Environmental Quality's regulations implementing NEPA specify that an agency must prepare "a summary of existing credible scientific evidence which is relevant to evaluating the ... adverse impacts" and "an evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community."⁴⁶ Commission staff did that in the final EA. While Yampa Realty might prefer that other studies be performed, we have no question that the final EA provides enough information for us to take a hard look at the impacts of the Catamount Project.

⁴³ See Proposed Hydropower Archimedean Screw Osney Lock and Wier, Oxford. Noise Impact Assessment. Technical Report. 2012. Available at: <http://osneylockhydro.co.uk/wp-content/uploads/2013/03/Noise-assessment-report.pdf>.

⁴⁴ See *supra* n.40.

⁴⁵ See section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2012). See, e.g., *Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1047 (9th Cir. 2013) (quoting *Oregon Natural Desert Association v. Bureau of Land Management*, 625 F.3d 1092, 1099 (9th Cir. 2008)); *Alabama Power Company*, 141 FERC ¶ 61,127, at P 80 (2012) (citing *Committee for Auto Responsibility v. Solomon*, 603 F.2d 992, 1002 (D.C. Cir. 1979), *cert. denied*, 445 U.S. 915 (1980)).

⁴⁶ 40 C.F.R. § 1502.22(b) (2014).

D. Request for Stay

35. Yampa Realty requests that the Commission stay the exemption order, contending that if the exemption is not stayed until the Commission has performed a comprehensive noise analysis, Yampa Realty will suffer irreparable harm. In acting on stay requests, the Commission applies the standard set forth in the Administrative Procedure Act, i.e., the stay will be granted if the Commission finds that “justice so requires.”⁴⁷ Under this standard, the Commission considers a number of factors related to the public interest, such as whether the movant will suffer irreparable injury in the absence of a stay. Yampa Realty’s assertions that it will suffer harm based on noise impacts from the project are speculative, and, as previously discussed, are contradicted by the record, which indicates that the Yampa Realty should not experience any noise impacts. Accordingly, Yampa Realty’s request for stay is denied.

The Commission orders:

(A) Catamount Municipal District’s September 12, 2013 request for rehearing of the August 13, 2013 order issuing an exemption for Project No. 14368 is granted to the extent set forth in ordering paragraphs (B) and (C).

(B) Article 26 is revised to read:

Article 26. Project Operation. Excepting for the losses from evaporation and for the following reasons, the exemptee shall maintain the reservoir at full capacity (approximately 6,900 feet above mean sea level) and operate the project in a run-of-river mode such that flow downstream of the project is approximately equal to flow into the project. The exemptee may deviate from run-of-river operations when: (1) water is legally stored in the reservoir under existing water storage rights; (2) water is legally released from the reservoir for an authorized downstream beneficial use under existing water storage rights; (3) water is pumped out of the reservoir for an authorized beneficial use; (4) the reservoir is drawn down to protect from icing, (5) the reservoir is refilled; (6) reservoir maintenance requires storage level fluctuations; and (7) the administration of reservoir storage is required by the State of

⁴⁷ 5 U.S.C. § 705 (2012). *See, e.g., Clifton Power Company*, 57 FERC ¶ 61,055 (1991).

Colorado or Division Engineers. Drawdown and refill procedures for hydroelectric power purposes will be further defined by the Commission-approved Project Intake Operations Plan required by Article 27.

The exemptee must record and maintain the run-of-river operation data documenting the deviations for the seven aforementioned exceptions. The exemptee must provide the documentation to the Commission or resource agencies, upon request.

Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the exemptee, and for short periods upon mutual agreement between the exemptee, the U.S. Fish and Wildlife Service, and the Colorado Parks & Wildlife. Except for the seven aforementioned exceptions, if the project operations deviate from the run-of-river requirement, the exemptee must file a report with the Commission within 30 days of the incident. The report must, to the extent possible, identify the cause, severity, and duration of the deviation, and any observed or reported adverse environmental impacts resulting from the deviation. The report must also include: operational data necessary to determine compliance with the run-of-river requirement; a description of any corrective measures implemented at the time of the occurrence and the measures implemented or proposed to ensure that similar incidents do not recur; and comments or correspondence, if any, received from the resource agencies regarding the incident. Based on the report and the Commission's evaluation of the incident, the Commission reserves the right to require modifications to project facilities and operations to ensure future compliance.

(C) Article 27(d) is revised to read, “A description of how the project will be operated during the annual drawdown to protect from icing, among other reasons, and subsequent refill, and how releases from the project will be provided to prevent flooding during the drawdown, and dewatering during the subsequent refill on the Yampa River downstream of the project.”

(D) Yampa Realty Holding LLC's September 12, 2013 request for rehearing is denied.

(E) Yampa Realty Holding LLC's September 12, 2013 request for stay is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.