

168 FERC ¶ 61,083
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. 1 of Chelan County,
Washington

Project No. 943-130

DETERMINATION ON PROJECT INVESTMENTS
UNDER SECTION 36 OF THE FEDERAL POWER ACT

(Issued August 9, 2019)

1. On June 10, 2019, Public Utility District No. 1 of Chelan County (Chelan PUD), licensee for the Rock Island Hydroelectric Project No. 943, filed a request for a determination under section 36(c) of the Federal Power Act (FPA)¹ that certain project investments over the term of the existing license meet the criteria set forth in subsection 36(b)(2), so that the investments will be considered when the Commission sets the term for the next license for the project.² The Rock Island Project is located on the Columbia River, near the City of Wenatchee, in Chelan and Douglas Counties, Washington.

I. Background

2. On January 18, 1989, the Commission issued Chelan PUD a new 40-year license to continue to operate and maintain the 412.41-megawatt Rock Island Project.³ By its terms, the license is set to expire on December 31, 2028.

¹ 16 U.S.C.A. § 823g(c) (West 2019).

² *Id.* § 823g(b)(2).

³ *Pub. Util. Dist. No. 1 of Chelan County, Wash.*, 46 FERC ¶ 61,033 (1989) (License Order). Originally licensed as a 622.5 MW project, the Rock Island Project license has been amended several times since 1989, resulting in several revisions to the project's authorized installed capacity. *See Pub. Util. Dist. No. 1 of Chelan County, Wash.*, 98 FERC ¶ 61,279 (2002), *reh'g denied*, 102 FERC ¶ 61,043 (2003) (623.2 MW); 108 FERC ¶ 62,258 (2004) (409.6 MW); 135 FERC ¶ 62,207 (2011) (422.212 MW); 146 FERC ¶ 62,055 (2014) (421.255 MW); 161 FERC ¶ 62,028 (2017) (420.555 MW); 165 FERC ¶ 62,108 (2018) (412.41 MW).

3. Section 15(e) of the FPA provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but no less than 30 years or more than 50 years.⁴ On October 19, 2017, the Commission established a 40-year default license term policy for original and new licenses.⁵

4. On October 23, 2018, the America's Water Infrastructure Act of 2018 was enacted.⁶ Among other things, the Act added section 36 to the FPA, requiring the Commission to consider, and give equal weight to, project-related investments by the licensee under the new license and project-related investments by the licensee over the term of the existing license.⁷ Section 36(b)(2) requires the Commission to consider investments by the licensee over the term of the existing license (including any terms under annual licenses) that "(A) resulted in redevelopment, new construction, new capacity, efficiency, modernization, rehabilitation or replacement of major equipment, safety improvements, or environmental, recreation, or other protection, mitigation, or enhancement measures conducted over the term of the existing license; and (B) were not expressly considered by the Commission as contributing to the length of the existing license term in any order establishing or extending the existing license term."⁸

5. Section 36(c) directs the Commission to make a determination upon the request of a licensee as to whether any planned, ongoing, or completed investment meets the criteria under section 36(b)(2).⁹ The Commission must make a determination within 60 days following receipt of the licensee's request, and the Commission is expressly precluded from quantifying the incremental number of years that an investment may add to the new license term.¹⁰

⁴ 16 U.S.C. § 808(e) (2012).

⁵ *Policy Statement on Establishing License Terms for Hydroelectric Projects*, 161 FERC ¶ 61,078 (2017) (Policy Statement). The Policy Statement included exceptions to the 40-year license term under certain circumstances, including establishing a longer license term upon a showing by the license applicant that substantial voluntary measures were either previously implemented during the prior license term, or substantial new measures are expected to be implemented under the new license. *Id.* PP 15-16.

⁶ Pub. L. No. 115-270, 132 Stat. 3765 (2018).

⁷ 16 U.S.C.A. §§ 823g(a),(b).

⁸ *Id.* § 823g(b)(2).

⁹ *Id.* § 823g(c).

¹⁰ *Id.*

II. Discussion

6. Chelan PUD asserts that it has invested heavily in the Rock Island Project in excess of the requirements of its 1989 license. By 2029, Chelan PUD forecasts an expected total investment during the current license term of over \$710 million. Specifically, Chelan PUD requests that the Commission determine whether the following project investments meet the criteria under FPA section 36(b)(2): (a) rehabilitation of Powerhouses 1 and 2; (b) design and construction of new office, warehouse, and storage facilities; (c) replacement of two spillway gate hoists; and (d) implementation of an Anadromous Fish Agreement and Habitat Conservation Plan (HCP).

7. Since issuance of the 40-year license in 1989, Chelan PUD notes that the Commission has not issued any order extending the existing license term. Therefore, Chelan PUD maintains that the Commission must consider, at the time it determines the next license term, any investment meeting FPA section 36(b)(2)(A) criteria that was not a requirement of the 1989 license order. We address each of Chelan PUD's planned, ongoing, or completed investments in turn.

A. Rehabilitation of Powerhouses 1 and 2

8. Chelan PUD requests that the Commission consider the "significant" investments it has made and is proposing to make to rehabilitate the two Rock Island Project powerhouses.¹¹ Powerhouse 1 contains 10 turbine-generator units (B1 through B10); Powerhouse 2 contains eight turbine-generator units (U1 through U8). In 2003 and 2017, Chelan PUD notified the Commission of its intent to rehabilitate 9 of the 10 generating units at Powerhouse 1.¹² According to Chelan PUD, these units "were reaching the end of their remaining useful lives," and rehabilitation was necessary to keep the project "in an adequate condition of repair."¹³ To date, Chelan PUD has completed the rehabilitation of three Powerhouse 1 units: Unit B10 completed in 2008,¹⁴ Unit B9 completed in 2012,¹⁵

¹¹ License Order, 46 FERC ¶ 61,033, ordering paragraph (B)(2).

¹² See Chelan PUD's November 11, 6, 2003 Letter (notifying the Commission of its intent to rehabilitate Units B10, B9, B7, B6, and B5) and January 10, 2017 Letter (notifying the Commission of its intent to rehabilitate Units B1 through B4).

¹³ Chelan PUD's June 10, 2019 Request for Section 36 Determination at 10.

¹⁴ Commission staff issued an order amending the license to reflect a reduction in the authorized installed capacity of Unit B10 from 18,000 to 14,100 kW. *Pub. Util. Dist. No. 1 of Chelan County*, 135 FERC ¶ 62,207, at P 9 (2011).

¹⁵ Commission staff issued an order amending the license to reflect a reduction in the authorized installed capacity of Unit B9 from 15,312 to 14,355 kW. *Pub. Util. Dist. No. 1 of Chelan County*, 146 FERC ¶ 62,055, at P 6 (2014).

and Unit B6 completed in 2018.¹⁶ The remaining Powerhouse 1 units are scheduled to be rehabilitated by 2022.¹⁷ By 2029, Chelan PUD plans to rehabilitate eight bulb turbine-generator units at Powerhouse 2.¹⁸ Chelan PUD anticipates that the rehabilitation of Powerhouse 2 will provide an additional 40 years of reliable and efficient power generation capability for the units. Chelan PUD estimates that it will cost approximately \$270 million to rehabilitate Powerhouse 1, and approximately \$352 million to rehabilitate Powerhouse 2.

9. FPA section 36(b)(2)(A) requires the Commission to consider investments made by the licensee over the term of the existing license that resulted in “efficiency, modernization, rehabilitation or replacement of major equipment.”¹⁹ Here, Chelan PUD’s turbine and generator improvements will enhance the efficiency and reliability of the Rock Island Project. These improvements were not considered by the Commission as contributing to the existing 40-year license term. Therefore, we find that the Powerhouse 1 and Powerhouse 2 rehabilitation projects qualify as “rehabilitation or replacement of major equipment,” meeting the criteria under FPA section 36(b)(2).²⁰

B. Construction of Ancillary Facilities

10. Chelan PUD intends to implement a long-term Rock Island facilities master plan that will include constructing or updating multiple office, warehouse, and storage facilities at the Rock Island Project, estimated at \$40 million. However, Chelan PUD’s request for a Commission determination under section 36(c) contains limited information on this investment, such that it is unclear whether it would qualify as a “project-related”²¹ investment under the criteria of section 36(b)(2)(A). Further, we are not certain that Congress intended for us to consider ancillary facilities, such as office buildings, that do not have a demonstrated direct hydropower purpose, may not be necessary for project operation, and may have other uses. Therefore, based on the information before us, we cannot determine whether these investments meet the criteria under section 36(b)(2).

¹⁶ Commission staff issued an order amending the license to reflect a reduction in the authorized installed capacity of Unit B6 from 22,500 to 14,355 kW. *Pub. Util. Dist. No. 1 of Chelan County*, 165 FERC ¶ 62,108, at P 6 (2018).

¹⁷ Chelan PUD’s June 10, 2019 Request for Section 36 Determination at 12.

¹⁸ *Id.*

¹⁹ 16 U.S.C.A. §§ 823g(b)(2)(A).

²⁰ *See id.* § 823g(b)(2).

²¹ *See id.* § 823g(a)(2).

Chelan PUD, however, is free to file further information on these matters during the relicensing process.

C. Improvement of the Spillway

11. Chelan PUD states that it plans to replace two spillway bay gate hoists to improve the safety and reliability of the spillway operation.²² In March 2020, Chelan PUD plans to replace the existing manually-operated hoists with automatic hoists, increasing the spillway gate capacity. Chelan PUD anticipates that these improvements will cost an estimated \$4 million.

12. FPA section 36(b)(2)(A) requires the Commission to consider investments made by the licensee over the term of the existing license that resulted in “safety improvements.”²³ Chelan PUD’s planned replacement of manual spillway gate hoists with auto hoists will allow remote gate operation and increase gate capacity, improving the safety and reliability of the spillway. These improvements were not considered by the Commission as contributing to the existing 40-year license term. Therefore, we find that this planned investment meets the section 36(b)(2) criteria.

D. Implementation of the HCP

13. On June 21, 2004, the Commission issued orders approving a project-specific HCP for the Rock Island Project,²⁴ and amending the license to incorporate the provisions of the plan as special articles.²⁵ The Rock Island Project HCP is a comprehensive and long-term management plan for salmonid species affected by the project (i.e., Chinook

²² The project includes a concrete gravity dam, about 3,580 feet long, with a gated spillway section 1,184 feet long, containing 31 crest gates. License Order, 46 FERC ¶ 61,033, ordering paragraph (B)(2).

²³ 16 U.S.C.A. §§ 823g(b)(2)(A).

²⁴ *Pub. Util. Dist. No. 1 of Chelan County, Wash.*, 107 FERC ¶ 61,280 (2004).

²⁵ *Pub. Util. Dist. No. 1 of Chelan County, Wash.*, 107 FERC ¶ 61,282 (2004) (2004 Amendment Order). The 2004 Amendment Order did not extend the existing license term. As relevant here, the 2004 Amendment Order amended the Rock Island Project License to add new Articles 413 (requiring Chelan PUD to carry out its obligations as set forth in the HCP); 414 (requiring Chelan PUD to file an implementation plan for the U.S. Fish and Wildlife Service’s Reasonable and Prudent Measures (RPMs) and associated Terms and Conditions for protection of bull trout); 415 (requiring an annual report describing the impacts of the bull trout RPMs and Terms and Conditions); and 416 (reserving authority to the Commission to require the licensee to carry out measures to participate in the development and implementation of a bull trout recovery plan).

salmon, sockeye salmon, coho salmon, and steelhead). To achieve the objective of the HCP – achieving and maintaining a “no net impact” for each plan species – Chelan PUD explains that it has spent more than \$44 million on fish passage survival studies, hatchery construction, operation and maintenance, annual funding for tributary protection and restoration projects, fish predator control programs, and ongoing passage facilities operations and maintenance.

14. FPA section 36(b)(2)(A) requires the Commission to consider investments made by the licensee over the term of the existing license that resulted in “environmental . . . protection, mitigation, or enhancement measures.”²⁶ Because Chelan PUD’s HCP implementation investments assist in the recovery, protection, and habitat enhancement of Columbia River salmonids, these measures appear to be the type that can meet the FPA section 36(b)(2) criteria. However, during the licensing process, Chelan PUD may wish to provide additional information to clarify the nature of these measures, such as explanations of the extent to which the measures arise from HCP obligations, as opposed to the requirements of the 1987 settlement agreement regarding the project.

The Commission determines:

(A) that Chelan PUD’s investments made to rehabilitate the two Rock Island powerhouses, improve the project spillway, and implement its HCP appear to meet the criteria set forth in section 36(b)(2) of the Federal Power Act.

(B) that it is unable to find whether Chelan PUD’s construction investments in new office, warehouse, and storage facilities meet the criteria set forth in section 36(b)(2) of the Federal Power Act.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁶ 16 U.S.C.A. §§ 823g(b)(2)(A).

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