

Comment date: June 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Portland General Electric Company
[Docket No. ES96-30-000]

Take notice that on June 12, 1996, Portland General Electric Company filed an application, under § 204 of the Federal Power Act, seeking authorization to issue short-term debt, from time to time, in an aggregate principal amount of not more than \$250 million outstanding at any one time, during the period August 1, 1996 through July 31, 1998, with a final maturity date no later than July 31, 1999.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96-15761 Filed 6-19-96; 8:45 am]

BILLING CODE 6717-01-P

Federal Energy Regulatory Commission

[Project No. 7481-068]

New York State Dam Limited Partnership; Notice of Availability of Draft Environmental Assessment

June 14, 1996.

A draft environmental assessment (DEA) is available for public review. The DEA was prepared for New York State Dam Limited Partnership (licensee) to provide passage for adult blueback herring at the New York State Dam Hydroelectric Project. In a letter dated April 9, 1993, the U.S. Fish and Wildlife Service (FWS) recommended that the licensee operate its existing fish

bypass to provide downstream fish passage for migrating adult blueback herring in the Mohawk River.

Article 15 of the project license requires the licensee, for the conservation and development of fish resources, operate project facilities as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of Interior, after notice and opportunity for hearing.

In summary, the DEA examines the environmental impacts of four alternatives for providing downstream fish passage for adult blueback herring at the project: (1) continuous flow; (2) summer operation; (3) spill; and (4) no-action. These alternatives are described in detail on pages five and six of the DEA.

The DEA recommends that the licensee operate its fish bypass in accordance with the summer operation alternative. The DEA concludes that implementation of this alternative would not constitute a major federal action significantly affecting the quality of the human environment.

This DEA was written by staff in the Office of Hydropower Licensing (OHL). As such, the DEA is OHL staff's preliminary analysis of FWS's recommendation for downstream passage of adult blueback herring. No final conclusions have been made by the Commission regarding this matter. Any action, pursuant to article 15, will be initiated by the Commission only after notice and opportunity for hearing.

Should you wish to provide comments on the DEA, they should be filed within 60 days from the date of this notice. Comments should be addressed to: Ms. Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please include the project number (7481-068) on any comments filed.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96-15691 Filed 6-19-96; 8:45 am]

BILLING CODE 6717-01-M

Notice of Intent to Prepare an Environmental Assessment

June 14, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Proposed Measures and Schedule for Improving the Seismic Stability of Butt Valley and Canyon Dams.

b. Project No: 2105-037.

c. Date Filed: June 13, 1996.

d. Licensee: Pacific Gas and Electric Company.

e. Name of Project: Upper North Fork Feather River Project.

f. Location: Butt Creek, Lake Alamanor, and Butt Valley Reservoir, in Plumas County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. License Contact: Mr. Jeffrey D. Butler, Manager—Hydro Generation, Pacific Gas and Electric Company, P.O. Box 770000, Mail Code N11C, San Francisco, CA 94177, (415) 973-4603.

i. FERC Contact: Dr. John M. Mudre, (202) 219-1208.

j. Comment Date: July 5, 1996.

k. Project Description: Pacific Gas and Electric Company, licensee for the Upper North Fork Feather River Project (FERC No. 2105), has filed plans for remedial work to be conducted to improve the seismic stability of the project's Canyon and Butt Valley Dams. The filing includes a description of, and proposed measures to mitigate, the environmental impacts of the proposed work. These impacts may result from the temporary drawdown of Butt Valley Reservoir, temporary restrictions on public access to the area, and construction activities. Staff intends to prepare an environmental assessment (EA) on the licensee's plans for remedial work and environmental mitigation. Comments are invited on the licensee's plans and the appropriate scope of the EA.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named

documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96-15692 Filed 6-19-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM96-5-001]

Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act; Order Dismissing Requests for Rehearing

Issued: June 14, 1996.

On February 28, 1996, the Commission issued a Statement of Policy (policy statement) in this proceeding which reviewed issues concerning the status, scope and effect of its regulation of gathering and transportation on the Outer Continental Shelf (OCS).¹ The policy statement articulated, clarified and, to some extent, modified the criteria the Commission will use to determine whether pipeline facilities located on the OCS have a primary function of gathering or transmission. Specifically, the Commission added a new factor to its existing primary function test for facilities located in water depths of 200 meters or more. The Commission stated that such facilities would be presumed to have a primary purpose of gathering up to the point or points of potential connection with the interstate pipeline grid. From that point on, the Commission would continue to apply the existing primary function test.

Four parties filed requests for rehearing and/or clarification or

reconsideration.² As discussed below, the Commission will dismiss the requests for rehearing, reconsideration or clarification.

Summary of the Requests

The following issues were raised by one or more of the parties in their requests for rehearing, reconsideration and/or clarification. The parties seek assurance that the Commission in the policy statement did not intend to create a presumption that all facilities located in water depths of less than 200 meters are transmission. They contend that the "bright line" test or new factor added to the primary function test for deep water facilities is inconsistent with Commission policy as articulated in *Amerada Hess Corporation (Amerada Hess)*.³ Additionally, some parties argue that any presumption or bright line test is inconsistent with *EP Operating Co. v. FERC*,⁴ which mandates a case-by-case application of the physical factors of the primary function test. Some parties note that many certificated offshore facilities are not necessarily transmission facilities and that the Commission did not scrutinize the function of such facilities when certificating them. Thus, these parties argue that the Commission has no rational basis for determining that pipelines are transmission facilities because of their proximity to certificated interstate pipelines when the "in-proximity" facilities may be misfunctionalized.

The parties also contend that the distinction between deep and shallow-water facilities articulated in the policy statement results in determinations of primary function based on a pipeline's vintage (older offshore pipelines tend to be in shallower waters and were certificated) or geographical location, rather than on the physical factors applied in the traditional primary function test. Other parties express concern that the new approach outlined in the policy statement will result in the Commission's giving undue weight to certain factors of the primary function

² They are: BP Exploration & Oil, Inc. (BP), Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia) (filing jointly), the Interstate Natural Gas Association of America (INGAA), and Williams Field Services Group, Inc. and Transcontinental Gas Pipe Line Corporation (Williams) (filing jointly).

³ 52 FERC ¶ 61,268 (1990). In *Amerada Hess*, the Commission stated it would consider the changing technical and geographic nature of exploration and production offshore when applying the primary function test to offshore facilities. *Amerada Hess* provided for a "sliding scale" approach where facilities with increasing length and diameters could still be classified as gathering where these physical factors are a function of the distance from shore and of the water depth of production areas.

⁴ 876 F. 2d 46 (5th Cir. 1989).

test, such as size, operating pressure and central point in the field, when attempting to determine the function of facilities located in shallower water. They posit that this occurred in *Shell Gas Pipeline Company*,⁵ where the Commission applied the approach outlined in the policy statement for the first time. Overemphasizing these factors for offshore facilities, they argue, is inconsistent with *Amerada Hess* and subsequent cases where the sliding scale approach was used. Additionally, they argue that the new approach can result in a single line being considered both gathering and transmission, which would be arbitrary and capricious.

Some parties are primarily concerned that the policy statement did not resolve issues related to whether there is a level playing field for regulated and unregulated offshore pipelines. Columbia argues that the Commission erred by not deciding to regulate all offshore pipelines under the Outer Continental Shelf Lands Act and by leaving a dual regulatory scheme in place. Further, Columbia asserts that the Commission erred by not initiating a generic production area rate design proceeding to address the issues raised by the commenters in this proceeding. INGAA maintains that the ability of interstate pipelines to utilize alternative ratemaking approaches does not solve the problems of the dual regulatory scheme, and that the Commission erred in the policy statement by so suggesting.

Finally, clarification is sought that the policy statement was intended to provide guidance and not intended to have the force and effect of a rule.

Discussion

The purpose of the policy statement in this proceeding was to provide the natural gas industry with guidance by stating the criteria the Commission will use to determine the function of offshore pipelines, especially new facilities constructed in deep water producing areas. A policy statement is not a rule, and generally objections to such a statement are not directly reviewable.⁶ Rather, such review must await implementation of the policy in a specific case.⁷ Therefore, the Commission declines to consider at this time the issues raised in the requests for rehearing, reconsideration or clarification, but will consider such issues and arguments in the specific

⁵ 74 FERC ¶ 61,219 (1996).

⁶ See, e.g., *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 75 FERC ¶ 61,024 (1996).

⁷ See *American Gas Association v. FERC*, 888 F. 2d 136 (D.C. Cir. 1989).

¹ 74 FERC ¶ 61,076 (1996), 61 FR 8611 (March 5, 1996).