Order No. 636.[9] In Order No. 636, the Commission required pipelines to unbundle transportation and sales and implement certain procedures including the requirement that interstate pipelines must offer open access to its storage facilities on a firm and interruptible basis.

If the Commission determines that Egan's facilities are in fact jurisdictional storage facilities, Egan may be required to obtain a NGA section 7(c) certificate. In *Petal Gas Storage Company*,[10] the Commission determined that Petal Gas Storage Company (Petal), a wholly owned subsidiary of Chevron U.S.A. Inc. (Chevron), and/or Chevron violated section 7(c) of the NGA because construction of jurisdictional storage facilities commenced before the requisite certificate authorization and environmental clearances were obtained. Petal was required to obtain a section 7(c) certificate to operate leased gas capacity in Chevron's salt dome storage cavern, and to construct and operate related facilities.[11] The Commission also required Petal to file a tariff conforming to Order No. 636, and imposed environmental conditions.

The Commission questions whether Egan should be deemed an interstate pipeline, subject to the requirements of the NGA and Order No. 636, when it constructs and operates new storage facilities for exclusive use in interstate commerce. Accordingly, the Commission is instituting this show cause proceeding, pursuant to sections 5, 7, and 16 of the NGA, to investigate further these matters. In its response, Egan and other interested persons are encouraged to address the concerns raised above by the Commission.

The Commission Orders

(A) Within 30 days of the issuance of this order:

Egan is required to show cause why the Commission should not require Egan to obtain a NGA section 7(c) certificate to construct and operate the storage facilities since the facilities are intended for use in interstate commerce and appear unrelated to any other nonjurisdictional operation on Egan's system.

(B) Notice of this proceeding will be published in the Federal Register. Interested persons will have 20 days from the date of publication of the notice to intervene.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23313 Filed 9–19 –95; 8:45 am]

BILLING CODE 6717–01–P

[9] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992).

[10] 64 FERC ¶ 361,190 (1993), *as amended*, 67 FERC ¶ 61,135 (1994).

[11] Chevron, an independent producer, initially planned to use its salt dome cavern in a nonjurisdictional manner or to obtain a certificate from the State of Mississippi. Subsequently, Chevron decided to form its subsidiary, Petal, to provide jurisdictional stand-alone storage service to third parties.

[Docket No. CP95–738–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

September 14, 1995.

Take notice that on September 7, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP95–738–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to revise an existing meter station to enable Koch Gateway to transport natural gas to serve Phoenix Gas Pipeline Company (Phoenix) for ultimate delivery to Calciner Industries Inc. (Calciner) at this location in Louisiana, under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to install two 4-inch positive meters and three 2-inch regulators at an existing delivery meter station located on its Baton Rouge-New Orleans Line designated as TPL 270–8, St. Charles Parish, Louisiana. The additional meter will increase delivery capacity to Calciner from 4,200 MMBtu to 6,050 MMBtu per day. The estimated cost is $42,535. The revision of existing metering facilities will involve only above-ground assembly within existing and previously disturbed right-of-way. Koch Gateway states it is authorized to provide interruptible transportation service to Phoenix under a November 1, 1993 transportation agreement and that the proposed installation of facilities will provide Phoenix with a better means of serving Calciner. Koch Gateway states that the proposed interruptible service provided through these facilities will remain within current certificated levels and will be rendered without detriment or disadvantage to existing customers. Koch Gateway's tariff does not prohibit the proposed modification of facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23273 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–35–000]

Order Establishing Hearing

Issued September 14, 1995.

In the matter of Kootenai Electric Cooperative, Inc., Clearwater Power Company, Idaho County Light & Power Cooperative Association, Inc., and Northern Lights, Inc. v. Public Utility District No. 2 of Grant County, Washington

On March 2, 1995, Kootenai Electric Cooperative, Inc., Clearwater Power Company, Idaho County Light & Power Cooperative Association, Inc., and Northern Lights, Inc. (collectively referred to as the Idaho Cooperatives or Complainants) tendered for filing a complaint against Public Utility District No. 2 of Grant County (Grant County). In their complaint, the Idaho Cooperatives request the Commission to determine and fix the applicable portion of capacity and output to be made available to the Idaho Cooperatives from the Priest Rapids Project upon relicensing and expiration of existing power sales contracts. Grant County and the Purchasers [1] oppose this request.

[1] The Purchasers are: City of Tacoma, Washington Water Power Company, Puget Sound Power & Light Company, Seattle City Light, Eugene Water & Electric Board, PacifiCorp, Portland General Electric Company, and Cowlitz County PUD No. 1.

They provide retail electric service in the States of Oregon, Washington, Idaho and Montana, and also engage in wholesale purchases and sales of electricity and transmission services, including transactions with Grant County. The Purchasers each entered into similar contracts with Grant County for the purchase and sale of output of the Priests Rapids Development. The contracts terminate on October 31, 2005. Certain of the

As explained below, we set this matter for trial-type, evidentiary hearing.

I. Background

Grant County is a municipal corporation organized under the laws of the State of Washington, and is the licensee of the Priest Rapids Project No. 2114. The license for the Priest Rapids Project No. 2114 was issued on November 4, 1955, effective November 1, 1955, and expires by its terms on October 31, 2005.[2] The Priest Rapids Project No. 2114 consists of two hydroelectric developments on the Columbia River, the Priest Rapids Development with an installed capacity of 886 MW and the upstream Wanapum Development with an installed capacity of 1017 MW.[3]

The Priest Rapids Project No. 2114 had originally been authorized for Federal development by the Flood Control Act of 1950.[4] In 1954 Congress enacted Public Law No. 83–544, 68 Stat. 573 (1954), which expressly modified the Flood Control Act to permit the development of the Priest Rapids Project No. 2114 pursuant to a license issued under Part I of the Federal Power Act. Section 6 of Public Law No. 83–544[5] provided in pertinent part that, if any disagreements arise under the statute the Commission may be called on to ''determine and fix the applicable portion of power capacity and power output to be made available.''

II. The Complaint

On March 2, 1995, the Complainants filed a complaint claiming, *inter alia*, that Grant County has violated section 6 of Public Law No. 83–544, and asking the Commission to determine and fix an amount of up to 288 MW which Grant County should be required to make available from its Priest Rapids Project No. 2114 to the Idaho Cooperatives when Grant County receives a new license for the project.

Specifically, the Complainants argue that Grant County has violated the terms of Public Law No. 83–544 and/or its existing license in the following ways:[6]

1. Grant County has not offered to make any portion of the capacity or output of the Priest Rapids Project No. 2114 available to the Complainants upon expiration of the existing contracts, after more than sixteen months of requests by the Complainants.

2. Grant County has not cooperated with the Complainants, which are agencies in a neighboring state, to insure compliance with the requirement of Public Law No. 83–544 after 2005. To the contrary, Grant County has been unwilling to even consider the Complainants' request, and instead has proceeded with negotiations with the Purchasers[7] for the future sale of Priest Rapids Project No. 2114 power and energy to the exclusion of the Complainants.

3. Grant County may have made sales of power and energy from the Priest Rapids Project No. 2114 that are not surplus to the requirements of the licensee and other non-Federal marketing agencies.[8]

4. Grant County has contracted for the sale of power and energy from the Wanapum Development after expiration of the original license without obtaining requisite approval; Grant County has already entered into contracts for an allocation of power and energy from the Wanapum Development through October 31, 2009, four years after the original license expires.[9]

III. Notice and Responses to Complaint

Notice of the filing of the complaint was published in the Federal Register,[10] with responses due on or before April 21, 1995.

On April 21, 1995, Grant County filed in opposition to the complaint. Grant County asks that the Commission dismiss the complaint. Grant County states that it has fully complied with Public Law No. 83–544 and, in any event, the complaint addresses matters not ripe for consideration.

Specifically, Grant County states that Complainants themselves concede that they have no problem with the offer of Priest Rapids Project No. 2114 power to date under Grant County's existing license.[11] Grant County states that what the Complainants are seeking from the Commission is that Grant County be ordered now to offer Complainants some yet to be determined amount of power upon relicensing.[12] Grant County states that the Complainants' argument assumes that section 6 of Public Law No. 83–544 applies on relicensing and in any event there is no pending application for relicensing and, therefore, the matter is not ripe for consideration.

Finally, Grant County states that it is not required to offer to the Bonneville Power Administration (BPA), and BPA is not required to purchase, power from the Priest Rapids Project No. 2114 under the statute in question. Grant County argues that the language of the statute is permissive, giving local authorities the opportunity to sell surplus power. Furthermore, according to Grant County, the clause was added to facilitate project financing, not to dictate power sales.[13]

On April 21, 1995, the Purchasers[14] filed in opposition to the complaint. The Purchasers state that the credit support provided by the Purchasers' contracts was essential to the ability of Grant County to construct the Priest

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Purchasers also entered into contracts with Grant County for the purchase and sale of output of the Wanapum Development. These contracts terminate on October 31, 2009. Both of these forms of contract contain rights of first refusal entitling the Purchasers to further output of the Priest Rapids Project upon contract termination.

[2] Public Utility District No. 2 of Grant County, Washington, 14 FPC 1067 (1955).

[3] 64 FERC ¶62,056 (1993).

[4] 64 Stat. 170, 179 (1950).

[5] The full text of Section 6 is as follows:

The operation and maintenance of a project under license pursuant to this Act shall be subject to reasonable rules and regulations by the Secretary of the Army in the interest of flood control and navigation. To assure that there shall be no discrimination between States in the area served by the project, such license shall provide that the licensee shall offer a reasonable portion of the power capacity and a reasonable portion of the power output of the project for sale within the economic market area in neighboring States and shall cooperate with agencies in such States to insure compliance with this requirement: *Provided*, That in the event of disagreement between the licensee and the power marketing agencies (public or private) in any of the other States within the economic market area, the Federal Power Commission may determine and fix the applicable portion of power capacity and power output to be made available hereunder and the terms applicable thereto. Power surplus to the requirements of the licensee and other non-Federal marketing agencies (public or private) within the economic marketing area, as may be economically usable to the Federal system, may be made available to and may be purchased by the Bonneville Power Administrator at rates not higher than the rates charged such non-Federal marketing agencies, and under such terms and conditions as shall be mutually agreeable to the licensee and the Secretary of the Interior. Such power may be co-mingled with power from Federal dams in the Columbia River system for which the Bonneville Power Administrator has been designated marketing agent and shall be sold by the Administrator in accordance with the provisions of the Bonneville Project Act at established rate schedules.

[6] *See* Complaint at 11–13.

[7] *See supra* note 1.

[8] The question with regard to ''surplus power,'' according to Complainants, is whether power which is, in effect, surplus from Priest Rapids Project No. 2114 is being sold to other entities without first being made available to Complainants or other agencies within the economic marketing area of the neighboring states.

[9] Section 22 of the Federal Power Act (FPA), 16 U.S.C. § 815 (1994), provides that contracts for the sale of power beyond the expiration date of a license require ''the joint approval of the [Federal Energy Regulatory Commission] and of the public-service commission or other similar authority in the State in which the sale or delivery of power is made. . . .''

[10] 60 FR 18094 (April 10, 1995).

[11] Grant County Response at 15, citing Complaint at 4 n. 3.

[12] *Id.*

[13] *Id.* at 17–18.

[14] On April 21, 1995, each of the Purchasers also filed separate motions to intervene.

Rapids Project No. 2114.[15] The Purchasers further note that at no time prior to the March 2, 1995 filing by Complainants had any protest been made to the methodology utilized by Grant County or to the contracts negotiated to finance the Priest Rapids Project No. 2114 in accordance with Public Law No. 83–544.[16] The Purchasers, like Grant County, state that in order for the Commission to be in a position to uphold Complainants' request for power, Grant County must first successfully relicense the Priest Rapids Project No. 2114. And Grant County has not yet even submitted an application for relicense and therefore the matter is not ripe for consideration.[17] The Purchasers also state that, when the existing power purchase agreements expire, the Purchasers are entitled to renew their contracts under terms similar to those contained in the existing contracts.[18] Finally, the Purchasers are in agreement with Grant County on the ''surplus power'' question raised by Complainants.[19]

IV. Complainants' Motion for Summary Disposition

On June 9, 1995, Complainants filed a motion for summary disposition. Complainants move that the Commission issue an order granting partial summary disposition of the complaint at this time by:[20]

1. Finding that the Idaho Cooperatives are agencies in neighboring states entitled to a reasonable allocation of power and energy upon expiration of the existing power sales contracts;

2. Directing Grant County to provide copies of the existing draft power sales contracts for the Idaho Cooperatives' consideration without further delay;

3. Directing Grant County to henceforth provide the Idaho Cooperatives with all revised drafts of the power sales contracts on an ongoing basis;

4. Directing Grant County to enter into good faith negotiations and to otherwise cooperate with the Idaho Cooperatives as required by Public Law No. 83–544 for the sale of the Priest Rapids Project No. 2114 power upon expiration of the existing contracts; and

5. Directing the parties to report to the Commission by December 31, 1996, regarding the progress of their negotiations and the status of any contracts executed or contemplated between Grant County and any prospective purchasers.

On June 30, 1995, Grant County and the Purchasers filed in opposition to Complainants' motion for summary judgment, essentially restating their arguments as to why the Idaho Cooperatives' complaint should be dismissed.

V. Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure,[21] the timely, unopposed motions to intervene of Grant County, City of Tacoma, Washington Water Power Company, Puget Sound Power & Light Company, Seattle City Light, Eugene Water & Electric Board, PacifiCorp, Portland General Electric Company, and Cowlitz County PUD No. 1 serve to make them parties to this proceeding.[22]

At the outset, we will address two issues important to the resolution of this complaint:

A. Does Public Law No. 83–544 apply on relicensing (or just to initial licensing)?

B. Did Grant County violate section 22 of the FPA by contracting for the sale and delivery of power beyond the date of termination of the license for Priest Rapids Project No. 2114 without obtaining the requisite approval of this Commission?

A. Public Law No. 83–544 (68 Stat. 573)

1. Background

Public Law No. 83–544, enacted in July 1954, provided for the hydropower development of the Priest Rapids site on the Columbia River in Washington State ''under and in accordance with the terms and conditions of a license duly issued pursuant to the Federal Power Act and in accordance with this Act.'' Section 6 of Public Law No. 83–544 states in relevant part:

> The operation and maintenance of a project under license pursuant to this Act shall be subject to reasonable rules and regulations by the Secretary of the Army in the interest of flood control and navigation. To assure that there shall be no discrimination between States in the area served by the project, such license shall provide that the licensee shall offer a reasonable portion of the power capacity and a reasonable portion of the power output of the project for sale within the economic market area in neighboring States and shall cooperate with agencies in such States to insure compliance with this requirement: *Provided,* That in the event of disagreement between the licensee and the power marketing agencies (public or private) in any of the other States within the economic market area, the Federal Power Commission may determine and fix the applicable portion of power capacity and power output to be made available hereunder and the terms applicable thereto.

As discussed above, Complainants argue that the licensee is violating this provision by refusing to negotiate over the sale of power after the existing license expires in 2005.

Grant County and the Purchasers respond that: (1) Public Law No. 83–544 only applies to the original license and does not apply in the relicensing context; (2) Grant County's current allocation method already shares small amounts of project power with Idaho utilities and has already been approved as consistent with the law; (3) Complainants missed their opportunity when they turned down the option to purchase project power in 1955 (at the time of original licensing) because they viewed Grant County's project power as too expensive; and (4) Complainants' concerns are premature because an application for relicensing for the project has not yet been filed.

2. Discussion

The first question to be addressed is whether section 6 of Public Law No. 83–544 applies after the initial license term for this project expires. We start with the language of the statute itself.[23] Nothing therein indicates that the provision applies *only* to the original license to be issued under Part I of the FPA, even though in the FPA Congress made distinctions between original licenses and ''new'' licenses (*i.e.,* relicenses). This would indicate that Public Law No. 83–544 was intended to comprehend both original and new licenses for the Priest Rapids Project.

We turn next to the legislative history of section 6.[24] The legislative history is bare of any reference to or discussion of the applicability of section 6 after expiration of the initial license term.[25] In the main, the committee reports and the debate on the floor of the House and Senate addressed the consistency of this proposal with the then-existing comprehensive Federal plan for development of the Columbia River, as set out in the Flood Control Act,[26] and the requirement to utilize the water

[15] Purchasers' April 21, 1995 Response at 4.

[16] *Id.* at 4–5.

[17] *Id.* at 9.

[18] *Id.* at 11.

[19] *Id.* at 13–14.

[20] Complainants' Motion at 24.

[21] 18 CFR 385.214.

[22] All of the above parties, except for Grant County, have also filed jointly in this proceeding as the Purchasers. *See supra* note 1.

[23] Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980).

[24] INS v. Cardoza-Fonseca, 480 U.S. 421, 432 (1987); Mead Corp. v. Tilley, et al., 490 U.S. 714, 722 (1989).

[25] *See* H.R. Rep. No. 1601, 83rd Cong., 2d Sess. (1954); S. Rep. No. 1656, 83rd Cong., 2d Sess. (1954); 100 Cong. Rec. 6846–50, 10211–28, 10247–57 (1954).

[26] *See supra* note 4.

resources in the Columbia River Basin for the benefit of the people generally by making a reasonable portion of the power generated available for equitable distribution within the economic marketing area in adjacent states. Although there was frequent mention of the fact that the project would be issued a license under the FPA, the consequences of that action were not fully articulated.

We turn next to the order issuing the license for Project No. 2114.[27] The order identifies Public Law No. 83–544 as applicable, but there is no further discussion. The Commission found that Grant County submitted satisfactory evidence of its financial ability to construct and operate the project.[28] The Commission also found that a portion of the energy generated would be used to meet Grant County's own requirements and the balance of the output and a reasonable portion of the power capacity would be sold to other electric utility systems in Washington and in neighboring states in accordance with the provisions of section 6 of Public Law No. 83–544. There is no discussion in the order regarding future relicensing or future allocation of power from the project.

We have also examined an analogous statute, the Niagara Redevelopment Act (NRA),[29] to see if its power allocation provisions address future applicability or provide any other general guidance on the issue before us. The NRA was being considered by Congress at the same time the Senate was debating the Priest Rapids legislation, and in fact the Senate debates on Priest Rapids referred specifically to the NRA legislation.[30]

As in the Priest Rapids case, Congress passed the NRA directing the Commission to issue a license for the Niagara Project to the Power Authority of the State of New York upon certain conditions contained therein. Two of those conditions, incorporated into the license, provide that ''at least 50 per centum of the project power shall be available for sale and distribution primarily for the benefit of the people as consumers, particularly domestic and rural consumers, to whom such power shall be made available at the lowest rates reasonably possible and in such manner as to encourage the widest possible use,'' and that the licensee ''shall make a reasonable portion of the project power subject to the preference provisions * * * available for use within reasonable economic transmission distance in neighboring States.'' In addition, those conditions also provide that ''[i]n any case in which project power subject to the preference provisions * * * is sold to utility companies organized and administered for profit, the Licensee shall make flexible arrangements and contracts providing for the withdrawal upon reasonable notice and fair terms of enough power to meet the reasonably foreseeable needs of the preference customers.'' [31]

There are some important similarities (and differences) between these NRA provisions and the Priest Rapids provision in dispute here. Although both intend project power to be sold over a wide geographic area for the benefit of the people at low rates, the NRA provision is more detailed and restrictive. The licensee is required to write its contracts in such a way as to allow power to be withdrawn as the needs of the preference customers grow. However, the NRA provisions, like the provisions of Public Law No. 83–544, do not expressly address future relicensing or power allocations after the initial license ends.

The Commission has interpreted the NRA allocation provisions in a number of decisions during a decade or more of litigation.[32] The Commission has found, among other things, that this language requires reallocation of the power at the end of each contract term, and that these provisions could even justify rescission of a contract if the licensee had not reasonably foreseen, and thus reserved sufficient power to withdraw for, the needs of preference customers.[33] However, it has not expressly addressed whether the provisions apply after the initial license ends. Therefore, neither the NRA itself nor the Commission's orders explicitly addresses the analogous issue before us.

In these circumstances, we believe that the most reasonable construction of Public Law No. 83–544 is that section 6 applies after issuance of a new license as well as from the issuance of the original license. First, as discussed above, there is no indication in the statutory language or its legislative history that Congress intended section 6 to apply *only* during the initial license term. In fact, had Congress intended this policy to apply for only a limited period, it would have expressly said so.[34] Second, to interpret the statute to be so limited would be inconsistent with Congress' intent to provide for the most widespread distribution and use of the project's power—both as reflected in the statute's language which prohibits discrimination between states and expressly provides for power to be sold in neighboring states, quoted *supra*, and also as reflected in the legislative history which expressed a desire to utilize the water resources in the Columbia River Basin for the benefit of the people generally including the people of neighboring states.[35] There is no indication whatsoever on the face of the statute or in the legislative history that this intent was to apply only during the initial license term and that after the initial license term the water resources of the Columbia River Basin were to be used differently. Accordingly, we find that section 6 applies after relicensing of the Priest Rapids Project No. 2114.

B. Section 22 of the FPA (16 U.S.C. 815)

The Complainants charge that Grant County has violated section 22 of the Federal Power Act by contracting for the

[27] *See supra* note 2.

[28] The power sales contracts which provided the economic underpinnings for project financing took longer than anticipated to negotiate and resulted in a delay in the commencement of construction. *See* P.U.D. No. 1 of Grant County, Washington, 15 FPC 1487 (1956).

[29] Public Law No. 85–159, 71 Stat. 401 (1957).

[30] *See* 100 Cong. Rec. 10225–26 (1954).

[31] Power Authority of the State of New York, 19 FPC 186, 193–94 (1958).

[32] *See generally* Municipal Electric Utilities Association of the State of New York, et al. v. Power Authority of the State of New York, Opinion No. 151, 21 FERC ¶ 61,021 (1982), *order on rehearing,* Opinion No. 151–A, 23 FERC ¶ 61,031 (1983), *affirmed,* PASNY v. FERC, 743 F.2d 93 (2d Cir. 1984); Massachusetts Municipal Wholesale Electric Company, et al. v. Power Authority of the State of New York, Opinion No. 229, 30 FERC ¶ 61,323, order on rehearing, Opinion No. 229–A, 32 FERC ¶ 61,194 (1985), affirmed, Metropolitan Transit Authority, et al. v. FERC, 796 F.2d 584 (2d Cir. 1986), cert. denied, 479 U.S. 1085 (1987); Municipal Electric Utilities Association of the State of New York, et al. v. Power Authority of the State of New York, Opinion No. 329, 48 FERC ¶ 61,124, *rehearing denied,* 49 FERC ¶ 61,068 (1989), *affirmed,* Allegheny Electric Cooperative, Inc. v. FERC, 922 F.2d 73 (2d Cir. 1990), *cert. denied,* 112 S.Ct. 55 (1991); Villages of Andover, et al., 64 FERC ¶ 61,066, *rehearing denied,* 64 FERC ¶ 61,358 (1993), *affirmed,* Village of Bergen, et al v. FERC, 33 F.3d 1385 (D.C. Cir. 1994).

[33] Municipal Electric Utility Association of New York, et al., 9 FERC ¶ 61,128 at 61,249 (1979); reh'g denied, 10 FERC ¶ 61,001 (1980); cf. Municipal Electric Utilities Association of the State of New York, et al., Opinion No. 151, 21 FERC ¶ 61,021 (1982), order on rehearing, Opinion No. 151–A, 23 FERC ¶ 61,031 (1983), affirmed, PASNY v. FERC, 743 F.2d 93 (2d Cir. 1984).

[34] *See* 33 F.3d at 1389.

[35] *See* H.R. Rep. No. 1601, 83rd Cong. 2d Sess. 3 (1954) (''Safeguards have been included in the bill to assure development of the Priest Rapids site for its optimum capabilities as a part of the comprehensive plan for the development and utilization of water resources in the Columbia Basin for the benefit of the people generally,'' and ''[i]t is desirable that the public benefits to accrue from power made available by this project be over as extensive an area as practical''); S. Rep. No. 1656, 83rd Cong. 2d Sess. 3–5 (1954) (Senate report contains similar language to House report); *cf.* 33 F.3d at 1389–90 (noting Congress' general intent in various statutes to use resources for benefit of people generally); 796 F.2d at 591–95 (noting Congress' intent as to NRA); 743 F.2d at 103–07 (noting Congress' intent as to NRA).

sale and delivery of power from the Wanapum Development beyond the date of termination of the project license, 2005, without obtaining the approval of the Commission.

In response, Grant County argues that the language of section 22 is permissive instead of restrictive toward entering into contracts beyond the license term. Grant County reasons that the provision exists for the protection of investors and purchasers, and thus if these entities do not wish to seek that protection by obtaining Commission approval of a contract that extends beyond the term of the license, that is their prerogative. Grant County states that the willingness of its power purchasers to accept measured business risk is not a proper cause for concern by the complainants.[36]

Section 22 of the FPA states: Whenever the public interest requires or justifies the execution by the licensee of contracts for the sale and delivery of power for periods extending beyond the date of termination of the license, such contracts may be entered into upon the joint approval of the commission and of the public-service commission or other similar authority in the State in which the sale or delivery of power is made, or if sold or delivered in a State which has no such public-service commission, then upon the approval of the commission, and thereafter, in the event of failure to issue a new license to the original licensee at the termination of the license, the United States or the new licensee, as the case may be, shall assume and fulfill all such contracts.

The legislative history is not extensive, but it demonstrates that the Commission was to use its sound discretion in approving contracts beyond the license term.[37] The Commission has received only a small number of requests for approval of contracts under section 22.[38] While we agree that the purpose of section 22 is to remove a potential obstacle from a licensee's ability to finance the project,[39] the section states that a licensee may enter into power sales contracts extending beyond the license term ''upon the joint approval of'' the Commission and the relevant state authority. The plain meaning of this text is that a licensee is not to enter into such a contract *without* the approval of the Commission and state authority, and there is no legislative history to the contrary.

We therefore conclude that section 22 required that Grant County obtain Commission approval of the approximately four-year period that the power purchase contract for the Wanapum Development extended beyond the license term. Accordingly, we direct Grant County to file an application under section 22 in a separate docket for approval of any power purchase agreements for periods extending beyond the termination date of the license.[40]

C. Setting the Matter for Hearing

We have found above that section 6 of Public Law No. 83–544 applies to relicensing. We also have reaffirmed that power sales contracts that extend beyond the term of a license require Commission approval under section 22 of the FPA. All other questions raised in the pleadings in this proceeding are set for trial-type, evidentiary hearing. All entities who have an interest in this proceeding must participate in this proceeding or they will be foreclosed later as to matters at issue in this proceeding.

Finally, we recognize that the license for Project No. 2114 does not expire until 2005, and under the Commission's regulations a relicense application is not due until at least 24 months before the existing license expires.[41] However, the parties have indicated that a licensee must begin the process of consulting with the public and the relevant resource agencies, as well as conducting the necessary environmental and economic studies long before that date,[42] and in this case, there is some indication that Grant County has already begun this process.[43] Indeed, Grant County in its June 30, 1995 filing states as follows: [44]

Grant is in the early process of developing an application for a new license for its Priest Rapids Project in accordance with Part 16 of the Commission's regulations. As part of that process, it commenced in 1992 negotiations with its existing power purchasers to determine, among other things, whether agreement could be reached on mutually beneficial terms and conditions for the sale of project power under any new license which might be issued for the Project.

Additionally, the complainants have indicated that prompt action is important because BPA has begun renegotiating all of its regional power sales contracts including those with the complainants.

Accordingly, we conclude that it is appropriate to take up the instant dispute at this time, rather than later. Moreover, we encourage the presiding judge and the parties to resolve the instant dispute expeditiously so that the relicensing proceeding may commence and be concluded in a timely manner.

The Commission Orders

(A) The Secretary is hereby directed to publish a copy of this order in the Federal Register.

(B) The Secretary is hereby directed to serve a copy of this order on all parties to this proceeding.

(C) Within 30 days from the date of issuance of this order, Grant County shall file in a separate docket an application for approval of its power sales agreements with the Purchasers under section 22 of the Federal Power Act, as described in this order.

(D) Pursuant to the authority contained in the Department of Energy Organization Act and in the Federal Power Act (particularly Sections 4(g), 10(h), 306, 307(a), 308, and 309), and the license for Project No. 2114, a public hearing shall be held in conformance with the Commission's Rules of Practice and Procedure to consider all matters of fact and law, consistent with the provisions of this order, concerning those issues in Docket No. EL95–35–000 not summarily decided in this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge for that purpose, shall preside at the hearing in this proceeding, and shall convene a prehearing conference within 30 days of the date of this order in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. 20426. The conference shall be held for the purposes of clarification of the positions of the

[36] In their response to the complaint (at 12), the Purchasers similarly state:

When the Purchasers entered into their long-term contracts to purchase power, that power was more expensive than available alternatives in the short term and involved substantial financial risks. Therefore, the Purchasers insisted upon and received power purchase contracts not only for the term of the initial license, but rights of first refusal to purchase their proportionate part of the project's output at the termination of their contracts. Those rights of first refusal gave the purchasers enforceable contractual rights under Washington law, which would be jeopardized by the relief requested by the [Complainants].

[37] *See* 58 Cong. Rec. 2240–41 (1919) (debate on H.R. 3184, which became the Federal Water Power Act of 1920).

[38] *See* Swift Creek Power Company, Inc., 61 FERC ¶ 61,227 (1992), and the cases discussed therein; *see also* Department of Water Resources of the State of California, 39 FPC 292 (1968).

[39] *See, e.g.,* Susquehanna Power Company, et al., 32 FPC 826, 830 (1964).

[40] *See* New York Irrigation District, *et al.*, 58 FERC ¶ 61,271 (1992) (when the Commission discovered, in the course of examining a contract for the sale of project power, that the term of the contract extended about eight years beyond the termination date of the license, it ordered the licensee to file a request under section 22 for approval of the power purchase agreement.)

[41] 18 CFR 16.9(b).

[42] *See* 18 CFR Part 16.

[43] *See* Motion of Idaho Cooperatives for Summary Disposition at Attachment 2.

[44] *See* Response of Grant County to Motion for Summary Disposition at 3.

parties, delineation of the specific issues to be litigated, discussion of procedures for expediting the hearing, and establishment by the presiding judge of any procedural dates necessary for this hearing.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23314 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. ER94–1529–001, ER94–1529–002, and EL95–77–000]

Mid-Continent Area Power Pool; Notice of Initiation of Proceeding and Refund Effective Date

September 15, 1995.

Take notice that on September 14, 1995, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL95–77–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL95–77–000 will be 60 days after publication of this notice in the Federal Register.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23312 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–730–000]

Mid Louisiana Gas Company; Application

September 14, 1995.

Take notice that on September 1, 1995, Mid Louisiana Gas Company (Mid Louisiana), 2 Allen Center, Suite 2885, 1200 Smith Street, Houston, Texas 77002 filed an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon (i) the storage services it receives at and from the Hester Storage Field (Hester) and appurtenant facilities owned by Transcontinental Gas Pipe Line Corporation (Transco); (ii) a related transportation and exchange service with Transco; (iii) certain services currently provided by Mid Louisiana to the extent that such services rely on the availability of the storage services at and from Hester, as well as related transportation and exchanges services; and (iv) the firm and interruptible storage services it provides to customers under its Rate Schedules FSS and ISS and its small merchant service provided under Rate Schedule SMS (to replace such services, Mid Louisiana states it will file a separate application, under Section 4 of the Natural Gas Act, to amend its existing no-notice service), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mid Louisiana states that the purpose of the requested abandonment authorizations and the Section 4 changes to be proposed in a later filing is to make available a revised no-notice service that will more accurately reflect the manner in which no-notice service has been used by its customers since the implementation of Order No. 636 on its system, while also providing those customers with an improved level of reliability of service at reduced costs. Mid Louisiana requests that the abandonment authorizations be permitted to become effective September 1, 1996. Consistent with this request, Mid Louisiana states that it will file the separate Section 4 rate application on March 1, 1996 so as to permit the proposed changes in its no-notice services to also become effective September 1, 1996.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 5, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Mid Louisiana to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23274 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–260–002]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

September 14, 1995

Take notice that on September 8, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised, Fourth Revised Sheet No. 319, to be effective October 8, 1995.

Natural states that the purpose of the filing is to comply with the Commission's August 18, 1995, letter order in Docket No. RP95–260–001. The letter order directed Natural to amend its tariff to reflect actual practice used to develop billing determinants used in Account 858 surcharge filings under Section 21 of the General Terms and Conditions of Natural's tariff.

Natural states that it has revised Section 21.3(d) to state that billing determinants will be based on those in effect sixty (60) days prior to the effective date of the semi-annual tracking filing adjusted for known and measurable changes that will occur by the effective date of the adjustment.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective October 8, 1995.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. RP95–260.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 21, 1995. 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. Copies of this filing are on file with the