



The Enterprise

220 Jewett Blvd, PO Box 218, White Salmon, WA 98672, Phone: 509.493.2112

FERC: PacifiCorp exempt from state, local rules

Story by: Jesse Burkhardt

The Federal Energy Regulatory Commission (FERC) has ruled that PacifiCorp will not necessarily have to abide by any state or local regulations as it moves to decommission and remove Condit Dam.

"It is well-established that the Federal Power Act pre-empts all state and local law concerning hydroelectric licensing," read an excerpt from the FERC ruling.

PacifiCorp is the Portland utility that owns and operates Condit Dam, which is located on the White Salmon River about three miles from the mouth of the Columbia River.

On Monday, PacifiCorp spokesman Dave Kvamme called the FERC ruling "helpful."

"FERC made it clear its authority under the Federal Power Act pre-empts state and local law related to the Condit Docket," explained Kvamme. "The order is helpful because now we know FERC is the jurisdiction where final permitting issues will be determined."

The FERC order, issued in late May, stated that the Federal Power Act "pre-empts all state and local regulatory authority that Skamania County or Klickitat County may attempt to exercise over PacifiCorp's actions in carrying out any order [FERC] issues regarding the settlement agreement filed in the surrender proceeding for the Condit Project."

The ruling is the latest chapter in an ongoing process that will eventually determine the fate of Condit Dam.

In 1999, PacifiCorp filed an application to surrender the project license for the dam, and proposed to remove the dam in 2008. PacifiCorp's request to remove the dam is now pending before FERC.

In October 2005, PacifiCorp filed a petition requesting that FERC issue a declaratory order stating that the Federal Power Act pre-empts "all state and local regulatory authority that [the counties] might attempt to exercise over PacifiCorp's actions carrying out any [FERC] order regarding the project's decommissioning settlement agreement."

PacifiCorp argued that "a declaratory order removing uncertainty about the counties' ability to interfere with, delay, and frustrate implementation of any ultimate order in the proceeding -- whatever that order may require -- is necessary to preserve the viability of the settlement agreement, pending [FERC] action."

In their legal response, Klickitat and Skamania counties pointed out that PacifiCorp's settlement agreement "contemplates that PacifiCorp will obtain

all applicable federal, state, regional, and local permits associated with its proposal ... PacifiCorp's petition is an attempt to renege on that commitment."

On Monday, Klickitat County Prosecuting Attorney Tim O'Neill questioned PacifiCorp's motivations.

"PacifiCorp has represented before that it would follow local permitting requirements, then they file a brief saying, `but we're not bound by them,'" O'Neill said. "So the entity getting regulated gets to pick which regulations it gets regulated by. What FERC held is that they're basically going to wait on making a decision as to what extent they will require PacifiCorp to follow local regulations. I would hope FERC would not allow PacifiCorp to walk away from everything."

However, the FERC order made clear that PacifiCorp would not automatically be allowed to ignore state and local requirements.

"Federal pre-emption does not necessarily mean that FERC will not elect to require PacifiCorp to comply with those of the counties' requirements that FERC concludes will not interfere with the company's ability to carry out FERC's orders. It only establishes that it is within FERC's sole discretion to determine the extent to which such compliance will be required," the order read. "We prefer for our licensees to be good citizens of the communities in which projects are located, and thus to comply with state and local requirements where possible. However, to the extent that state or local regulations make compliance with our order impossible or unduly difficult, we will conclude that such regulations are pre-empted."

Kvamme pointed out that the FERC order does not mean PacifiCorp will seek to cut corners.

"We'd like to continue to work constructively with the counties and other parties so we can smoothly implement the settlement plan," Kvamme explained.

FERC commissioners added that there is no way for them to predict what local requirements may be included in, or precluded by, their decisions.

"PacifiCorp proposed, under certain conditions, to comply with state and local ordinances and the counties have noted particular local ordinances which they maintain should apply," FERC commissioners wrote in their statement. "To determine in a declaratory order which, if any, local requirements we will or will not require the licensee to fulfill would be to pre-judge issues that may come before us in the future. Therefore, to the degree that PacifiCorp is seeking assurance that FERC's order will not require compliance with any of the counties' ordinances, we cannot do so here."

"Frankly, they just punted to another time," O'Neill commented on the FERC ruling.