

153 FERC ¶ 62,175  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

City of River Falls, Wisconsin

Project No. 10489-014

ORDER DENYING EXTENSION OF LICENSE TERM

(Issued December 9, 2015)

1. On July 6, 2015, the City of River Falls, Wisconsin (City or licensee) filed a request to extend the termination date of its license for the River Falls Project.<sup>1</sup> The current license for the project expires August 31, 2018. The City seeks to extend its license term by 5 years so that it expires on August 31, 2023. The project is located on the Kinnickinnic River, in Pierce County, Wisconsin. The project does not occupy federal lands.

BACKGROUND

2. The City filed a Notice of Intent (NOI) to relicense the project and Pre-Application Document (PAD) on November 27, 2013. Along with this filing, the City submitted a request to use the Commission's Traditional Licensing Process (TLP). The Commission granted the City's TLP request on January 27, 2014. Initial comments and study requests were due for consideration by May 23, 2014. Study requests were filed by the U.S. Fish and Wildlife Service (FWS), Kinnickinnic River Land Trust, National Park Service (NPS), the Kiap-Tu-Wish Chapter of Trout Unlimited, Friends of the Kinni, and the Wisconsin Department of Natural Resources (Wisconsin DNR).<sup>2</sup>

3. On January 13, 2015, the River Falls City Council adopted resolutions recommending a request for a license extension for the River Falls Project, to allow for additional time to engage the community in a comprehensive river corridor planning process. The City intends to draft and adopt a Kinnickinnic River Corridor Planning Strategy (Corridor Plan) that would reflect a single community vision for the river, with or without the hydroelectric project. In meetings with stakeholders, the City says it

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<sup>1</sup> Order Issuing License, 44 FERC ¶ 62,298 (1988).

<sup>2</sup> The requested studies include: hydrology, sedimentation, bathymetry, water quality, aquatic resources, erosion, wildlife, plant communities, invasive species, recreation, aesthetics, tourism, and economic analysis.

intends to fund and conduct studies so it can consider the option of surrendering the license instead of continuing with relicensing.

4. The results of the preliminary relicensing studies were expected to be completed by summer 2015. However, in a supplemental filing with the Commission on July 6, 2015, the City included a proposal for conducting a sediment study and a recreation study which are the primary issues for the corridor planning process. The City states that all of the other requested relicensing studies would be conducted as part of the river corridor planning process, which would take through 2017. The filing does not explain why the preliminary relicensing studies had not been initiated prior to the City's decision to request an extension of time.

#### LICENSE TERM EXTENSION REQUEST

5. The City requests a 5-year extension of its license term so that, during that time, it can work with stakeholders and the community to complete its Corridor Plan and decide whether to relicense the project or to surrender the license. The City states the additional time is needed so that it does not spend time and money relicensing the project only to determine through its Corridor Plan that the license should be surrendered and the project decommissioned. The City believes that a lengthy and expensive licensing process is the wrong process for making such a determination. The City explains that a decision about the future of the project would be made by the fall of 2017, and a notice of intent to relicense the project or a surrender application would be filed no later than August 31, 2018.

#### PUBLIC NOTICE AND COMMENTS

6. The Commission issued a public notice of the City's extension request on August 21, 2015, setting a deadline of September 21, 2015, for filing comments, motions to intervene, and protests. Twenty-five local citizens filed comments supporting the extension. The Kinnickinnic River Land Trust and the U.S. Department of the Interior, representing the FWS and the NPS, filed comments indicating support for the extension. Timely motions to intervene, along with comments supporting the extension, were filed by the Kiap-Tu-Wish Chapter of Trout Unlimited, the Friends of the Kinni, and the Wisconsin DNR. The River Alliance of Wisconsin filed a late motion to intervene, along with comments supporting the extension, which was granted by Secretary's Notice on December 9, 2015.

#### DISCUSSION

7. In its application, the City explains that the Commission must ensure that a project is in the public interest and best adapted to a comprehensive plan for developing a

waterway to benefit commerce, water-power development, environmental protection, and other beneficial public uses.<sup>3</sup> The City believes that its decision to use the Corridor Plan as a vehicle for deciding whether to relicense or surrender the project fits this public interest standard and justifies its extension request.

8. We disagree with this rationale. Generally, the Commission has extended license terms in the past to enable a licensee to amortize the cost of substantial improvements to project facilities or substantial new environmental measures.<sup>4</sup> The Commission has also extended license terms to coordinate the license expiration date with the expiration dates of other licenses in the same river basin.<sup>5</sup> However, neither situation exists here. Nor can the City cite to unique circumstances or circumstances beyond the City's control that prevent it from making a determination by August 31, 2016 (when a relicense application is due) as to whether to relicense or to surrender the project. Many municipalities and local governments develop similar comprehensive river corridor plans. Furthermore, we see nothing in the City's application that would bar the City from continuing to work on relicensing (or surrender), while at the same time developing its Corridor Plan.

9. The City's new proposed studies will require additional time. In certain cases, statutory deadlines for filing a new license application make it necessary for a licensee to complete studies and file study reports after the filing of a final license application, in order to gather useable data for Commission staff, resource agencies, and other stakeholders. In general, these studies can be incorporated into the post-filing process of a relicensing proceeding without disrupting the overall proceeding.<sup>6</sup>

10. To support its request, the City points to several cases in which the Commission granted a license extension in order to allow for continued environmental study of a project. As cited by the City, the Commission extended the license for Montana Power

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<sup>3</sup> Section 10(a)(2)(A) of the Federal Power Act (FPA) requires the Commission to consider the consistency of proposed hydropower projects with comprehensive plans for waterways affected by the project. 16 U.S.C. § 803(a)(2)(A) (2012).

<sup>4</sup> *Idaho Power Company*, 132 FERC ¶ 62,001 (2010); *PPL Holtwood, LLC.*, 129 FERC ¶ 62,092 (2009); *Wolf River Hydro Limited Partnership*, 116 FERC ¶ 62,166 (2006).

<sup>5</sup> *Northern States Power Company*, 149 FERC ¶ 62,090 (2014); *Black Bear Hydro Partners, LLC.*, 140 FERC ¶ 62,194 (2012); *Black Bear Hydro Partners, LLC.*, 140 FERC ¶ 62,195 (2012); *Wisconsin Public Service Corporation*, 127 FERC ¶ 62,219 (2009); and *FPL Energy Maine Hydro, LLC.*, 118 FERC ¶ 61,043 (2007).

<sup>6</sup> *TransCanada Hydro Northeast, Inc.*, 152 FERC ¶ 62,048 (2015).

Company's Milltown Dam Project No. 2543 because the project was part of a Superfund Site and the Environmental Protection Agency (EPA) needed 3 more years to make a final determination on how to reconfigure or operate the project to prevent the release of toxic chemicals. Montana Power Company was granted a 6-year extension to await the EPA's ruling and to evaluate whether that ruling would result in project termination.<sup>7</sup> In that case, an additional burden was placed on the licensee by another federal agency that was beyond the licensee's control.

11. In a second case cited by the City, the Commission extended the license terms for three smaller community-owned projects to allow the licensees adequate time to economically amortize future investment.<sup>8</sup> In that case, the City of Batesville,<sup>9</sup> Arkansas and Independence County, Arkansas<sup>10</sup> were each granted a 10-year extension of their 40-year licenses because 15 years into the license terms the projects had not begun construction, which left only 25 years for the licensees to recoup the costs of their investment. The extensions were granted in response to authorizing legislation from Congress. Although the projects in that case were owned by municipalities, the similarities to the present application end there.

12. In a third case, the City cites an extension of time granted to South Carolina Electric & Gas Company (SCE&G) to provide more time to conduct relicensing studies for the Saluda Project.<sup>11</sup> In the Saluda case, the project dam had to be modified and reinforced to better withstand earthquakes and the reservoir was lowered to protect downstream residents. All of this occurred just prior to the time when the licensee needed to conduct studies so it could file a relicense application. SCE&G requested an extension of its license term in order to conduct some of the required aquatic studies once the dam safety work was completed and the reservoir returned to its normal operating level. The Commission granted a 3-year extension of SCE&G's license term due, in part, to the unique circumstances of the dam safety situation in that case.

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<sup>7</sup> Order Extending Term of License, issued February 28, 1990 (unpublished).

<sup>8</sup> *Independence County, Arkansas*, 94 FERC ¶ 62,047 (2001).

<sup>9</sup> White River Lock and Dam No. 1 Project No. 4204.

<sup>10</sup> White River Lock and Dam No. 2 Project No. 4660 and White River Lock and Dam No. 3 Project No. 4659.

<sup>11</sup> *South Carolina Electric & Gas Co.*, 105 FERC ¶ 61,226 (2003).

## CONCLUSION

13. Although the City's request to extend its license term by 5 years has garnered support from commenters, most commenters support the extension because it will provide more time to explore the license surrender and dam removal option. As mentioned above, we see no reason why the City cannot evaluate both license surrender and relicensing in the remaining time it has to file a relicense application (due August 31, 2016). In fact, analysis of studies and feedback from agencies would help inform its decision of whether or not to continue to pursue the project.

14. When the license for the River Falls Project was issued, the Commission determined that a 30-year term was appropriate and in the public interest. The City has filed its NOI and PAD and has received Commission approval to use the TLP. The City is currently conducting studies to determine whether to file a relicense application or to surrender the project. We see no unique or extenuating circumstances to justify extending the license term at this time. The City remains able to work on both a relicensing option and a surrender option while it develops its Corridor Plan should the City wish to do so. Therefore, the City's application to extend its license term by 5 years should be denied.

### The Director orders:

(A) The City of River Falls, Wisconsin's application, filed on July 6, 2015, to extend the license term for the River Falls Project from August 31, 2018, to August 31, 2023, is denied.

(B) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2015). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Jennifer Hill, Director  
Division of Hydropower Administration  
and Compliance

Document Content(s)

P-10489-014.DOC.....1-5