

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Central Maine Power Company } Project No. 2555-002
Kennebec Water District } Maine

ORDER APPROVING TRANSFER OF AUTHORIZATION
FOR CONTINUED PROJECT OPERATION

(Issued January 3, 1995)

By application filed November 23, 1993, Central Maine Power Company (transferor) and Kennebec Water District (transferee) seek Commission approval to transfer the license for the Automatic Project No. 2555 from transferor to transferee.¹ The project is located on Messalonskee Stream, a tributary of the Kennebec River, in the City of Waterville, Kennebec County, Maine. Public notice of the transfer application was published, and the Maine State Planning Office filed a motion to intervene. The intervenor's contention that the transfer must be consistent with the State's Comprehensive Plan is not relevant to the transfer proceedings.² No other motions to intervene, comments, or protests were filed.

The transfer application is the result of the termination of a 1923 agreement between the transferor and transferee concerning project ownership and operation. The purpose of the transfer is to facilitate conveyance of all property rights in the project from the transferor to the transferee.

The minor license for the project expired on December 31, 1993, and has since been operated under an authorization for continued project operation pursuant to Section 9(b) of the Administrative Procedure Act, 5 U.S.C. § 558(c).³ Therefore, the transfer application is being treated as a request to transfer that authorization.⁴

¹ The minor license for Project No. 2555 was issued to transferor on August 30, 1968 (40 FPC 376).

² COMPARE Rancho Riata Hydro Partners, Inc., 54 FERC ¶ 61,253 at p. 61,735 (1991).

³ See Project No. 2555-000, Central Maine Power Company, Notice of Issuance of Authorization for continued Project Operation (unpublished), issued January 13, 1991.

⁴ COMPARE Escondido Mutual Water Company and City of Escondido, California, 47 FERC ¶ 62,054 (1989).

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The project is currently the subject of a pending relicensing application.⁵ As noted in the public notice of the transfer application, in Hydroelectric Relicensing Regulations under the Federal Power Act, the Commission indicated that it would scrutinize all transfer requests that are filed during the last five years of an existing license to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing, such as when a transfer is intended to escape consideration of a poor compliance record. Here, the compliance record of the transferor is satisfactory, and the transfer will facilitate the continued operation and maintenance of the project under the described transaction. Therefore, there is no basis for concluding that the transfer is intended to avoid a poor compliance record or otherwise give the transferee an advantage in relicensing.⁶

The transferor complied with the terms of the license and agrees to pay annual charges that have accrued to the date of the transfer. The transferee is qualified to hold the license and operate the property under license and agrees to accept all of the terms and conditions of the license and to be bound by the license as if it were the original licensee. Transfer of the license for this project is consistent with the Commission's regulations and is in the public interest.

A notice issued January 15, 1992, under Section 16.9(d)(2) of the Commission's relicensing regulations, 18 C.F.R. § 16.9(d)(2),⁷ established April 1, 1992, as the deadline for filing final amendments to relicensing applications, including the application for Project No. 2555. In MICHIGAN POWER COMPANY and INDIANA MICHIGAN POWER COMPANY, 57 FERC ¶ 61,227 (1991), the Commission found that the substitution as licensee applicant of one corporate entity for another (notwithstanding the fact that the two corporate entities were subsidiaries of the same holding

⁵ As noted, the Automatic Project No. 2555 is currently under separate, minor license. On December 4, 1991, the transferor filed an application for a new license that would encompass Project Nos. 2555, 2556, 2557, and 2559.

⁶ 54 Fed. Reg. 23,756; FERC Stats. and Regs., Regs. Preambles 1986-1990 ¶ 30,854 at p. 31,437 n. 318 (Order No. 513).

⁷ Approval of the transfer makes the transferee the "current existing licensee" of Project No. 2391. COMPARE Augusta Development Corporation and the Edwards Manufacturing Company, 57 FERC ¶ 61,070 at pp. 61,260-61 (1991).

⁸ See also Order No. 513, MUDRA, at p. 31,418.

company) was a material amendment of the license application under Section 4.35, but granted the parties' request to waive the requirements of Section 4.35.⁹

The transfer application, p. 3, states in part that, "if the transferor receives approval to transfer the license for Project No. 2555, transferor will request that the Commission issue a ... license for this project to the transferee and a new license for Project Nos. 2556, 2557, and 2559 to the transferor."¹⁰ This statement will be treated as a request to waive the public notice requirements of Section 16.9(d)(1). Since the public notice requirements of the transfer application stated that the transfer would lead to the substitution of the transferee for the transferor as the applicant for a subsequent license for Project No. 2555, the notice was published in the Federal Register and in local newspapers once a week for four consecutive weeks, and the notice was served on federal and state resource agencies and Indian tribes, substantially as required by Section 16.9(d)(1).¹¹ Adherence to the remaining notice requirements of Section 16.9(d)(1) would serve no useful public purpose, and those requirements are therefore waived.

The Director orders:

- (A) Transfer of the Authorization for Continued Project Operation for this project is approved.
- (B) Central Maine Power Company shall pay all annual charges that accrue up to the effective date of the transfer.
- (C) Approval of the transfer is contingent upon transfer of title of the properties under license and delivery of all license instruments to Kennebec Water District, which is subject to all terms and conditions of the license, as though it were the

⁹ Section 16.20 (d) applies Section 16.9(d) to minor licenses.

¹⁰ Indeed, the transfer application was the equivalent of a request to substitute the transferee for the transferor in transferor's relicensing applications for Project No. 2555, since approval of the transfer puts the transferee in the position of becoming the "current existing licensee" of those projects. See n. 6, EUPR2.

¹¹ Section 16.9(d)(1)(ii) and (iii) requires publishing notice once a week for four weeks and notifying appropriate federal, state, and interstate resource agencies and Indian tribes by mail of material amendments to relicensing applications.

original licensee. Kennebec Water District shall submit certified copies of all instruments of conveyance within 60 days from the date of this order.

(D) Licensee shall acknowledge acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheet within 60 days from the date of this order.

(E) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.



J. Mark Robinson
Director, Division of Project
Compliance and Administration

Project No. 2555-002

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, _____ this _____ day of _____, 19____, has caused its corporate name to be signed hereto by _____, its President, and its corporate seal to be affixed hereto and attested by _____ its Secretary, pursuant to a resolution of its Board of Directors duly adopted on the _____ day of _____, 19____, a certified copy of the record of which is attached hereto.

By _____

Attest:

Secretary
(Executed in quadruplicate)

Project No. 2555-002

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