

Winooski Hydroelectric Company)

Project No. 6470-000

ORDER ISSUING LICENSE (MINOR)

(Issued August 29, 1983)

The Winooski Hydroelectric Company (Applicant) filed on June 28, 1982, an application for a minor license under Part I of the Federal Power Act (Act) to construct, operate and maintain the Winooski B Project No. 6470. 1/ The project would be located on the Winooski River in Washington County, Vermont. The project would affect the interests of interstate commerce. The Green Mountain Power Corporation (GMPC) filed an application for a preliminary permit for Project No. 6399 for both this competing site (the No. 4 Development) and another non-competing site (the No. 5 Development) on June 1, 1982.

Competing Applications

The competing portions of the plans submitted in the preliminary permit application of GMPC (No. 4 Development) and the plans proposed in the license application have been analyzed by the Staff. It is concluded that neither of the plans presented differ in any substantive way. Pursuant to Section 4.33(f) of the Commission's regulations, the Commission will favor the application for license if the accepted applications for license and preliminary permit would develop, conserve and utilize the same water resources, and the license applicant has demonstrated its ability to carry out its plans. Therefore, the application for license prepared by the Applicant shall be granted herein for the Winooski B site and the competing application for the site filed by GMPC will be denied. GMPC will be granted a permit for the non-competing No. 5 site in a separate order.

1/ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under §375.308 of the Commission's regulations, 18 C.F.R. §375.308 (1982), PERC Statutes and Regulations §30,238. This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, 18 C.F.R. 385.1902, PERC Statutes and Regulations §29,052, 47 Fed. Reg. 19014 (1982). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or any other date specified in this order, except as specifically directed by the Commission.

Public Notice

Notices of the applications have been published and comments have been received from interested Federal, State, and local agencies. No protests have been received and none of the agencies objected to the issuance of a license.

Description

The proposed Winooski B project would consist of a rehabilitated dam, a seven-acre impoundment, a new penstock, a new powerhouse with one 550-kw unit and a new one-mile-long transmission line. A more detailed project description is contained in Ordering Paragraph B.

Environmental Considerations

The U.S. Department of the Interior (Interior) and the Vermont Agency of Environmental Conservation (AEC) provided comments on the proposed project. The Applicant responded to those comments by letter dated January 21, 1983.

Minimum Flows

The AEC and Interior recommended that the Applicant release a minimum flow of 30 cubic feet per second (cfs) to protect the fishery associated with the plunge pool located at the base of the dam. The Applicant stated that subsequent to the agency's letters, a minimum flow of 25 cfs had been determined sufficient by the agencies to protect the plunge pool fishery. This was verified by the issuance of a water quality certificate on December 30, 1982, in which the AEC required the Applicant to release a minimum flow of 25 cfs from the project dam. In addition, Interior, in a telephone conversation with Staff, stated that 25 cfs would be sufficient to protect the pool fishery. The staff concurs with the agencies. Article 24 requires the Licensee to release from the dam a minimum flow of 25 cfs, or inflow to the reservoir, whichever is less, for the protection of downstream aquatic resources.

Fish Passage

The AEC and Interior recommended that the Applicant excavate a fish passage channel between the tailrace and dam if operation of the project impairs passage of fish through this reach during periods of low flow. Article 11 of this license would provide for modification of project structures or operation if in the future such modification is deemed necessary by the resource agencies or by the Commission.

Recreational Resources

Interior stated that the Applicant should consult with the appropriate state agency in determining the need for any public recreational development that would be compatible with the existing resource. The Applicant stated that the reservoir is heavily silted and, as a result, is not suitable for swimming and receives only limited use by fishermen. Because of the limited public use of the project reservoir, the Applicant has not proposed any recreational development. It is concluded that development of recreational facilities is not needed at this time. Article 13, however, requires the Licensee to allow the public free access to a reasonable extent to project lands and waters for recreational purposes.

Environmental Impacts

Construction of the proposed facilities would result in short-term increases in the sediment load of the Winooski River. Lands occupied by the transmission line and penstock rights-of-way and powerhouse would be devoted to those uses throughout the life of the project. Adherence to conditions set forth in the license articles would ensure that impacts to the terrestrial and aquatic environments associated with construction and operation of the project would be minimized. No sites eligible for or included in the National Register of Historic Places would be impacted by the proposed action. No federally listed threatened or endangered species would be affected. On the basis of the record and Staff's independent analysis, we conclude that issuance of a license for the project, as conditioned, would not constitute a major Federal action significantly affecting the quality of the human environment.

Safety and Adequacy, Comprehensive Development and Economic Feasibility

The dam would be submerged during high flood flows. The spillway capacity is considered adequate.

The New York Regional Office Staff inspected the project and classified the dam as small with a low hazard potential. At the time of the regional office inspection, water was being spilled and the surface of the spillway section was not visible. The right abutment shows deterioration around the sluiceway and penstock openings. The left abutment shows concrete erosion at the water line and base of the wall. It is the intent of the Applicant to return the dam, appurtenant structures and embankment to good condition.

The project would operate run-of-river and have an estimated average annual generation of 2,200,000 kWh. ^{2/} The project is considered economically feasible based on the sale of project power at the avoided cost in the State of Vermont adjusted for escalation.

The project is not in conflict with any planned development and would be best adapted to the comprehensive development of the Lake Champlain River Basin under present conditions upon compliance with the terms and conditions of the license.

License Term

This license is issued for a term of 40 years. The proposed construction of this project is similar to the relicensing of a project for which a moderate amount of redevelopment or new construction is proposed. ^{3/}

It is ordered that:

(A) This license is issued to the Winooski Hydroelectric Company (Licensee) of Montpelier, Vermont, under Part 1 of the Federal Power Act (Act), for a period of 40 years, effective the first day of the month in which this order is issued, for the construction, operation and maintenance of the Winooski 8 Project No. 6470, located on the Winooski River in Washington County, Vermont, and affecting the interests of interstate or foreign commerce. This license is subject to the terms and conditions of the Act, which are incorporated by reference as part of the license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The Winooski 8 Project No. 6470 consist of:

(1) All lands, to the extent of the Licensee's interests in those lands, constituting the project area and enclosed by the project boundary. The project area and boundary are shown and described by certain exhibits that form part of the application for license and that are designated and described as:

^{2/} The project will utilize a renewable resource that will save the equivalent of approximately 3,610 barrels of oil or 1,020 tons of coal.

^{3/} See the Village of Lyndonville Electric Department, Great Falls Project No. 2839, Order Issuing License (Minor), issued June 29, 1979.

Article 23. The Licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations are consistent with the approved design. At least 30 days prior to start of construction of the cofferdam the Licensee shall file with the Commission's Regional Engineer and Director, Office of Electric Power Regulation, one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

Article 24. Licensee shall discharge from the Winooski No. 8 Dam a continuous minimum flow of 25 cubic feet per second or the inflow to the reservoir, whichever is less, for the purpose of protecting and enhancing aquatic resources in the Winooski River. These flows may be temporarily modified if required by operating emergencies beyond the control of the Licensee, and for short periods for fishery management purposes upon mutual agreement between the Licensee and the Vermont Department of Fish and Game.

Article 25. The Licensee shall pay the United States the following annual charges, effective the first day of the month in which this license is issued:

(a) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 730 horsepower.

Article 26. The Licensee shall continue to consult and cooperate with appropriate Federal, State, or other natural resource agencies for the protection and development of the environmental resources and values of the project area. The Commission reserves the right to require changes in the project works or operations that may be necessary to protect and enhance those resources and values.

Article 27. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission,

and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the Licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The Licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable State and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the Licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the Licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the Licensee's costs of administering the permit program. The Commission reserves the right to require the Licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The Licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges and roads for which all necessary State and Federal approvals have been obtained;

(2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kv or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the Licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d). The Licensee may convey fee titles to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary State and Federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary Federal and State water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary Federal and State approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the Licensee must file a letter to the Director, Office of Electric Power Regulation, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any Federal or State agency official consulted, and any Federal or State approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the Licensee to file an application for prior approval, the Licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraphs (c) or (d) of this article:

(1) Before conveying the interest, the Licensee shall consult with Federal and State fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the Licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

(4) The Commission reserves the right to require the Licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

(F) The Licensee's failure to file a petition appealing this order to the Commission shall constitute acceptance of this license. In acknowledgment of acceptance of this order and its terms and conditions, it shall be signed by the Licensee and returned to the Commission within 60 days from the date this order is issued.

Lawrence R. Anderson
Lawrence R. Anderson
Director, Office of Electric
Power Regulation

Project No. 6470-000

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, the Winooski Hydroelectric Company, this ____ day of _____, 1983, has caused its name to be signed hereto by each of its partners.

By _____
General Partner

By _____
General Partner

By _____
General Partner

Subscribed and sworn to before me this ____ day of _____, 1983.

Notary Public

(Executed in quadruplicate)