

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

City of Batesville, Arkansas
Independence County, Arkansas

Project No. 4204-022
Project Nos. 4659-024 and
4660-026

ORDER EXTENDING TERMS OF LICENSES

(Issued January 22, 2001)

On September 29, 2000, the City of Batesville, Arkansas (City) and Independence County, Arkansas, (County)(together, licensees) filed an application to amend their licenses for the White River Lock and Dam Nos. 1, 2, and 3 Hydroelectric Projects, FERC Project Nos. 4204, 4660, and 4659, respectively. The licensees request that the current 40-year terms of these licenses be extended ten years, stating that after several Congressionally authorized extensions of time to start construction, inadequate time remains in the license terms to amortize the investment in the projects. The projects are to be located at existing lock and dam projects of the same name on the White River in Independence County, Arkansas.

Background

On November 8, 1985, the Commission issued a license for the construction, operation, and maintenance of Project No. 4660 to the County.¹ The license had an effective date of November 1, 1985, and a termination date of October 31, 2025. On February 28, 1986, the Commission issued a license for the construction, operation, and maintenance of Project No. 4204 to the City and a license for the construction, operation, and maintenance of Project No. 4659 to the County.² These licenses each had an effective date of February 1, 1986 and a termination date of January 31, 2026.

All three licenses required that construction of the project begin within two years of issuance of the licenses. By letter order dated March 16, 1987, the Commission

¹33 FERC ¶ 62,182.

²34 FERC ¶ 62,437 and 34 FERC ¶ 62,430.

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by the Federal Power Act. In 1989 and 1996, Congress authorized the Commission to grant three additional two-year extensions of each project's commencement of construction deadlines. The Commission has granted all extensions for each project. The current commencement of construction deadlines are November 7, 2001, for Project No. 4660 and February 27, 2002, for Project Nos. 4204 and 4659.³

Public notice of the requested license amendments was issued on October 27, 2000, with December 6, 2000, as the deadline for filing comments or motions to intervene. The U.S. Department of the Interior and the Arkansas Department of Environmental Quality indicated that they have reviewed the information provided and have no comment. Clarksville Light & Power Company, in a late comment letter filed December 12, 2000, expressed its support for the extension request. No motions to intervene were received.

Discussion

When a license has a term less than the statutory maximum of fifty years⁴ the Commission can extend the term of the license up to the statutory maximum. An extension is ordinarily granted when a license amendment entails significant project redevelopment or improvement, or the addition of substantial costs for environmental protection. In these cases, an extension serves to encourage the full development of a site's hydropower development or environmental enhancements.⁵ One consideration in determining whether to extend the license and, if so, the length of the extension, is whether a longer term is needed to ensure the financial feasibility of the proposed new generating or environmental enhancements.⁶

³Order Granting Extensions of Time, issued December 14, 1999 (Unpublished).

⁴See 16 U.S.C. § 808(b)(1).

⁵See, e.g., *Montana Power Company*, 47 FERC ¶ 61,277 at pp. 61,962-963 (1989) (denying extension request premised on licensee's expenditures to repair and rehabilitate the project because of deterioration and structural safety concerns without adding new capacity); *Milstar Manufacturing Corporation*, 33 FERC ¶ 61,349 (1985) (extension granted where licensee made substantial investment in capacity upgrade and fish passage facilities).

⁶The Commission has also granted license term extensions in unusual circumstances where no additional investment in generating capacity or environmental protection is involved. For instance, in *Montana Power Company*, 91 FERC ¶ 61,280

(continued...)

In this instance, additional investment in project generation or environmental enhancements is not contemplated because, as discussed above, initial construction has not commenced. Notwithstanding, I conclude that consideration of financial feasibility is an appropriate consideration here. The projects were issued licenses with terms of 40 years, consistent with our policy regarding the term of license.⁷ Because about 15 years have passed since these licenses were issued and construction has not commenced, the term of the licenses for practical purposes has been reduced to about 25 years. That circumstance alone would not necessarily warrant an extension of the license term, but the licensees in this instance have offered credible evidence that a 25-year license term will also prejudice their ability to finance construction.

In this connection, they state that their continuing efforts to develop the projects have recently born fruit, with two possible purchasers of the projects' output expressing their intent to proceed with power purchase agreements. However, both purchasers have advised the licensees that their interest is contingent on terms that include financing with a 30-year amortization period. They also state that, assuming construction begins by November 7, 2001, (the first deadline for commencement of construction) and is completed within two years, power from the projects would be available to purchasers at the earliest by the end of 2003. The debt would have to be serviced within the 22 and 23 years remaining in the respective license terms. In comparison to the common industry practice of 30-year financing, the licensees state that the shortened period would increase the annual debt service by 12.5 percent. They contend that as a result the remaining license terms provide inadequate time to economically amortize the investment in the projects.

⁶(...continued)

(2000), reh'g denied, 92 FERC ¶ 61,231 (2000), the Commission granted a two-year extension of the license term in order to prevent the triggering of relicensing deadlines while the Environmental Protection Agency proceeds with analyses under the Superfund law likely to result in the project being decommissioned rather than relicensed).

⁷The Commission's policy is to issue a 30-year license for projects with little or no new development, construction, capacity or environmental measures; a 40-year license for projects with a moderate amount of new development, construction, capacity, or environmental measures; and a 50-year license for projects with extensive new development, construction, capacity, or environmental measures. See Consumers Power Company, 68 FERC ¶ 61,077 at 61,383-84 (1994).

I conclude that the licensees have made a convincing showing in this regard. For that reason, I find their request for a 10-year license term extensions to be in the public interest and will approve the proposed license amendments.

The Director orders:

(A) The term of the license for the White River Lock and Dam No. 2 Hydroelectric Project No. 4660 is extended to October 31, 2035.

(B) The terms of the licenses for the White River Lock and Dam Nos. 1 and 3 Hydroelectric Projects Nos. 4204 and 4659 are extended to January 31, 2036.

(C) 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.



Fred E. Springer
Director, Division of Hydropower
Administration and Compliance