

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

City of Hamilton, Ohio

)

Project No. 12667-002

**JOINT SUBMISSION OF
THE CITY OF HAMILTON, OHIO AND
THE KENTUCKY DEPARTMENT FOR ENVIRONMENTAL PROTECTION,
DIVISION OF WATER
REGARDING PROPOSED WATER QUALITY CONDITIONS
AND WITHDRAWING REQUEST FOR EXTENSION OF TIME**

The City of Hamilton, Ohio (“City” or “Hamilton”) and the Kentucky Department for Environmental Protection, Division of Water (“KDOW”) respectfully submit this joint filing addressing certain water quality issues raised by KDOW for the proposed hydroelectric project at the Captain Anthony Meldahl Locks and Dam (“Meldahl Project”). This filing addresses the issues raised by the KDOW in its January 22, 2008 letter to FERC, rendering moot its request for an extension of time to issue a water quality certificate.

I. BACKGROUND

On October 6, 2006, Hamilton submitted an Application for Original License to develop the Meldahl Project.¹ In accordance with Commission regulations, Hamilton sent copies of the application to all affected agencies and Indian Tribes. Hamilton also submitted a request for water quality certification from KDOW on that same date.

¹ On October 10, 2006, E.On Hydro LLC also submitted a development application to develop a project at the Meldahl site (FERC Docket No. P-12658). E.On Hydro LLC later withdrew its application (*see*, “Notice of Withdrawal,” P-12658 (July 10, 2007)). Hamilton is the only remaining applicant for the Meldahl site.

On October 18, 2006 the Commission issued public notice that Hamilton had tendered for filing its license application, and soliciting additional study requests.² On December 13, 2006 the Commission accepted Hamilton's license application for filing and requested that by March 13, 2007 Hamilton submit additional information which the Commission considered necessary for it to perform an environmental assessment of the proposed project.³ On December 18, 2006, the Commission issued public notice that the Commission had accepted Hamilton's application and solicited interventions and protests.⁴ No protests were filed. On March 13, 2007, the City provided the additional information requested by the Commission in its December 13, 2006 notice. On September 18, 2007, the Commission transmitted to interested parties the environmental Scoping Document in which the Commission identified all pertinent issues to be analyzed during the environmental assessment.⁵ No parties filed comments.

On November 8, 2007, the Commission issued public notice that the project is ready for environmental assessment, and solicited comments recommendations, proposed terms and conditions, and prescriptions for the proposed project not later than January 7, 2008.⁶ The notice also required the City to file by January 7, 2008: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of

² See, "Notice Of Application Tendered For Filing With The Commission And Soliciting Additional Study Requests," FERC Docket No. P-12667 (October 18, 2006).

³ Letter from Office of Energy Projects to Mr. Mike Perry, City of Hamilton, Ohio, FERC Docket No. P-12667 (December 13, 2006).

⁴ "Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests," FERC Docket No. P-12667 (December 18, 2006).

⁵ Letter from Office of Energy Projects to interested parties, FERC Docket No. P-12667 (September 18, 2007); See also, "Notice Soliciting Scoping Comments," FERC Docket No. P-12667 (September 18, 2007).

⁶ "Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions," FERC Docket No. P-12667 (November 8, 2007).

the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.⁷ On January 7, 2008, the City filed a copy of the request for certification sent to KDOW and advised the Commission that the City had not received a water quality certification from the agency.

On January 22, 2008 KDOW submitted a request for extension of time to issue its water quality certification, stating that the agency did not receive a copy of the November 8, 2007 notice.⁸ KDOW stated that it regulates discharges of hydroelectric projects through the water quality certification program and that it has a substantial interest in the outcome of the proceeding.⁹ KDOW further stated that the conditions it would have included in its water quality certification would have been identical to those contained in Hamilton's October 6, 2006 request to the agency for the water quality certificate.¹⁰

II. JOINT RESOLUTION TO WATER QUALITY CONCERNS

A. Proposed Terms And Conditions For Water Quality

Hamilton and KDOW have engaged in discussions concerning the requests in KDOW's January 22, 2008 letter to FERC. KDOW states in its letter that if it had issued a water quality certificate, it would have included the same terms and conditions as proposed by Hamilton in its October 6, 2006 request to KDOW. Those conditions are as follows:

⁷ *Id.* Para. "o".

⁸ Letter from KDOW to FERC, FERC Docket No. P-12667 (January 22, 2008).

⁹ *Id.*

¹⁰ *Id.*

1. The project will be constructed in such a manner as to control, to the extent practicable, all sources of pollution.
2. All work performed under the certification shall adhere to the specifications set forth in the Application for License For Major Project - Existing Dam, filed by Hamilton on October 6, 2006, FERC Project No. 12667.
3. Dissolved oxygen concentration shall be maintained at 5.0 mg/l or above, daily average, with an instantaneous minimum of no less than 4.0 mg/l. With respect to the operation of the hydro units during periods of low river dissolved oxygen, Hamilton will ensure that the dam and hydro units will produce as high or higher dissolved oxygen as the dam now does by itself, unless compliance with flow and discharge requirements of the U. S. Army Corps of Engineers interferes with Hamilton's ability to do so.
4. Items of agreement between the interests represented by the Kentucky Department of Fish and Wildlife, the U.S. Army Corps of Engineers, the Kentucky Environmental and Public Protection Cabinet, and the Ohio River Valley Water Sanitation Commission relating to water quality will be met, consistent with the license articles.
5. Should evidence of stream use impairment or violation of water quality standards occur as a result of the Project (either from a spill or other forms of water pollution), Hamilton will notify the Kentucky Division of Water, Water Quality Branch and the Florence Regional Office immediately.

Hamilton understands that KDOW's primary objective is to ensure that its regulations on water quality are carried out. It was as a result of Hamilton's discussions with KDOW prior to filing its license application, and its review of the KDOW water quality parameters, that Hamilton proposed the conditions that it did. Since filing its Application, Hamilton has not learned of anything that would cause it to modify its proposed conditions. Therefore, in order to be responsive to KDOW's concerns, Hamilton informs the Commission that it does not oppose the inclusion of the water quality monitoring requirements as conditions in the license.

B. Withdrawal of Request For Extension Of Time To Issue A Water Quality Certificate

Hamilton and KDOW have discussed the parties' respective views on the Commission's authority to grant the extension sought by KDOW. Respectfully, Hamilton does not believe the Commission has the authority to grant an extension to issue the water quality certificate.¹¹ As a practical matter, however, the parties agree that the extension may not be necessary since Hamilton and KDOW both agree to the inclusion of the proposed water quality terms into the Project license. Once it is granted status as Licensee, Hamilton will be bound to comply with all terms and conditions of the license. Thus, incorporation of the above water quality terms, upon which KDOW and Hamilton are in agreement, into the license, will fulfill KDOW's substantive concerns. Although there would be no formal water quality certificate issued by the KDOW for this project, the same terms would be included in the license. This would render moot the KDOW request for extension of time to issue a water quality certificate, and the Commission will not need to address that portion of the request.

III. CONCLUSIONS

For the foregoing reasons, Hamilton and KDOW respectfully request that the Commission, through the Division of Hydropower Licensing/Office of Energy Projects, accept this joint submission, include in the license the water quality terms and conditions

¹¹ A state agency has up to one year from the date of request to issue a water quality certificate. 33 U.S.C. § 1341(a). In this case, the deadline for submitting the water quality certificate was October 5, 2007, or a full month prior to the Commission's November 8, 2007 Notice, upon which KDOW rests its request for the extension. Since Hamilton and KDOW have agreed to jointly recommend that the Commission include in the license the same terms that KDOW would have included in the water quality certificate, this submission does not further address the parties' positions regarding the one year deadline for issuance of water quality certificates.

proposed by KDOW and Hamilton as set forth herein, and accept KDOW's withdrawal of its request for extension of time to issue a water quality certificate for the Meldahl Project.

Respectfully submitted,

For City of Hamilton, Ohio



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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing document to be served upon each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington, D.C. this 21st day of February 2008.

/s/ Michelle King
Legal Assistant
Jennings, Strouss & Salmon, P.L.C.