

135 FERC ¶ 61,232
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Northern Lights, Inc.

Project No. 2594-014

ORDER DENYING REHEARING

(Issued June 16, 2011)

1. On April 14, 2011, the Director of the Office of Energy Projects (Director) issued a new 30-year license to Northern Lights, Inc. (Northern Lights)¹ under sections 4(e) and 15 of the Federal Power Act (FPA)² for the continued operation and maintenance of the 4.5-megawatt (MW) Lake Creek Hydroelectric Project No. 2594, located on Lake Creek in Lincoln County, Montana, near the City of Troy. The new license, which does not authorize any change to the project's installed capacity, requires implementation of measures to protect and enhance water quality and endangered species at the project, as well as shoreline management.
2. Northern Lights filed a timely request for rehearing, asking for a longer license term. For the reasons discussed below, we deny rehearing.

Discussion

3. Section 15(e) of the FPA³ provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years from the date on which the license is issued. The Commission's

¹ *Northern Lights, Inc.*, 135 FERC ¶ 62,040 (2011). The original license for the project was issued in 1981 and expires November 30, 2011. *Montana Light and Power*, 17 FERC ¶ 62,439 (1981). The new license is effective December 1, 2011.

² 16 U.S.C. §§ 797(e), 808 (2006), respectively.

³ 16 U.S.C. § 808 (2006).

general policy is to establish 30-, 40-, and 50-year terms for projects with, respectively, little, moderate, or extensive redevelopment, new construction, new capacity, or additional environmental measures.⁴

4. The Director concluded that the relicensed project requires only a minor amount of new environmental mitigation measures, and the April 14 Order issuing new license therefore set a 30-year term for the new license.⁵

5. On rehearing, Northern Lights contends that a term of more than 30 years is appropriate for the project. It argues that the new license requires the addition of over \$30,000 in new annual costs, which it contends for a project of its size “represents a moderate, if not significant cost.”⁶

6. We disagree. As the Commission has previously noted, the selection of an appropriate license term is a highly fact-sensitive exercise.⁷ We have reexamined the new environmental mitigation measures imposed by the license, the most significant of which provide for implementation of: (1) minimum flow releases of three cubic feet per second to the bypassed reach; (2) plans for bull trout protection and shoreline management; (3) a gage to monitor project operations.⁸ As noted above, these requirements will increase the annual cost of the project by approximately \$34,000. We agree with the Director that the requirements of this license do not rise to the level of moderate measures that would warrant a 40-year license term.⁹ Deeming the level of new measures required here to be minor is consistent with our findings in similar cases.¹⁰

⁴ See, e.g., *Public Utility District No. 1 of Chelan County, Washington*, 127 FERC ¶ 61,152, at P 10 (2009) (*Chelan County*); *Consumers Power Company*, 68 FERC ¶ 61,077, at 61,383-84 (1994).

⁵ See 135 FERC ¶ 62,040 at P 84.

⁶ Request for rehearing at 3. The levelized annual cost to operate the project as licensed would be about \$793,000. See 135 FERC ¶ 62,040 at P 76.

⁷ See, e.g., *Portland General Electric Co.*, 134 FERC ¶ 61,206, at P 6 (2011).

⁸ See Commission staff’s December 9, 2010 final EA, Table 4-3 at 84-86 (costs of environmental measures mitigation and enhancement measures).

⁹ Northern Lights also argues that a longer term is appropriate here because, although there was no formal Settlement Agreement regarding its project, the Commission should consider the informal agreements reached between it and the

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7. Northern Lights also argues that the Director should have included as an environmental mitigation measure of its relicense the cost to perform a bull trout entrainment monitoring study. Northern Lights conducted the monitoring study after it filed its relicense application, but prior to license issuance. Northern Lights asserts that, had the Director considered the cost of the study, a license term of at least 40 years would have been warranted.¹¹

8. We disagree. Although Northern Lights proposed an entrainment monitoring study in its license application, and the U.S. Fish and Wildlife Service (FWS) supported such a study,¹² Commission staff determined that Northern Lights had provided adequate information to conclude the level of bull trout entrainment at the project was low and that population level impacts were likely minimal.¹³ The Director agreed and thus did not include the study as a requirement of the new license. Because these expenditures were not part of the Director's comprehensive development/public interest determination under section 10(a)(1) of the FPA,¹⁴ they have no bearing on the length of the license term.¹⁵

stakeholders. We disagree. Where an applicant has reached a settlement or an informal agreement with interested stakeholders, including a specific license term, we will not extend a license term beyond that dictated by the extent of proposed new activities simply because the parties have agreed to such a term. *See Chelan County*, 127 FERC ¶ 61,152 at P 17 (noting that Commission, in reviewing settlements, looks not only to wishes of settling parties but also to greater public interest).

¹⁰ *See, e.g., City of Spearfish, South Dakota*, 135 FERC ¶ 61,043 (2011) (30-year license term for 4.0-MW project with \$77,020 levelized annual cost of mitigation measures).

¹¹ Request for rehearing at 3.

¹² Although FWS supported Northern Lights' proposal to conduct an entrainment monitoring study, FWS did not request the study during the study-determination phase of the Commission's integrated licensing pre-filing process. Northern Lights nevertheless voluntarily performed the study while its relicense application was pending.

¹³ *See* Commission staff's May 27, 2010 draft Environmental Assessment (EA) for the project at 97. The EA found that, although the proposed entrainment monitoring study would assist in quantifying the level of bull trout entrainment at the project, little additional information would be gained from the study. *Id.*

¹⁴ 16 U.S.C. § 803(a)(1) (2006). That section requires that any project for which the Commission issues a license shall be best adapted to a comprehensive plan for

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9. For the above reasons, we deny Northern Lights' request for a longer license term.

The Commission orders:

The request for rehearing filed by Northern Lights, Inc. on May 12, 2011, is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and utilization of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.

¹⁵ See *Ford Motor Company*, 110 FERC ¶ 61,236, at P 8 (2005). Northern Lights contends that, had it not performed the study, FWS would have included the study as a license requirement through its incidental take terms and conditions (*see* Ordering Paragraph (E) of the April 14 Order). We cannot set a license term based on speculation.