

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426
August 4, 2014

OFFICE OF ENERGY PROJECTS

Project No. 14276-001— Kentucky
Kentucky River Lock & Dam No. 11
Hydroelectric Project
Free Flow Power Project 92, LLC

Docket No. AD13-9-000

Mr. Dan Lissner
Free Flow Power Corporation
239 Causeway Street, Suite 300
Boston, MA 02114

**Reference: Authorization to Test a Two-Year Licensing Process for the Kentucky
River Lock & Dam No. 11 Hydroelectric Project**

Dear Mr. Lissner:

Background

The Hydropower Regulatory Efficiency Act of 2013 directed the Federal Energy Regulatory Commission (Commission) to investigate the feasibility of a two-year licensing process for hydropower development at non-powered dams and closed loop pumped storage projects, develop criteria identifying projects that may be appropriate for a two-year process, and develop and implement pilot projects to test a two-year process, if practicable. On January 6, 2014, the Commission solicited proposals from potential applicants to test such a licensing process, and defined the minimum criteria for projects that may be appropriate for licensing within a two-year process.

Proposed Project

On May 5, 2014, Free Flow Power Project 92, LLC (FFP) requested to use the two-year licensing process to prepare a license application for the proposed Kentucky River Lock & Dam 11 Hydroelectric Project (FERC No. 14276), which would add power

to the Kentucky River Authority's existing Kentucky River Lock & Dam 11, located on the Kentucky River in Estill and Madison counties, Kentucky. FFP also filed a notice of intent (NOI) to file a license application and a pre-application document (PAD).

On June 3, 2014, the Commission issued notice of FFP's request, soliciting: comments on the use of a two-year license process for the project; comments on the PAD, the list of environmental issues, and proposed studies; and study requests. Staff held a technical meeting on June 19, 2014, to discuss the project and potential study needs, issued comments on one of FFP's proposed studies on June 26, 2014, and issued a summary of the technical meeting on July 1, 2014.

Based on a review of the information in the PAD, it appears that FFP's proposed project meets the criteria outlined in the Commission's January 6, 2014 notice, including that the project would cause little to no change to existing surface and groundwater flows and uses, and that it would be unlikely to adversely affect federally listed threatened and endangered species. Therefore, FFP's request to use the two-year process is granted. A process plan and schedule is enclosed as Appendix A to this letter.

Studies and Additional Information Request

The PAD contains a detailed project description; a list of potential environmental effects; a proposed study plan to fill information gaps; a process plan and schedule; and documentation of consultation with affected federal and state resource agencies, Indian tribes, non-government organizations, and the public. Of the six studies proposed by FFP and addressed herein, three are approved with staff-recommended modifications and three are approved as filed by FFP (Appendix B). No additional studies are being required at this time. The specific modifications to the proposed studies and the basis for modifying FFP's study plan are discussed in Appendix C. Although Commission staff considered all study plan criteria in section 5.9 of the Commission's regulations, only the specific study criteria that are relevant to the determination are referenced in Appendix C.

Although no additional studies are being requested, additional information is needed to inform the pre-filing consultation process and so staff can expeditiously process any application that may be filed. Within 30 days of the issuance date of this letter, FFP must file the additional information requested in Appendix C. The additional information request is consistent with the information needs discussed by staff during the June 19, 2014 technical meeting, as well as comments filed on July 29, 2014, by Lock 12 Hydro Partners, LLC, applicant for the proposed Ravenna Hydroelectric Project (FERC No. 13214) at the Kentucky River Lock & Dam No. 12. This information should also be included in any license application that may be filed.

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If you have any questions, please contact Sarah Salazar at (202) 502-6863 or via email at sarah.salazar@ferc.gov.

Sincerely,

Jeff C. Wright
Director
Office of Energy Projects

Enclosures: Appendix A – Process Plan and Schedule
Appendix B – Approved Studies
Appendix C – Staff’s recommendations on proposed and requested studies
and additional information requests

cc: Mailing List
Public Files

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**APPENDIX A
PROCESS PLAN AND SCHEDULE**

**KENTUCKY RIVER LOCK & DAM NO. 11 HYDROELECTRIC PROJECT
PROCESS PLAN AND SCHEDULE**

(if due date falls on a weekend or holiday, the due date is the following business day)

Responsible Party	Pre-Filing Action or Milestone Description	Time	Deadline^a
FFP	<p>Prior to filing a request to use a two-year pilot process, prospective applicants must meet with Commission staff to discuss the nature of the project, the status of the applicant's consultation efforts, and the status of the applicant's efforts in obtaining the information described below.</p> <p>Prospective applicant files a request to use a two-year pilot process, a pre-application document including a detailed project description, a list of potential environmental effects for environmental analysis, a proposed study plan with schedule, and certification that the prospective applicant has met with the affected federal and state resource and land management agencies to discuss its project proposal.</p>	0	May 5, 2014
Commission staff	Issue notice of request to use the two-year pilot process and notice of public technical meeting to discuss the two-year pilot process proposal (if needed), or issue a letter rejecting the pilot process request if the request does not meet the criteria or filing requirements, or if the request is otherwise deficient pursuant to the instructions in this notice.	30 days	June 4, 2014
Commission staff, FFP, and	Hold public technical meeting to discuss the proposed pilot process (if	45 days	June 19, 2014

interested parties	needed as determined by Commission staff).		
Commission staff	Issue determinations on the request to use the pilot process, study plan, and environmental effects list, and if the pilot process is approved, designate the applicant to conduct informal section 106 of the National Historic Preservation Act and section 7 of the Endangered Species Act (ESA) consultations, as needed.	90 days	August 3, 2014
FFP	Complete studies, and apply for water quality and coastal zone certifications. ¹	270 days	January 30, 2015
FFP	File license application. ²	1 year	May 5, 2015
Responsible Party	Post-Filing Action or Milestone Description	Time	Deadline^a
Commission staff	Review license application and issue deficiency or additional information letter, if necessary.	395 days	June 4, 2015
Commission staff	Issue combined acceptance and ready for environmental analysis notice.	425 days	July 4, 2015
Interested parties	File comments, recommendations, preliminary terms and conditions.	485 days	September 2, 2015
Kentucky DEP	File draft water quality certification conditions.	485 days	September 2, 2015
FFP	File reply comments.	500 days	September

¹ The Commonwealth of Kentucky does not have a Coastal Zone Management Act program; therefore, the Kentucky River Lock & Dam No. 11 Hydroelectric Project is not located within a state-designated coastal management zone.

² The filing of the license application and license application content requirements should be consistent with the Commission's existing regulations, including 18 C.F.R. §§5.17 and 5.18, except as otherwise stipulated in the approved process plan and schedule or other Commission issuance for the proposed pilot process. As a reminder, all of an applicant's proposed measures and plans to protect, mitigate, or enhance environmental resources must be provided by the time the license application is filed, (18 C.F.R. § 5.18(b)(5)(ii)(C)). Measures that contain sensitive information (e.g., location of an archaeological site) should be submitted separately and marked "Not for Public Disclosure" (18 C.F.R. § 388.107 (c)).

			17, 2015
Commission staff	Issue environmental assessment (EA) and draft programmatic agreement (PA), section 10(j) letter, and section 7 ESA informal consultation letter, as necessary.	605 days	December 31, 2015
Interested parties	File comments on EA and draft PA, final terms and conditions, water quality certification, and response to section 10(j) and informal ESA consultation letters.	635 days	January 30, 2016
Commission staff	Issue final PA and hold section 10(j) meeting, if necessary.	655 days	February 19, 2016 ^b

^a Milestones shaded in gray are complete.

^b The decision on the license application can take place after all of the steps in this table have been completed, or as otherwise determined by the Commission. Two years in the process occurs on May 5, 2016.

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**APPENDIX B
APPROVED STUDIES**

Study	Recommending Entity	Approved	Approved with Modifications	Study Report Due
1. Project Hydraulics Study	FFP	x		January 30, 2015
2. Aquatic Habitat Assessment	FFP	x		January 30, 2015
3. Fish Entrainment and Survival Study	FFP	x		January 30, 2015
4. Water Quality Study	FFP		x	November 2, 2014
5. Terrestrial Habitat and Rare, Threatened, and Endangered Species Survey	FFP		x	January 30, 2015
6. Cultural Resource Assessments	Kentucky Heritage Council; FFP		x	January 30, 2015

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APPENDIX C
STAFF'S RECOMMENDATIONS ON PROPOSED AND REQUESTED
STUDIES and ADDITIONAL INFORMATION REQUESTS

Proposed and Requested Studies

The following discusses staff's recommendations on studies proposed by FFP and participants' requests for study modifications and additional studies. We base our recommendations on the study criteria outlined in the Commission's regulations [18 C.F.R. section 5.9(b)(1)-(7)]. Except as explained below, the study plan filed on May 5, 2014, as modified below, adequately addresses all study needs at this time.

The PAD contains study plans for three pre-license studies and two post-license studies. Prior to filing a license application, FFP proposes to conduct the following studies to assess project effects: a Project Hydraulics Study, an Aquatic Habitat Assessment, and a Fish Entrainment and Survival Study. After license issuance, but prior to the start of construction, FFP proposes to conduct a Water Quality Study and a Terrestrial Habitat and Rare, Threatened, and Endangered (RTE) Species Survey. FFP also proposes to prepare several resource-specific protection plans, including a Recreational Resource Management Plan (pre-licensing), as well as an Erosion and Sedimentation Control Plan, Historic Properties Management Plan, Avian Protection Plan, and Transmission Line Corridor Management Plan (post-licensing) to mitigate project effects.

On June 3, 2014, the Commission issued a notice seeking comments and requests for studies to be filed by July 3, 2014, and announced a technical meeting. The U.S. Fish and Wildlife Service (FWS), Kentucky Department of Fish & Wildlife Resources (Kentucky DFWR), Kentucky River Authority (KRA), Kentucky Heritage Council, and National Park Service (NPS) filed timely comments on your PAD. During the June 19, 2014 technical meeting, in response to comments from the Kentucky Heritage Council (Heritage Council), FFP agreed to conduct cultural resource surveys prior to filing any application. In addition, FFP agreed to file responses to staff's additional information requests regarding the proposed project design and operation.

The process plan and schedule in Appendix A requires FFP to apply for water quality certification by no later than January 30, 2015. To the extent the results of the approved studies are needed to inform the water quality certification application, you should complete the studies in sufficient time to include the results in the water quality certification application.

Project Operations, Aquatic, and Terrestrial Resource Studies

No entity filed comments on the Project Hydraulics Study, Aquatic Habitat Assessment, and Fish Entrainment and Survival Study. Those study plans are adequate, and the results should be included in the draft study reports due January 30, 2015, with the final results being filed with the license application. For the reasons explained by staff in its June 26, 2014 letter, and as confirmed in FFP's filing of July 25, 2014, the proposed Terrestrial Habitat and RTE Species Survey should be conducted during pre-filing consultation, and the results should be included in the draft study reports due January 30, 2015, with the final results being filed with the application.

Water Quality Study

As part of the proposed Water Quality Study, FFP plans to monitor temperature and dissolved oxygen levels upstream and downstream from the project during the summer months prior to construction and during the first year of project operation. Pre-construction water quality data are needed to characterize baseline water quality conditions in the project area, and we will need such data in order to conduct our environmental analysis. Therefore, within 90 days from the date of this letter, please compile a report containing existing water quality data for the project area³ and file it with the Commission. Additionally, prior to filing the report with the Commission, provide a copy to FWS, Kentucky DFWR, and Kentucky Department for Environmental Protection (Kentucky DEP), allowing the agencies 30 days to review the report and provide you with any comments. Please include proof of agency consultation and documentation of all comments received in the report filed with the Commission. A water quality monitoring study may be needed to inform our environmental analysis if the information in your report is insufficient to characterize existing water quality in the project area.

Cultural Resource Assessments

On June 30, 2014, the Kentucky Heritage Council filed a request for two Cultural Resource Assessments, including a cultural historic/architectural study and an archaeological study. In FFP's letter filed July 25, 2014, FFP confirmed its intent to conduct the cultural resource surveys, consistent with the Heritage Council's request(s), prior to filing a license application. Therefore, you should consult with the Heritage Council, conduct the historic/architectural study and archaeological study following the specifications on the Heritage Council's website at <http://heritage.ky.gov/siteprotect>, and the results should be included in the draft study reports due January 30, 2015, with the final results being filed in any license application.

³ The PAD, with attached consultation record, suggests that such data already exists.

Recreation Resources Management Plan

As to recreation resources, FFP proposes to use existing information to develop a Recreation Resources Management Plan (RRMP). The RRMP would include: (a) an inventory of existing public and private water-based recreation facilities; (b) seasonal use patterns; (c) an assessment of how project construction and operation may affect use of these facilities; and (d) proposed mitigation for any adverse effects to recreation resources or recreation enhancement measures. NPS, in comments filed July 3, 2014, states that because of the effort to establish the Kentucky River Water Trail, an “All American River Project,” designated by the Secretary of the Interior as part of the America’s Great Outdoors Initiative, existing information about recreation needs along the Kentucky River may need to be augmented with a more robust recreational needs assessment or recreation study. NPS provides no other basis for the need for additional information, and no discussion of the methods or level of effort needed to conduct such a study (*see* 18 CFR section 5.9(b)(4), (6), and (7)). In its July 25 filing, FFP acknowledges NPS and Kentucky River Water Trail Alliance’s efforts to establish the Kentucky River Water Trail, including local efforts to study the feasibility of constructing portage points at the project site. However, FFP states that there is sufficient existing recreation data, which it plans to supplement with information acquired through consultation with stakeholders, to develop a complete and comprehensive RRMP. FFP also plans to work with appropriate entities in its efforts to develop portages and trails at the project site.

It appears that sufficient information exists to assess potential project effects on recreation at the project. However, FFP should consider both land- and water-based recreation in the development of the RRMP. In particular, the proposed RRMP should explain how the Kentucky River Water Trail and associated recreation facilities were considered in the development of the RRMP. In addition, the RRMP should be developed in consultation with NPS, Kentucky DFWR, the Kentucky Heritage Council, KRA, and the Kentucky Riverkeeper.

Additional Information Requests

During the June 19, 2014 technical meeting FFP committed to providing certain additional information to staff. Staff has not yet received this information. Therefore, within 30 days from the date of this letter, please provide the following requested information about the existing and proposed project design: (1) the dimensions of the existing dam, trashrack, and intake structure; (2) the length of the buried voltage cable from the powerhouse to the new substation; (3) the composition of crest gates; (4) confirmation that information regarding (a) maximum depth, (b) mean depth, (c) flushing rate, (d) shoreline length, and (e) substrate composition of the upper reservoir is not currently available; (5) confirmation that the gradient of the affected downstream reach is

not currently available; and (6) an explanation of why the proposed 3.5-foot-high crest gate is needed.

On July 29, 2014, Lock 12 Hydro Partners, LLC, applicant for the proposed Ravenna Hydroelectric Project (Ravenna Project; FERC No. 13214) at the Kentucky River Lock & Dam No. 12, filed comments regarding the potential effects of your proposed project design on the operation and economic viability of the Ravenna Project. Please file a response to Lock 12 Hydro Partners, LLC's concerns within 30 days from the date of this letter. In addition, you should address Lock 12 Hydro Partners, LLC's comments in your license application, so that sufficient information regarding the issue is available for staff to review and analyze potential effects in the environmental document.

Document Content(s)

P-14276-001Letter4.DOC.....1-11