

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Homestead Energy Resources, L.L.C.

Project No. 7115-034

ORDER GRANTING REHEARING

(Issued May 21, 2003)

1. In this order, we grant Homestead Energy Resources, L.L.C.'s (Homestead) request for rehearing of the denial of its request for an extension of time to commence construction of the George W. Andrews Project No. 7115, and of notice of probable termination of the project license,<sup>1</sup> and extend the commencement of construction deadline to September 21, 2004, and the completion of construction deadline to September 21, 2008.

**BACKGROUND**

2. The George W. Andrews Project was licensed in 1987.<sup>2</sup> It is to be located at the U.S. Army Corps of Engineers' (Corps) George W. Andrews Lock and Dam on the Chattahoochee River in Houston County, Alabama, and Early County, Georgia.

3. Article 308 of the license order required construction to commence within two years of license issuance, i.e., by May 22, 1989. Section 13 of the Federal Power Act (FPA), 16 U.S.C. § 806, authorizes the Commission to grant one extension of the deadline, for no more than two additional years. The licensee requested and received a two-year

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<sup>1</sup>February 20, 2003 Order Denying Extension of Time and Issuing Notice of Probable Termination of License (unpublished).

<sup>2</sup>39 FERC ¶ 62,197. The license was issued to the City of Dothan, Alabama, and the Municipal Electric Authority of Georgia. In 1989, the Commission approved the deletion of the City of Dothan as co-licensee and transferred the license to the Municipal Electric Authority, 46 FERC ¶ 62,093.

extension, which moved the construction deadline to May 22, 1991.<sup>3</sup> The Commission stayed the construction deadline for over nine years pending a protracted competitive transfer proceeding, and a subsequent 1999 proceeding in which the license was transferred to Homestead, after which the construction commencement deadline was September 21, 2000.<sup>4</sup>

4. On May 26, 2000, Congress enacted Public L. No. 106-213, which states in relevant part:

Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. § 806) that would otherwise apply to the Federal Energy Regulatory Commission project numbered 7115, the Commission shall, at the request of the licensee for the project, in accordance with the good faith, due diligence, and public interest requirements of that section<sup>5</sup> and the Commission's procedures under that section, extend for 3 consecutive 2-year periods, the time period during which the licensee is required to commence construction of the project.

5. On June 23, 2000, Homestead sought the first two-year extension of time under the legislation, based on documentation demonstrating that, while it had entered into

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<sup>3</sup>Order Granting Extension of Time to Commence Project Construction, issued March 16, 1989 (unpublished).

<sup>4</sup>See 54 FERC ¶ 61,227 (1991) (start of construction stayed effective January 29, 1991); 80 FERC ¶ 61,268 (1997) (transfer of license to Southeastern Hydro Power, Inc.); 87 FERC ¶ 62,232 (1999) (transfer of license to Homestead); 88 FERC ¶ 61,071 (1999) (stay of start of construction deadline lifted, effective July 15, 1999); 88 FERC ¶ 61,256 (1999) (effective date of stay of start of construction deadline revised from January 29, 1991, to March 14, 1990, with the effect of giving the licensee additional time to commence construction once the stay was lifted).

<sup>5</sup>Section 13 of the FPA states that "the period for the completion of construction carried on in good faith and with reasonable diligence may be extended by the Commission when not incompatible with the public interests." As the Division Director's February 20, 2003 order explained, while FPA Section 13 applies a "good faith/reasonable diligence/public interest" standard only to completion of construction deadline extensions, the wording and intent of P.L. 106-213 call for the application of this standard to requests to extend the deadline to commence construction of the project. See also Summit Energy Storage, Inc., 88 FERC ¶ 61,038 (1999). We therefore examine the licensee's extension request under this standard.

negotiations for securing both a power purchase agreement and project financing, it needed more time to secure both.<sup>6</sup> Homestead's request was granted, making the deadline for start of construction September 21, 2002.<sup>7</sup>

6. On June 17, 2002, Homestead submitted a second request under the legislation for an extension of the construction commencement deadline to September 21, 2004,<sup>8</sup> stating that its most recent efforts in diligently pursuing the project "have concentrated on acquiring a power contract and establishing a project organizational structure for development of the project."<sup>9</sup> By letter dated July 16, 2002, Commission staff asked Homestead to document any steps it had taken toward the start of project construction. In its August 29, 2002 response, Homestead stated that it had been in negotiations for the sale of project power and project financing, and attached three exploratory letters from Homestead addressed to power and finance companies;<sup>10</sup> a general request for proposal from Georgia Power Company; and an agenda from a conference on "green power" during which Homestead states that it discussed the sale of power with several utilities.<sup>11</sup>

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<sup>6</sup>November 17, 2000 supplement to June 23, 2000 extension request at 9 -10.

<sup>7</sup>Order Granting Extension of Time, issued May 4, 2001 (unpublished). The order also gave the licensee until September 21, 2004, to complete project construction, issued by the Commission's Division of Hydropower Administration and Compliance.

<sup>8</sup>Homestead also requested that the completion of construction deadline be extended to September 21, 2008.

<sup>9</sup>June 17, 2002 request at 4. Notice of the request was issued July 18, 2002. The U.S. Department of the Interior timely filed a motion to intervene; Interior's Fish and Wildlife Service timely filed comments which do not relate to the subject of this proceeding.

<sup>10</sup>The August 29, 2002 response requested that the Commission withhold from public disclosure certain business and financial documents provided in its August 29 filing, pursuant to the Commission's regulation at 18 C.F.R. § 388.112 (2002).

<sup>11</sup>Due to ministerial error, Homestead's August 29, 2002 filing did not reach the Division Director, who therefore denied Homestead's extension request by order issued October 8, 2002. Homestead sought rehearing of the denial, noting that it had timely filed the requested additional information. On December 6, 2002, the Division Director rescinded his October 8 order, mooting the rehearing request, which was dismissed, 102 FERC ¶ 61,034 (2003).

7. By order issued February 20, 2003, the Director of the Division of Hydropower Administration and Compliance (Division Director) denied Homestead's request, on the basis that Homestead had provided no information showing it had advanced the imminence, or even likelihood, of the start of project construction since the grant of its last two-year extension request. The order also gave notice of the probable termination of the Project No. 7115 license. On March 24, 2003, Homestead timely filed a request for rehearing.

## DISCUSSION

8. As noted, the standard to be applied here is that the construction deadlines for a project that is being prosecuted "in good faith and with reasonable diligence may be extended by the Commission when not incompatible with the public interests."<sup>12</sup>

9. Homestead asserts that it "has nearly every item necessary to go forward with development except the power contract," and argues that it has shown due diligence in pursuing a power contract during "the enormous disruption and reorganization of the power markets in the last two years."<sup>13</sup> Homestead has made efforts to secure a power contract since its last extension request via exploratory letters to power companies, a contract with a project manager to assist it in identifying and negotiating with likely power companies,<sup>14</sup> and other informal discussions with potential buyers. We find that, while the evidence in support of these efforts is not overwhelming, it is sufficient to demonstrate Homestead's good faith and reasonable diligence in pursuing project construction.<sup>15</sup>

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<sup>12</sup>See n. 6.

<sup>13</sup>Rehearing request at 2-3.

<sup>14</sup>The September 16, 2002 contract was included in Homestead's rehearing request.

<sup>15</sup>By contrast, the Commission has denied requests for extensions under similar project-specific legislation when the licensee had not taken any additional steps since the previous extension grant. See Summit Energy Storage, Inc., 88 FERC ¶ 61,038 (1999), reh'g denied, 88 FERC ¶ 61,257 (1999) (Summit); and Northumberland Hydro Partners, L.P., 92 FERC ¶ 61,280 (2000). On rehearing of the Northumberland order, the licensee for the first time filed information demonstrating that since the last extension it had been working to secure an acceptable power sales agreement and to revise the project design to improve its economics. Based on this showing, the Commission granted rehearing and extended the construction deadlines. 95 FERC ¶ 61,013 (2001).

Because Summit, Northumberland, and the instant proceeding all involve project-

(continued...)

10. Having found that Homestead has met the good faith/due diligence test, we turn to whether granting its extension request is compatible with the public interest.<sup>16</sup> We are not aware of any other entities seeking to develop the project site for hydroelectric generation or any other enterprise, and no one has filed in opposition to Homestead's request. We therefore conclude that extending the construction deadlines by two years is compatible with the public interest, and grant rehearing.

The Commission orders:

(A) Homestead's March 24, 2003 request for rehearing of the February 20, 2003 order in this proceeding is granted.

(B) The deadline for commencement for project construction is extended to September 21, 2004.

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<sup>15</sup>(...continued)

specific legislation governing the grant of additional extensions of the FPA Section 13 construction commencement deadline, our treatment of these licensees' efforts to obtain power purchase contracts is distinguishable from, and does not apply to, the Commission case law denying requests that the Commission stay, for the licensee's lack of a power purchase contract or other financing basis, construction commencement deadlines that the Commission is not authorized to extend. See, e.g., Ronald E. Rulofson, 62 FERC ¶ 61,268 (1993); Town of Telluride, Colorado, 75 FERC ¶ 61,298 (1996).

<sup>16</sup>Under the Section 13 standard that Pub. L. No. 106-213 and others like it apply to extension requests, the Commission must find that a licensee has demonstrated good faith and reasonable diligence in prosecuting construction before the Commission can consider whether grant of the extension is compatible with the public interest. See Summit, 88 FERC ¶ 61,257 at 61,812-13.

(C) The deadline for completion of project construction is extended to September 21, 2008.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.