

153 FERC ¶ 61,198
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Marseilles Land and Water Company

Project No. 13351-021

ORDER GRANTING STAY

(Issued November 19, 2015)

1. On October 16, 2015, Marseilles Land and Water Company (Marseilles L&W or licensee), licensee for the Marseilles Lock and Dam Project No. 13351, filed a request for a 60-day stay of the project license. As discussed below, we will grant the request.

I. Background

2. The Commission licensed the 10.26-megawatt Marseilles Lock and Dam Project on December 15, 2011.¹ The project will utilize the head potential created by the existing U.S. Army Corps of Engineers' (Corps) Marseilles Lock and Dam, located on the Illinois River in the city of Marseilles in LaSalle County, Illinois.

3. Article 301 of the license required Marseilles L&W to commence construction within two years of license issuance, and complete construction within five years of license issuance.² On September 9, 2013, the Commission granted Marseilles L&W's request that the commencement and completion of construction dates be extended by an additional two years.³ Thus, Marseilles L&W is required to commence construction by December 15, 2015, and to complete construction by December 15, 2018.

4. On October 16, 2015, Marseilles L&W filed a request for a 60-day stay of the project license. Marseilles L&W states that although it has completed nearly all

¹ *Marseilles Land and Water Company*, 137 FERC ¶ 62,235 (2011).

² *Id.* at Art. 301.

³ *Marseilles Land and Water Company*, Project No. 13351-000 (Sept. 9, 2013) (unpublished order).

preconstruction requirements,⁴ it had not received approval of the project plans and specifications from the Corps, as required by Article 308 of the license. Marseilles L&W anticipates that it will need an additional 45 to 60 days following approval to commence physical construction of the project works.

5. On October 26, 2015, while its request for stay was pending before the Commission, Marseilles L&W received approval of its plans and specifications from the Corps.⁵

II. Discussion

6. Section 13 of the Federal Power Act requires a licensee to commence project construction no later than four years after issuance of the license; otherwise, the Commission is required to terminate the license.⁶ Hence, Marseilles L&W's failure to commence construction by December 15, 2015, would result in termination of its license.

7. The Commission reviews requests for stays under the standard established by the Administration Procedure Act: a stay will be granted if the Commission finds that "justice so requires."⁷ It is Commission policy to grant requests for stay of the

⁴ Marseilles L&W notes that the Regulating or Operating Plan required by Article 312 of the license has been approved by the Corps and will soon be submitted to the Commission for approval. Additionally, Marseilles L&W states that it is in the process of obtaining a construction completion bond and letter of credit, as required by the approved Financial Assurance Plan.

⁵ See U.S. Army Corps of Engineers October 26, 2015 Letter (filed October 29, 2015).

⁶ 16 U.S.C. § 806 (2012). That section states in pertinent part:

That the licensee shall commence the construction of the project works within the time fixed in the license, which shall not be more than two years from the date thereof The periods for the commencement of construction may be extended once but not longer than two additional years In case the licensee shall not commence actual construction of the project works . . . within the time prescribed in the license or as extended by the Commission, then, after due notice given, the license shall . . . be terminated upon written order of the Commission.

⁷ 5 U.S.C. § 705 (2012).

commencement of construction deadline, or of the entire license, only in narrowly circumscribed circumstances.⁸ Such circumstances may occur where there are preconditions to project construction that are beyond a licensee's control, but which appear likely to be resolved within a definitive time frame.⁹

8. Here, final approval of the project plans and specifications by the Corps is a precondition to project construction. As noted above, Marseilles L&W received approval of the project plans from the Corps on October 26, 2015. However, the licensee still requires an additional 45 to 60 days to begin construction, which could cause it to miss the commencement of construction deadline. Marseilles L&W states that the additional time following the Corps' approval is required to allow the contractor to marshal the equipment and personnel necessary to begin construction. We find that this is sufficient proof that Marseilles L&W, for reasons beyond its control, may not be able to timely commence project construction.

9. For the above reasons, we will stay Article 301 of the license for 60 days. Consistent with Commission practice,¹⁰ we are making the stay effective on October 16, 2015, the date Marseilles L&W filed its stay request. Upon expiration of the stay, on December 15, 2015, Marseilles L&W will have until February 13, 2016, to begin construction, and until February 13, 2019, to complete construction. We are staying only Article 301, rather than the entire license, to encourage the licensee to continue project development during the term of the stay. Should the recent action by the Corps prevent the licensee from complying with particular license articles, it can seek any necessary extensions of time from Commission staff.

The Commission orders:

(A) The motion for stay of the license filed by Marseilles Land and Water Company on October 16, 2015, is granted as set forth below.

⁸ *Borough of Lehigh, Pennsylvania*, 140 FERC ¶ 61,211, at P 8 (2012) (*Borough of Lehigh*); *City of Broken Bow, Oklahoma*, 132 FERC ¶ 61,225, at P 7 (2010); *Gull Industries, Inc.*, 70 FERC ¶ 61,253, at 61,784 (1995).

⁹ *Borough of Lehigh*, 140 FERC ¶ 61,211 at P 8.

¹⁰ *City of Marion, Kentucky, and Smithland Hydroelectric Partners*, 85 FERC ¶ 61,401, at 62,537 (1998).

(B) License Article 301 for Project No. 13351-000 is stayed, effective October 16, 2015, for sixty days.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.