

154 FERC ¶ 61,214
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

City of River Falls, Wisconsin

Project No. 10489-015

ORDER GRANTING REHEARING

(Issued March 17, 2016)

1. On January 8, 2016, the City of River Falls, Wisconsin (City), filed a request for rehearing of Commission staff's December 9, 2015 order denying the City's request to extend its license term for five years.¹ As discussed below, we grant rehearing.

I. Background

2. In 1988, the Commission issued an original 30-year license to the City for the operation of the 375-kilowatt River Falls Hydroelectric Project (project), located on the Kinnickinnic River, in Pierce County, Wisconsin.² The license expires August 31, 2018.

3. Under the Commission's regulations, a licensee for a minor project must notify the Commission at least 5 years before its license expires whether it intends to file a relicense application.³ If it timely notifies the Commission that it intends to seek a relicense, the licensee must file its relicense application at least 24 months before its license expires.⁴

4. The City filed a Notice of Intent to relicense the project, request to use the Commission's Traditional Licensing Process (TLP), and a Pre-Application Document on November 27, 2013. The Commission approved the City's TLP request on January 27,

¹ *City of River Falls, Wisconsin*, 153 FERC ¶ 62,175 (2015) (December 9 Order).

² *River Falls Municipal Utility*, 44 FERC ¶ 62,298 (1988).

³ 18 C.F.R. § 16.19(b) (2015).

⁴ 18 C.F.R. § 16.20(c) (2015).

2014, and several resource agencies and stakeholders filed study requests.⁵ On July 6, 2015, the City filed a request to extend the expiration date of its license by five years, until August 31, 2023.⁶ The City would then be required to notify the Commission of its intent to relicense the project by August 31, 2018, and file a relicensing application no later than August 31, 2021. The City stated that additional time was needed to work with stakeholders and the community to complete a comprehensive river corridor plan and determine whether to relicense the project or surrender the license. Notice of the City's request was issued on August 21, 2015, and several entities filed comments.

5. On December 9, 2015, Commission staff issued an order denying the City's request. The order noted that extensions of license terms have only been granted in a few specific instances, and concluded that none of those limited circumstances exist in this proceeding. The order stated that the licensee could evaluate both license surrender and relicensing in the remaining nine months it has to prepare and file a relicense application (i.e., by August 31, 2016), and further noted that the analyses and studies needed for a relicense application would help inform a decision on whether to continue to pursue relicensing.

6. The City filed a timely request for rehearing of the denial.

II. Discussion

7. On rehearing, the City argues that the order erred in: (1) determining that it could complete the studies and gather feedback from resource agencies and stakeholders prior to the August 31, 2016 deadline for filing a relicensing application; (2) dismissing the unanimous support from resource agencies and stakeholders; and (3) finding that no unique or extenuating circumstances justify extending the license term.

8. We find that the unique circumstances of this proceeding – the combination of unanimous stakeholder support for the extension, the tying of the extension to the development of a comprehensive river plan, and the fact that the licensee is a small municipality – demonstrate that a five year extension of the project license is in the public interest. All resource agencies and stakeholders support the City's proposal to

⁵ The requested studies include: hydrology, sedimentation, bathymetry, water quality, aquatic resources, erosion, wildlife, plant communities, invasive species, recreation, aesthetics, tourism, and an economic analysis.

⁶ Section 6 of the Federal Power Act states that "licenses ... shall be issued for a period not exceeding fifty years." 16 U.S.C. § 799 (2012). Thus, the Commission may extend a license term for a period no longer than fifty years from the date of issuance if it determines that such an extension is in the public interest.

extend the license term in order to complete the corridor plan and decide whether to seek a subsequent license or surrender the project. This strong support and lack of any adverse comments demonstrates that the City is not requesting an extension of the license term merely to delay the preparation of a relicense application and to continue generating under more favorable terms.

9. In addition, the City's request for an extension of its license occurred in the context of the River Falls City Council's decision to prepare a comprehensive corridor plan, which would help inform whether to relicense the project or surrender the license. The City has already engaged with stakeholders, resource agencies, and the community, and has completed two studies pursuant to the corridor plan. The City has also established a schedule whereby a decision on whether to relicense or surrender would be made by the fall 2017 and filed by August 31, 2018.

10. Last, allowing the City time to determine if it should relicense or surrender prior to having to file a relicensing application is the most efficient use of resources. As a small municipality, the City may incur significant costs in preparing and processing a relicensing application despite the fact that it may later surrender its license.

11. In the past, the Commission has extended license terms only in very narrow circumstances, for example, to amortize the cost of substantial new improvements or substantial new environmental measures,⁷ to coordinate the expiration dates of licenses in the same river basin,⁸ or because of unique circumstances or circumstances beyond a

⁷ *Idaho Power Company*, 132 FERC ¶ 62,001 (2010) (10-year extension of the license term due to the costs of replacing the project's existing powerhouse section containing 0.4-MW and 0.6-MW generating units with a new larger powerhouse section containing a single 50-MW generating unit); *PPL Holtwood, LLC.*, 129 FERC ¶ 62,092 (2009) (16-year extension of the license term due to costs associated with the construction of a new powerhouse; installation of two turbine generating units at the existing powerhouse and various environmental measures); *Wolf River Hydro Limited Partnership*, 116 FERC ¶ 62,166 (2006) (10-year extension of the license term due to costs associated with proposed environmental measures).

⁸ *Northern States Power Company*, 149 FERC ¶ 62,090 (2014) (5-year extension of license term to combine relicensing activities with another project); *Black Bear Hydro Partners, LLC*, 140 FERC ¶ 62,194 (2012), *Black Bear Hydro Partners, LLC*, 140 FERC ¶ 62,195 (2012) (3-year and 10-year extensions, respectively, of license terms for significant new construction and environmental measures and to coordinate expiration dates of the licenses); and *Wisconsin Public Service Corporation*, 127 FERC ¶ 62,219 (2009) (15-month extension of license term to combine relicensing activities with another project).

licensee's control.⁹ The Commission generally does not favor actions that delay the completion of licensing proceedings. The public interest in the timely issuance of licenses that reflect current environmental and developmental conditions at a project site, as well as administrative efficiency, counsel against doing so either lightly or often. However, given the relatively unique facts of this case, we find that an extension of the license term is in the public interest.

12. For the reasons discussed above, we grant the City's request for rehearing and extend the license term five years.

The Commission orders:

(A) The rehearing request filed by the City of River Falls on January 8, 2016, is granted.

(B) The license term for the River Falls Hydroelectric Project No. 10489 is extended to August 31, 2023.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ In *South Carolina Electric & Gas Co.*, 105 FERC ¶ 61,226 (2003), the Commission extended the term of the license for five years to give the licensee adequate time to conduct studies needed to prepare its relicense application once the project reservoir was refilled (after being drawn down for repairs) and the affected environment had returned to near normal. The Commission and its staff also granted a series of license term extensions (5 extensions totaling 15 years) for the Milltown Project after the U.S. Environmental Protection Agency (EPA) included the project in a Superfund Site. The extensions would give the licensee time after the EPA determined site cleanup measures to decide whether to seek a relicense or surrender its project and prepare the appropriate application. See *Clark Fork and Blackfoot, LLC*, 105 FERC ¶ 61,048 (2003) and previous extensions cited therein.