

156 FERC ¶ 61,197  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Fairlawn Hydroelectric Company, LLC

Project No. 12715-008

ORDER GRANTING STAY

(Issued September 22, 2016)

1. On April 28, 2016, Fairlawn Hydroelectric Company (Fairlawn or licensee), licensee for the Jennings Randolph Hydroelectric Project No. 12715, filed a request for a two-year stay of the commencement and completion of construction deadlines. As discussed below, we will grant the request.

**I. Background**

2. On April 30, 2012, the Commission issued an original license to Fairlawn to construct, own, and operate the Jennings Randolph Hydroelectric Project, located at the U.S. Army Corps of Engineers' (Corps) Jennings Randolph Dam and Lake, on the North Branch Potomac River in Garrett County, Maryland, and Mineral County, West Virginia.<sup>1</sup>

3. Article 301 of the license requires Fairlawn to commence construction of the project within two years of the issuance date of the license, and complete construction within five years of license issuance.<sup>2</sup> On May 13, 2014, the Commission granted Fairlawn's request that the commencement and completion of construction deadlines be extended by an additional two years.<sup>3</sup> Fairlawn's deadlines for commencement and

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<sup>1</sup> *Fairlawn Hydroelectric Co., LLC*, 139 FERC ¶ 62,079 (2012).

<sup>2</sup> *Id.* at 64,224.

<sup>3</sup> *Fairlawn Hydroelectric Co., LLC*, Project No. 12715-003 (May 13, 2014) (unpublished order).

completion of construction were extended to April 30, 2016, and April 30, 2019, respectively.

4. Article 313 of the license, in part, states that no construction of project works may be authorized until the Corps has given written approval of construction plans and specifications for the project.<sup>4</sup>

5. On April 28, 2016, Fairlawn filed a request for a two-year stay of the commencement of construction deadline set forth in section 13 of the Federal Power Act (FPA),<sup>5</sup> and the commencement and completion of construction deadlines in Article 301 of Fairlawn's license. Fairlawn states that, despite its best efforts, the Corps has yet to approve construction plans and specifications, preventing Fairlawn from commencing construction.

## II. Discussion

6. Section 13 of the FPA requires a licensee to commence project construction by the time fixed in the license, which can be no more than two years from the date of the license, and allows the Commission to extend the deadline once, for no more than two additional years. If the licensee does not commence construction by the deadline, the Commission is required to terminate the license.<sup>6</sup> Accordingly, because the Commission has granted Fairlawn the maximum commencement of construction deadline permitted by the FPA, and because Fairlawn has not been able to commence construction, in the absence of a stay Fairlawn's license would be required to be terminated.

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<sup>4</sup> *Fairlawn Hydroelectric Co., LLC*, 139 FERC ¶ 62,079 at 64,226.

<sup>5</sup> 16 U.S.C. § 806 (2012).

<sup>6</sup> 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. 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.”<sup>7</sup> It is Commission policy to grant requests for stay of the commencement of construction deadline, or of the entire license, only in narrowly circumscribed circumstances.<sup>8</sup> Such circumstances may occur where there are preconditions to project construction that are beyond a licensee’s control.<sup>9</sup>

8. Here, final approval of the project plans and specifications by the Corps is a precondition to project construction. Fairlawn states that, from 2011 - 2014, it worked with the Corps’ Baltimore District to develop final plans and specifications for Corps’ approval. Fairlawn further notes that while final plans and specifications were sent to the Corps’ Baltimore District in December, 2014, and subsequently forwarded to the Corps’ Headquarters, Fairlawn has yet to receive final approval, rendering it unable to commence construction. We find that this is sufficient proof that Fairlawn, for reasons beyond its control, was not able to commence timely project construction.

9. For the above reasons, we will stay Article 301 of the license for two years. Consistent with Commission practice,<sup>10</sup> we are making the stay effective on April 28, 2016, the date Fairlawn filed its stay request. Upon expiration of the stay, on April 28, 2018, Fairlawn will have two days - until April 30, 2018 - to commence construction, and until April 28, 2021 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.

The Commission orders:

(A) The motion for stay filed by Fairlawn Hydroelectric Company, LLC on April 28, 2016, is granted as set forth below.

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<sup>7</sup> 5 U.S.C. § 705 (2012).

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

<sup>9</sup> *Borough of Lehighon*, 140 FERC ¶ 61,211 at P 8.

<sup>10</sup> *City of Saxman, Alaska*, 108 FERC ¶ 61,153, at 61,870 n.6 (2004).

(B) License Article 301 for the Jennings Randolph Hydroelectric Project No. 12715 is stayed, effective April 28, 2016, for two years.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.