



ADDRESS

222 Lewis Street
River Falls, WI
54022

PHONE

715-425-0906

FAX

715-425-7217

WEBSITE

www.rfmu.org



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July 2, 2015

Ms. Kimberly Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: River Falls Hydroelectric Project, Project No. 10489
Application for Amendment of License To Extend Date for
Termination of License

Dear Secretary Bose:

Enclosed please find the City of River Falls' Application for Amendment of License to Extend the Date for Termination of License – Project No 10489 (River Falls Hydroelectric Project). For the considerations in the public interest set forth in this Application, the City seeks to amend the license termination date from August 31, 2018 to August 31, 2023. We have notified and provided an electronic copy of this application to those individuals and state and federal agencies that have expressed an interest in this matter.

Please let me know if you have any questions regarding these materials.

Sincerely,

Kevin Westhuis
Utility Director

Raymond French
Management Analyst

Encls.

BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

Application for Amendment of License

(1) The City of River Falls applies to the Federal Energy Regulatory Commission for an amendment of license for the River Falls water power project.

(2) The exact name, address, and telephone number of the applicant are:

City of River Falls
222 Lewis Street
River Falls, WI 54022
715-425-0900

(3) The applicant is a Wisconsin municipal corporation, licensee for the water power project, designated as Project No. 10489 in the records of the Federal Energy Regulatory Commission, issued on the 27th day of September, 1988.

(4) The amendments of the license proposed and the reason(s) why the proposed changes are necessary, are: [Give a statement or description]

I. Introduction

The City of River Falls (City) currently owns, operates, and maintains the River Falls Hydroelectric Project (Project). The City was issued a license on September 27, 1988 by the Federal Energy Regulatory Commission (Commission) for a period of 30 years and terminating August 31, 2018. The City seeks by this application an extension of five (5) years of the term of the license, thereby providing for a termination date of August 31, 2023. The City submits that considerations in the public interest justify this limited extension of the license term.

II. Background

The City submitted its notice of intent to relicense the Project and pre-application document on November 27, 2013. The City also submitted a request to use the traditional licensing process on that date, which was granted by the Commission on January 27, 2014. Consistent with Commission regulations, an initial consultation meeting was held at the project facilities and the River Falls City Hall on March 24, 2014. It was widely attended by community

members and other interested parties from the region and state. Initial comments and study requests from stakeholders were received by the City for consideration by May 23, 2014.

During and since the initial Commission-required deadlines, City representatives have been continuing to evaluate the Project feasibility, public sentiment, and the scope of requested studies, and continuing informal conversations with community members and interested parties. Given the significant interest in the project and preliminary analysis completed by staff, the City retained a licensing consultant to perform an alternatives analysis regarding licensing requirements and project disposition. This analysis produced wide ranges of costs for the different licensing alternatives available.

In contemplation of the different options, the River Falls City Council adopted resolutions that called for additional time to engage the community in a comprehensive river corridor planning process and that enhanced the responsible fiscal management of the hydroelectric operations and facilities. Appendix A includes the relevant City Council reports and adopted resolutions. On January 13, 2015, the River Falls City Council adopted resolutions that directed staff to seek a license extension, adopted a draft Kinnickinnic River Corridor Planning Strategy, and provided additional oversight of hydro capital costs. Another resolution also directed staff to annually report the fund balance, if any, from hydro operations for future capital projects related to the future Kinnickinnic River Corridor Plan.

Since that action, staff has continued to work with stakeholders on developing the corridor planning process and seeking their support on a license extension. Appendix B details those efforts to engage with stakeholders and includes handouts and notes from those meetings. Appendix C includes the official feedback received from stakeholders on the path forward.

The Kinnickinnic River Corridor Planning Strategy as it currently stands is reflected in Appendix D. The initial timeline for the application for amendment of the license term was seven and one half (7½) years and to allow first for the adoption of the Kinnickinnic River Corridor Plan. Based on the feedback from stakeholders, the timeline for extension was reduced to five years as reflected in this application. As a result, the decision about the future of the hydroelectric project was moved to the middle of the Corridor Planning process, which is fall 2017. The intent is to continue the process and adopt a Corridor Plan that reflects the single vision of a river either with or without hydro generation.

The other primary issue identified by stakeholders is for the City to commit to directed studies that evaluate the potential for dam removal and commit adequate funding for those studies. The City, in consultation with stakeholders, has identified two areas of immediate study that are currently being pursued and intended to inform the Corridor Planning process. Appendix E includes a response to the study requests submitted by stakeholders as part of the traditional licensing process to the extent that these topics correspond to those study areas. This study report is filed concurrent to this application to respond to the feedback from stakeholders that this response was needed to move forward. Development of further study plans will continue with stakeholders through 2017, and they will continue to be filed throughout the process.

As such, the City continues to engage with stakeholders and be transparent in its activities. All meeting notices, informational materials, and meeting notes are posted to the City's project webpage at <http://www.rfcity.org/hydro>.

III. Applicable Law

The Commission is permitted to issue hydropower licenses not to exceed fifty (50) years, which "...may be altered or surrendered only upon mutual agreement between the licensee and

the Commission after thirty days' public notice." 16 U.S.C. §799. Statutory guidance also states that license terms are to be determined by the Commission "...in the *public interest* (emphasis added) but not less than 30 years, nor more than 50 years, from the date on which the license is issued." 16 U.S.C. §808(e).

The "public interest" standard is further clarified under Sections 10(a)(1) and 4(e) of the Federal Power Act (FPA). In relevant sections, the public interest standard requires, "That the project adopted... will be best adapted to a comprehensive plan [for developing waterways to benefit commerce, water-power development, environmental protection], and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 797(e) of this title...." 16 U.S.C. §803(a)(1). Elaborated in 16 U.S.C. §797(e), the public interest standard requires the Commission, when issuing licenses, and "in addition to the power and development purposes... give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife..., the protection of recreational opportunities, and the preservation of other aspects of environmental quality."

Taken together, these two sections are understood to be the so-called comprehensive development and public interest standards for licenses for hydropower projects. These sections direct that projects licensed by the Commission and their conditions, including the term of the license, be incorporated in a comprehensive plan for public uses for the project area.

The Commission has also articulated the general circumstances for the period of time between 30 and 50 years that it issues a license. *Consumers Power Co.*, 68 FERC ¶ 61,077 at 61,383-84(1994). To summarize, 30-year licenses are issued for projects that "include no substantial new construction or power generating expansion" and 40 years or more for projects

including “substantial new construction or capacity increases”. *Consumers Power*. This section also articulates justifications for issuing licenses of longer durations, including (1) “to ease the economic impact of new costs”, (2) “encourage better comprehensive development of the renewable power generating resource”, and (3) projects including “substantial or costly environmental mitigation and enhancement measures”. *Id.*

The guidance in *Consumers Power Co.* goes on to state that the intent of the policy for licenses of longer duration is to “encourage license applicants (1) to be better environmental stewards, and (2) to propose more balanced and comprehensive development of our river basins.” *Id.* Inferred in Commission policy is that licenses can be issued for a longer duration than the standard 30-year term so that licensees are careful to propose a comprehensive development plan for the nation’s waterways.

The Commission’s responsibility to balance the developmental and environmental values of the public interest under Sections 10(a)(1) and 4(e) of the FPA continues to apply to projects throughout the term of the license. *City of Tacoma, WA*, 86 FERC ¶ 61,311 at 62,087-104 (1999). As acknowledged in *City of Tacoma* and throughout the term of a license, the Commission must continuously balance “various developmental and environmental public interest uses of the affected waterway.”

IV. Discussion

The City of River Falls seeks an extension of its current license for five years in order to develop a comprehensive plan for the Kinnickinnic River that will determine the future of the River Falls Hydroelectric Project. As reflected in Appendix D, this decision will determine the future path for licensing: relicensing or surrender. It would be impractical to continue in the current relicensing process when there is a similar likelihood for surrender at the termination of

the license. The community, stakeholders, and City leaders need additional time to be able to make that determination.

The corridor planning process will save time and public funds for the licensee, state and federal agencies, and stakeholders because a lengthy and expensive traditional relicensing process is a poor place to determine a project's disposition. In the case of relicensing, significant time and expense would be devoted for extensive study and to develop project plans for the continued operation of the facilities for the next 30 year license term. Through what would be a concurrent corridor planning process, the community could decide to surrender the license shortly after the next license would be issued and much of the study and project plans would no longer be relevant. The public interest will be best served by engaging all parties and the community in a comprehensive corridor planning process to adopt a plan that would serve as the foundation for a potential future relicensing or surrender application.

In the extensive history of the Montana Power Company project (P-2543), extensions were issued by the Commission in order to allow for continued environmental study of the Project. In the determination of the Commission, the timing of the EPA remedy for the Milltown Dam would "prevent the licensee from preparing and filing a relicensing application by [the required deadline]." *Montana Power Company*, unpublished, Order Issued February 28, 1990. The City is similar in that a decision made in accordance with the updated Kinnickinnic River Corridor Planning Strategy in Appendix D would prevent the City from preparing and filing a relicensing application by the existing license termination date of August 31, 2018. For *Montana Power Company*, the extension was granted to finalize the comprehensive study of the project area as the City seeks to do here.

Relevant in the *Montana Power Company* decision was that the EPA remedy was “likely to result in the project being decommissioned rather than relicensed.” *City of Batesville, Arkansas*, 94 FERC ¶ 62,047 /6. As recognized by stakeholders and City leaders, there is a similar likelihood that this Project could be relicensed or decommissioned at the termination of the current license.

The River Falls Hydroelectric Project is also in a unique position to establish a public engagement process that could result in the decommissioning of a minor project based on the vision of residents and users in the community and region. Existing data does not suggest an immediate need to decommission the project in order to address poor environmental conditions. The Project is locally-owned through the municipal utilities and is responsive to a wider array of constituents than the typical major project seeking decommissioning. The vision of the public engagement and corridor planning process is an adopted comprehensive plan for the river corridor through the City of River Falls. The City submits that this is exactly the sort of consideration intended by the comprehensive development/public interest standard established by Congress in the Federal Power Act.

The Commission has also established other considerations for determining whether to extend a license, which impacts this smaller, community-owned Project: allowing the licensee adequate time to economically amortize future investment. *City of Batesville, Arkansas*, 94 FERC ¶ 62,047. While this is typically related to capacity investments, extending this consideration to investments in the general public uses of the waterway and project area is well-within the public interest guidelines statutorily provided. Appendix A shows that the City of River Falls City Council has reserved ongoing income gains from hydro operations for future projects related to the Kinnickinnic River Corridor Plan. The required investment will be

determined through the planning process, and the City is on the path to economically planning for that investment. As a community-owned public utility, the public interest will be served by granting this application for an extension of the license by ensuring the responsible use of public funds and fiscal management of the hydroelectric facilities.

Another analogous situation that resulted in the Commission extending the term of a hydropower license can be found in *South Carolina Electric & Gas Company*, 105 FERC ¶ 61,226. In it, license requirements changed the physical environment for study during relicensing, and the licensee was granted an extension to allow for relicensing studies to occur when the project area returned to a state that would be similar to its state under a new license. While this application and situation is not the result of a changed physical environment preventing conditions supporting the necessary studies for relicensing, the primary necessity was to extend the license to allow adequate time to conduct studies following an intervening event.

The River Falls Hydroelectric Project experienced an intervening event in relicensing through the exceptional community and regional interest in the process. In response, River Falls City Leaders have decided it is in the public interest to further consider the impacts of hydro generation on our valuable resource and give the community a chance to determine how it will engage with the river for years to come. The Kinnickinnic River Corridor Plan process is the City's intervening event. As the statutory guidance has made clear, developing a comprehensive power and public use plan for the Project is a public interest factor for the Commission to consider when determining the term of the license. Granting the requested extension would be consistent with the public interest.

Commission policy also states that extension requests must "be reasonable and must be accompanied by sufficient justification, including a showing of consultation with and view of the

state and federal agencies involved in the relicensing process for any particular extension of the license termination date which may be needed for the timely filing of an acceptable relicensing application.” *Montana Power Company*, unpublished, issued May 25, 1989. The City has documented sufficient justification in the public interest and a showing of consultation with local, regional, state, and federal agencies involved in the relicensing process (See Appendices B, C, and E).

Finally, if the request for extension is granted, the City also seeks to reset notice requirements pursuant to 18 C.F.R. §5.5. As in *The Montana Power, L.L.C.*, 99 FERC ¶ 61,049 /28, a decision to extend the term of the license moots the City’s November 27, 2013 notice of intent to relicense the project. This application seeks to require the City to provide notice of its intent to relicense or surrender no later than August 31, 2018. This action is consistent with Commission policy and the Kinnickinnic River Corridor Planning Strategy envisioned by the River Falls City Council.

IV. Conclusion

In consideration of the public interest concerns discussed above, the City respectfully requests that the Commission approve a five-year extension of the River Falls Hydroelectric Project license to August 31, 2023.

(5)(i) The statutory or regulatory requirements of the state(s) in which the project would be located that affect the project as proposed with respect to bed and banks and the appropriation, diversion, and use of water for power purposes are: [provide citation and brief identification of the nature of each requirement.]

- [Wisconsin Statutes Chapter 30](#) and regulations promulgated thereunder govern structures, deposits, and activities in navigable waters, as well as diversion and use of water.

- [Wisconsin Statutes Chapter 31](#) and regulations promulgated thereunder govern permitting, construction, operation, and maintenance of dams in navigable and non-navigable waters.
- [Wisconsin Statutes §66.0801-0831](#) and regulations promulgated thereunder provide the authority to construct and operate electrical utilities.

(ii) The steps which the applicant has taken or plans to take to comply with each of the laws cited above are: [provide brief description for each requirement]

This project is existing and is not proposed to be modified as part of this application. As the City and community consider impacts of dam removal at our project, Wisconsin Department of Natural Resources staff will be consulted regarding the potential impacts of Wisconsin Statutes and regulations promulgated thereunder governing such action.

(c) *Required exhibits for non-capacity related amendments.* Any application to amend a license for a water power project that would not be a capacity related amendment as described in paragraph (b) of this section must contain those exhibits that require revision in light of the nature of the proposed amendments.

See Appendix F – Order Issuing License. Page 3 of 9 of the original order states that the license is issued, “for a period of 30 years, effective the first day of the month in which this order was issued, to operate and maintain the River Falls Project.” This application for amendment of license seeks approval to revise the license period of 30 years to a license period of 35 years.