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January 8, 2016

VIA ELECTRONIC FILING

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

Re: River Falls Hydroelectric Project, Project No. 10489-014
Request for Rehearing

Dear Secretary Bose:

Enclosed please find a Request for Rehearing in the Docket P-10489-014. The City of River Falls respectfully requests that the Commission grant rehearing of the Order Denying Extension of License Term and that it grant the City's request to extend its license term by five (5) years so that it expires on August 31, 2023.

This Request for Rehearing has been filed today using the Commission's eFiling service. Because the Request for Rehearing has been filed electronically, no hard copies will be delivered to the Commission. Service copies are being delivered electronically to the service list attached to the Request for Rehearing.

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

Sincerely,

Kevin Westhuis
Utility Director

Raymond French
Management Analyst

cc: Mayor Dan Toland, City of River Falls
City Council Members, City of River Falls
Scot Simpson, City Administrator, City of River Falls
Senator Ron Johnson
Senator Tammy Baldwin
Representative Ron Kind
Representative Sean Duffy

Encls.



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FEDERAL ENERGY REGULATORY COMMISSION

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| River Falls Hydroelectric Project |) | Project No. 10489-014 |
| City of River Falls, Wisconsin |) | |
| |) | |
| |) | |

REQUEST FOR REHEARING OF RIVER FALLS HYDROELECTRIC PROJECT

Pursuant to Section 313(a) of the Federal Power Act (“FPA”)¹ and Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”)², the City of River Falls (“City”) hereby files this Request for Rehearing of the December 9, 2015 Order Denying Extension of License Term (“Order”)³ pertaining to the River Falls Hydroelectric Project No. 10489-014 (“Project”).

The basis for this request for rehearing is three-fold. The City maintains the following:

1. That Commission staff erred in finding that the City can complete studies and gather feedback from agencies, stakeholders, and residents in time to make a determination for the project by August 31, 2016 (when a relicense application is due).
2. That Commission staff improperly dismissed the unanimous support from commenters, stakeholders, and agencies for the application.
3. That Commission staff erred in finding no unique or extenuating circumstances to justify extending the license term.

I. BACKGROUND

On July 6, 2015, the City of River Falls, Wisconsin filed a request to extend the termination date of its license for the River Falls Hydroelectric Project, which currently expires

¹ 16 U.S.C. §8251(a) (2012).

² 18 C.F.R. §385.713

³ 153 FERC ¶62,175

on August 31, 2018. The Commission issued a public notice of the City’s extension request on August 21, 2015, setting a deadline of September 21, 2015 for filing comments, motions to intervene, and protests. On December 9, 2015, an Order was issued from the Director of the Division of Hydropower Administration and Compliance (“Director”) that denied the City’s application to extend the license term for the River Falls Hydroelectric Project.

II. STATEMENT OF ISSUES

The matters at issue in this request for rehearing are the following:

1. Whether the City can complete studies and gather feedback from agencies, stakeholders, and residents in time to make a determination for the project by August 31, 2016 (when a relicense application is due).
2. Whether denial is in the public interest despite the unanimous support from commenters, stakeholders, and agencies for the application.
3. Whether there are one or more unique or extenuating circumstances to justify extending the license term.

III. SPECIFICATION OF ERRORS

Error 1. Commission staff erred in finding the City can complete studies and gather feedback from agencies, stakeholders, and residents in time to make a determination for the project by August 31, 2016 (when a relicense application is due).

In the Order, the Director concludes that analysis of studies and feedback from agencies would help inform the decision of whether or not to continue to pursue the project (Paragraph 13). The City agrees, as evidenced by the extensive study and engagement opportunities contemplated in the Corridor Planning process included with the application. However, the

Director also acknowledges that there is not enough time to complete the studies and gather feedback from the agencies and community prior to the City submitting a relicense application.

The Order describes the next steps of the process in conflicting terms. Paragraph 8 of the Order argues that the City can continue working on relicensing or surrender at the same time that it develops the Corridor Plan. However, Paragraph 9 of the Order continues that the required studies for completing the Corridor Plan and arriving at the determination will require additional time. The Order concludes in Paragraph 13 that Commission staff sees no reason why the City cannot evaluate both license surrender and relicensing in the remaining time it has to file a relicense application (due August 31, 2016).

If the City were to continue with the studies for just a relicense application, then additional studies could be incorporated into the post-filing process of a relicensing proceeding without disrupting the overall process. However, because the studies, analysis of the studies, and feedback from agencies and stakeholders are necessary to arrive at the determination for the future of the project, those events must occur prior to the submission of a relicense application, currently due on August 31, 2016, which the Order acknowledges cannot occur without additional time. Effectively, the Order says the City can continue with relicensing studies that will require additional time *beyond* August 31, 2016, while the results, analysis, and feedback of those studies are necessary for making a determination on the future of the project *before* the August 31, 2016 deadline. To give the City, agencies, stakeholders, and residents enough time to complete the necessary studies and provide for adequate community engagement, the City needs the additional time beyond the current license term.

Error 2. Commission staff improperly dismissed the unanimous support from commenters, stakeholders, and agencies for the application.

The Order noted the extensive and unanimous public support received for the application, including from twenty-five local citizens, the Kinnickinnic River Land Trust, U.S. Department of the Interior (representing the FWS and the NPS), the Kiap-Tu-Wish Chapter of Trout Unlimited, the Friends of the Kinni, and the River Alliance of Wisconsin. Appendix B of the application detailed the City's efforts at stakeholder engagement and Appendix C included supportive feedback received from stakeholders throughout the plan development process.

The Kinnickinnic River Corridor Planning process represents the often-sought collaboration of agencies, stakeholders, and licensees that is expected by elected representatives and taxpayers. They expect government agencies to collaborate with each other, public interest groups, and the public itself. There can be no greater consideration of the public interest. The process developed in River Falls carefully cultivated local stakeholder and agency support for the path forward and for the application. It contemplates that decisions about the future of a project that could change the face of a community are best made by the local community over a period of time and in consultation with stakeholders and agencies. The example of the Milltown Dam Project No. 2543 is persuasive, not to suggest that another agency was placing a burden on the City, but to show that the Commission has often worked in coordination with other agencies to further consider the future of a project. In the City's case, we have worked to garner support for this path forward with a license extension from all commenters for the application, including the Department of Interior representing two major consultative divisions. The path forward through the license extension provides the best opportunity through a collaborative process to determine the future of the project.

Error 3. Commission staff erred in fining no unique or extenuating circumstances to justify extending the license term.

The Order concludes that despite the study process requiring additional time beyond the relicensing deadline for which feedback on those studies is necessary to make a determination prior to the relicensing deadline, and despite the unanimous support from stakeholders and agencies for the application, there are no unique or extenuating circumstances to justify extending the license term.

The City of River Falls is not immune from the recent trend among small hydropower facilities to be taking a broader view of its operation when the period of relicensing begins. The costs of relicensing are significant and are typically factored into the return on investment of hydropower facilities over the course of a new license. While the City is at the end of its license term and cannot earn back the costs of relicensing without pursuing a relicense application, it can avoid some costs of relicensing by continuing with the preferred Corridor Planning process. This arguably applies the same principle as when the Commission has extended licenses in the past to allow the licensee more time to recoup the costs of their investment.⁴ The City is working to operate the River Falls Hydroelectric Project in the most cost-effective manner possible and the Corridor Planning process and extension of the current license term is the best path forward to accomplish that goal, in accordance with past Commission action.

The Order also distinguishes the City's application from past extensions where the unique circumstances were dam safety.⁵ However, the consideration of the Saluda case was to suggest that unique circumstances come in many forms. In the City's case, the unique circumstance is the wide-ranging support for the Corridor Planning process and extension application. The City undoubtedly needs additional time to complete studies, evaluate their results with feedback from agencies, and conduct the necessary community engagement. The support for this path forward

⁴ *Independence County, Arkansas*, 94 FERC ¶ 62,047 (2001).

⁵ *South Carolina Electric & Gas Co.*, 105 FERC ¶ 61,226 (2003).

and the license extension is also unanimous. There is a unique opportunity for the River Falls community and resource agencies to consider the future of this Project within a framework agreed upon by the parties engaged in the process.

IV. CONCLUSION

Based on the above claims of issues and errors, the City of River Falls respectfully requests that the Commission grant rehearing of the Order Denying Extension of License Term, 153 FERC ¶ 62, 175 (December 9, 2015), and that it grant the City's request to extend its license term by five (5) years so that it expires on August 31, 2023.

Submitted this 8th day of January, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at River Falls, Wisconsin, this 8th day of January, 2016.

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