

**VIA ELECTRONIC FILING**

January 16, 2015

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

**RE: Request for Extension of License Term for the Bellows Falls Project (P-1855), Wilder Project (P-1892), and Vernon Project (P-1904)**

Dear Secretary Bose:

TransCanada Hydro Northeast Inc. (“TransCanada”), owner and licensee of the Bellows Falls Hydroelectric Project (FERC No. 1855), the Wilder Hydroelectric Project (FERC No. 1892), and the Vernon Hydroelectric Project (FERC No. 1904) (“Vernon Project”) (collectively, the “Projects”), hereby submits this request to extend the term of the current licenses for these Projects for one year. Such an extension would move the expiration date of the Projects licenses from April 30, 2018, to April 30, 2019. This short extension would allow TransCanada to complete studies delayed by the decommissioning of Entergy’s Vermont Yankee Nuclear Power Plant (“Vermont Yankee”) before license applications are submitted and would maintain the integrity of the Integrated Licensing Process (“ILP”) as set forth in 18 C.F.R. Part 5 of the Commission’s regulations by allowing the post-study report process and project effect modeling to occur before license applications are submitted. The extension would also allow TransCanada to avoid significant amendments to its license applications by providing the opportunity before filing the license applications for TransCanada and stakeholders to review all study results and the results of the Hydraulic and Operations Models, which examine potential project effects on the resources and concerns identified in these studies, including discussion, consultation and examination of alternatives and any mitigation proposed by TransCanada.

**BACKGROUND**

In 1979, the Commission issued 38-year licenses for the Projects, each of which expires on April 30, 2018.<sup>1</sup> In accordance with the Commission’s ILP regulations, on October 31, 2012, within five and one-half years of the expiration date of the licenses, TransCanada submitted a notification of intent to file new license applications and a pre-application document for each of the Projects, consistent with the Commission’s regulations. 18 C.F.R. § 5.5(d) (2014).

On April 16, 2013, TransCanada initiated the study plan process by filing 33 proposed study plans to gather information for the Commission and agencies responsible for mandatory terms and conditions to craft appropriate license conditions for the new licenses for the Projects. In response to comments on the proposed study plans and from study plan meetings,

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<sup>1</sup> *New England Power Co.* 7 FERC ¶ 61,292 (1979) (Vernon Project); *New England Power Co.*, 8 FERC ¶ 61,122 (1979) (Bellows Falls Project); *New England Power Co.*, 9 FERC ¶ 61,322 (1979) (Wilder Project).

TransCanada submitted a revised study plan to the Commission on August 14, 2013, consistent with the time period set forth in the ILP regulations.

On August 27, 2013, Entergy announced its plans to decommission Vermont Yankee during the fourth quarter of 2014. Vermont Yankee withdraws water from the reservoir formed by the Vernon Project dam for cooling purposes and discharges this water back to the Vernon reservoir. The discharge of warm water from Vermont Yankee has influenced water temperatures in the Vernon reservoir and downstream of the Vernon Project since 1972. Therefore, it became apparent that the baseline environmental conditions anticipated by stakeholders early in the study plan process would change upon closure of Vermont Yankee.

Pursuant to 18 C.F.R. § 5.13(c) of the Commission's regulations, the Director of the Office of Energy Projects ("OEP") was required to issue a study plan determination in response to TransCanada's August 13, 2013 revised study plan by September 13, 2013. However, recognizing the potential influence of the closure of Vermont Yankee on the baseline environmental conditions in the Vernon reservoir and downstream of the Vernon Project, the Commission tiered its study plan determination to account for the anticipated closure of Vermont Yankee and on September 13, 2013, the Director of OEP issued a study plan determination for 13 non-aquatic studies unaffected by the closure of Vermont Yankee. These 13 non-aquatic studies include TransCanada's proposed Hydraulic Model (Study 4) and Operations Model (Study 5), each of which requires the inputs from numerous approved studies. Both of these studies will ultimately be used to determine and finalize various project effects analyses once the field work and data processing portions of studies are completed as described in their respective approved Study Plans. In this study plan determination, the Director also announced that the Commission would host a technical meeting to obtain more information as to whether the remaining 20 proposed aquatic studies are affected by changing baseline conditions or whether the schedule related to those studies should be adjusted until 2015 or later as a result of the closure of Vermont Yankee. Commission staff hosted this technical conference on November 26, 2013.

On February 21, 2014, the Director of OEP issued a study plan determination for 20 aquatic studies proposed by TransCanada and one additional study, the Vernon Hydroacoustic Study ("Aquatic SPD"). For 16 of these 21 studies, the Director adjusted the schedule to provide that the studies would be initiated in the 2015 field season due to the timing of the closure of Vermont Yankee. For these 16 studies, the initial study report is due on February 21, 2015, which is one year after the issuance of the Aquatic SPD, as required by 18 C.F.R. § 5.15(c). The updated study report is due on February 21, 2016, which is two years from the date of the Aquatic SPD, as required by 18 C.F.R. § 5.15(f).<sup>2</sup> For the Vernon Hydroacoustic Study, the Aquatic SPD requires the final study report to be submitted by March 1, 2017. The results of 11 of these 16 delayed studies are also inputs to the Hydraulic and Operations Models which will examine and potential project effects.

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<sup>2</sup> The Aquatic SPD identifies the date of the final study reports for 15 of these studies as March 1, 2016. Because the due dates for the updated study reports (February 21, 2016) and the final study reports (March 1, 2016) are so close in time, it is anticipated that the updated study report will be the final study report.

The review, comment, and disagreement provisions of the Commission's regulations, 18 C.F.R. § 5.15(c)(2)-(7), allow up to an additional 120 days for review, comment, and Director determinations after the latter of the updated study report or the final study report is filed. Consequently, in the case of 15 of the delayed studies in the Aquatic SPD, the review, comment, and disagreement provisions would be exhausted by early June 2016. In the case of the Vernon Hydroacoustic Study, this process would be exhausted by early June 2017. Moreover, additional time will be necessary after the study results have been finalized pursuant to these regulatory procedures to incorporate the study results as inputs to the Hydraulic and Operations Models, assess the Projects' effects on resources, consult with agencies and stakeholders regarding proposed mitigation, and assess the adequacy and reasonableness of any proposed mitigation measures with models.

Section 15(c)(1) of the Federal Power Act ("FPA"), 16 U.S.C. § 808(c)(1) (2012), and 18 C.F.R. § 5.17 of the Commission's regulations, require licensees seeking a new license to submit an application for a new license at least two years before expiration of a license. Therefore, TransCanada must submit new license applications for the Projects by May 2, 2016.<sup>3</sup>

### **REQUEST FOR EXTENSION OF LICENSE TERM**

TransCanada requests that the terms of the licenses for the Projects be extended for one year to maintain the integrity of the ILP pre-filing process in light of the delay in conducting necessary studies caused by the closure of Vermont Yankee and the statutory deadline for submitting new license applications two years before a license expires.

If TransCanada were required to submit its license applications by May 2, 2016, then the Commission would be required to meet certain regulatory deadlines, which it will not be in a position to meet because of the delay in other regulatory requirements related to the aquatic studies. For example, upon submission of the new license applications, the Commission must issue public notice of the tendering for filing of the applications within 14 days (18 C.F.R. § 5.19(a)), and resolve any requests for additional information gathering or studies made in comments on the preliminary licensing proposals or draft license applications (18 C.F.R. § 5.19(d)) and identify any deficiencies in the applications within 30 days of their filing (18 C.F.R. § 5.20(a)). However, because the initial field results from the aquatic studies will not be completed under the current schedule until October and November, 2015, and the preliminary licensing proposals or draft license applications are due by December 4, 2015,<sup>4</sup> stakeholders will not be able to provide meaningful comments with respect to the adequacy of the information gathered by the aquatic studies because of the limited time they will have had to analyze the results of the aquatic studies. The Commission, in turn, will not have this information in order to meet its deadline under 18 C.F.R. § 5.19(d).

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<sup>3</sup> The licenses for the Projects expire on April 30, 2018, and thus license applications must be filed by April 30, 2016. However, this date is a Saturday, and pursuant to 18 C.F.R. § 385.2007(a)(2) of the Commission's regulations, the deadline for filing a license application would shift to the close of business on the next business day, which is May 2, 2016.

<sup>4</sup> This is the date identified in the Process Plan and Schedule in Appendix B of Scoping Document 2, issued by FERC staff on April 15, 2013.

In addition, the combination of the study delays caused by the closure of Vermont Yankee and the statutory deadline for filing new license applications results in a nonsensical application of the Commission's regulations. For example, in order to submit new license applications that comply with the Commission's ILP pre-filing regulations by May 2, 2016, TransCanada is required to submit preliminary licensing proposals or draft license applications 150 days prior to May 2, 2016, or by December 4, 2015. 18 C.F.R. § 5.16. However, if TransCanada intends to prepare a draft license application in lieu of a preliminary licensing proposal, then TransCanada must request to do so in its updated study report. For the 16 delayed aquatic studies, this report is due by February 21, 2016, or almost three months *after* the date TransCanada is required to actually submit a draft license application. This simply does not make sense.

One potential solution to this conundrum is for the Commission to suspend the procedural schedule that is initiated upon the filing of a license application or to provide additional comment periods that track the pre-filing regulations after the license applications have been filed. The problem with this solution is that this will result in two different procedural tracks for the non-aquatic and aquatic resources components of the license applications, each with numerous, separate regulatory deadlines. Ultimately, TransCanada may need to revise and amend significant portions of its application related to operations that affect aquatic resources and/or aquatic resources affected by the Projects operations based on the results of the aquatic studies, the results of the Hydraulic and Operations Models. Proposed mitigation measures addressing project related impacts on all resources cannot be finalized until all studies are completed and analyzed in a comprehensive, balance, approach. It is likely that this situation will cause confusion and impose an unnecessary burden on all relicensing participants.

Furthermore, revising post-application deadlines does not resolve the fact that regulatory components of the study plan process and the application preparation process would be eliminated with respect to information related to aquatic resources if the schedule set forth in the Aquatic SPD and the statutory application filing date remain unchanged. It is important to the integrity of the Commission's ILP process that all stakeholders, including the Commission and TransCanada, are able to exercise all available rights established in the Commission's regulations. This includes the process that occurs after an updated study report or final study report is submitted to the Commission. After such a submission, TransCanada must hold a study plan meeting and submit a summary report of the meeting to the Commission. 18 C.F.R. §§ 15.15(c)(2)-(3). Stakeholders may file a disagreement with the summary, to which responses may be filed. 18 C.F.R. §§ 15.15(c)(4)-(5). Ultimately, the Director will resolve any disagreements. 18 C.F.R. § 15.15(c)(6).

Moreover, the final results of the studies must be incorporated into TransCanada's Hydraulic and Operations Models in order to assess whether the Projects are affecting resources. If it is determined that the Projects are affecting resources, the models will then be used to assess the reasonableness and adequacy of potential mitigation measures that may be proposed by TransCanada in its license applications. However, if the information gathered by the study plan process is not available at the time that TransCanada is required to prepare its license applications under the current schedule, or if the post-application process is distorted by segregating the aquatic and non-aquatic components of the license applications, the results of both of which are inputs to the models, then the opportunity for productive discussions and

agreement among all stakeholders regarding the effects of the Projects on resources and any potential mitigation will be diminished considerably.

In the alternative, by extending the license terms of the Projects by one year, the relicensing process would be simplified because TransCanada could submit meaningful preliminary licensing proposals or draft license applications that take into account the results of the aquatic studies, assess these results as part of the Hydraulic and Operations Models, including any potential mitigation measures to address the Projects effects on resources. In response to the complete applications that TransCanada would be able to provide under such a schedule, stakeholders and the Commission would be able to provide constructive comments that address aquatic resources. Ultimately, TransCanada could avoid significant amendments to its license applications, which would considerably diminish the administrative burden on all relicensing participants.

Extending the licenses for the Projects for one year would be consistent with section 6 of the FPA, which allows the Commission to issue licenses for a period of up to 50 years. 16 U.S.C. § 799 (2012). The licenses for the Projects were issued for 38 years. Adding one additional year to the term of the licenses for the Projects would result in a total license term of less than 40 years for each Project, and thus would not be inconsistent with section 6 of the FPA.

Finally, TransCanada recognizes that the Commission has expressed its intent to coordinate the environmental review pursuant to the National Environmental Policy Act (“NEPA”) of the five hydropower projects on the Connecticut River currently undergoing relicensing, including TransCanada’s three Projects and two projects owned and operated by FirstLight Hydro Generating Company (“FirstLight”) – the Turners Falls Project (FERC No. 1889) and the Northfield Mountain Pumped Storage Project (FERC No. 2485). If the Commission intends to prepare a single NEPA document for all five projects, then the environmental review for FirstLight’s projects will also have to be postponed as a result of the delay in studies caused by the closure of Vermont Yankee. This delay will occur irrespective of whether FirstLight seeks to extend the license term for the Turners Falls Project or whether the Commission issues annual licenses for the Northfield Pumped Storage Project. Therefore, the fact that TransCanada’s Projects may be part of an environmental document that also includes FirstLight’s projects should not prevent the Commission from considering and approving TransCanada’s request for an extension of its license term for its Projects.

**CONCLUSION**

TransCanada respectfully requests that the Commission extend the term of the licenses for the Projects for one year to April 30, 2019, to allow aquatic studies delayed by the Director to be completed, to allow TransCanada to incorporate the results of these studies into its Hydraulic and Operations Models to assess the Projects effects on resources and any mitigation measures, and to maintain the integrity of the study plan process and the post-application process by allowing the regulatory pre-filing process to conclude before TransCanada is required to submit its license applications.

If you have any questions or concerns, please contact me at (603) 498-2851.



Sincerely,  
John L. Ragonese  
FERC License Manager

Document Content(s)

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