

152 FERC ¶ 62,048

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

TransCanada Hydro Northeast Inc.

Project Nos.1855-048,
1892-028, 1904-076

ORDER AMENDING LICENSES

(Issued July 22, 2015)

1. On January 16, 2015, TransCanada Hydro Northeast Inc. (TransCanada) filed an application to amend its licenses for the Bellows Falls Hydroelectric Project No. 1855 (Bellows Falls Project), Wilder Hydroelectric Project No. 1892 (Wilder Project), and Vernon Hydroelectric Project No. 1904 (Vernon Project). The projects are located on the Connecticut River in Windham, Windsor, and Orange Counties, Vermont, and Cheshire, Sullivan, and Grafton Counties, New Hampshire. In its application, TransCanada seeks Commission approval to extend the term of each license by one year.

BACKGROUND

Current License Terms

2. In 1979, the Commission issued 38-year licenses for TransCanada's three projects in separate proceedings.¹ The term of each license was set to expire on April 30, 2018, in accordance with the Commission's policy to coordinate the license expiration dates, to the extent possible, of projects on the same river.² As such, the terms for the three TransCanada licenses were coordinated with those of FirstLight Hydro Generating Company's (FirstLight) Turners Falls Hydroelectric Project No. 1889 (Turners Falls Project)³ and Northfield Mountain Pumped Storage Project No. 2485 (Northfield

¹ Order Issuing New License, June 25, 1979 (7 FERC ¶ 61,292) (Vernon Project); Order Issuing New License, August 3, 1979 (8 FERC ¶ 61,122) (Bellows Falls Project); and Order Issuing New License, December 10, 1979 (9 FERC ¶ 61,322) (Wilder Project).

² 9 FERC ¶ 61,322 (1979).

³ Order Issuing New License, May 5, 1980 (11 FERC ¶ 61,124).

Mountain Project),⁴ which are located on the Connecticut River downstream of the Vernon Project.

3. Under section 15(c)(1) of the Federal Power Act (FPA),⁵ licensees seeking new licenses must submit an application at least two years before the expiration date of the existing license. Therefore, new license applications for all five projects are due May 2, 2016.⁶

Pre-Filing Consultation on New License Applications

4. On October 31, 2012, TransCanada initiated the integrated licensing process (ILP) pursuant to part 5 of the Commission's regulations⁷ by filing Notices of Intent (NOI) to seek new licenses along with Pre-Application Documents (PAD) for the three projects. On the same date, FirstLight filed an NOI and PAD for its two projects. The Commission staff's Scoping Document 1, issued on December 21, 2012, indicated staff's intent to prepare a single environmental impact statement (EIS) for the three TransCanada and two FirstLight projects.

5. As part of the ILP, TransCanada has consulted with resource agencies and other stakeholders in developing plans and conducting studies that will inform Commission staff's environmental analysis and, ultimately, the Commission's decision on whether, and under what conditions, to issue new licenses for the projects. The studies will also provide information for resource agencies as they provide comments, recommendations, and in some cases, terms and conditions for inclusion in licenses that may be issued for the projects.

6. On April 16, 2013, based on study requests and stakeholder comments filed on the PAD, TransCanada filed a Proposed Study Plan (PSP). The PSP contained 33 proposed studies (20 aquatic and 13 non-aquatic studies) in support of the licensee's intent to relicense the projects.

⁴ Order Issuing and Amending Licenses, May 14, 1968 (39 FPC 723).

⁵ 16 U.S.C. § 808(c)(1) (2012).

⁶ Rule 2007(a)(2) of the Commission's Rules of Practice and Procedure provides that the last day of a time period will not end on a weekend, legal holiday, or other day when the Commission is otherwise closed for business. 18 C.F.R. § 385.2007(a)(2) (2014). Here, the license applications are due April 30, 2016, which is a Saturday; therefore, the due date moves to the next business day, which is May 2, 2016.

⁷ 18 C.F.R. pt. 5 (2014).

7. TransCanada held a PSP meeting on May 13, 2013, and subsequently held additional, resource-specific, study plan meetings. On July 9, 2013, TransCanada filed an updated PSP for additional stakeholder review and comment. Following the conclusion of the study plan meetings, and after receiving comments on its updated PSP, TransCanada filed a Revised Study Plan on August 14, 2013.

8. On September 13, 2013, the Director, Office of Energy Projects (Director), issued a study plan determination that required TransCanada to conduct the 13 proposed non-aquatic studies.⁸ However, as discussed below, a decision on the remaining 20 proposed aquatic studies, and on an additional requested *Vernon Hydroacoustic Study*, which was not adopted by TransCanada, was deferred.

Vermont Yankee Decommissioning

9. In 1972, the Vermont Yankee Nuclear Power Plant (Vermont Yankee) went into commercial operation. When it was operating, Vermont Yankee withdrew its cooling water from, and discharged it back into, TransCanada's reservoir for the Vernon Project. The Vernon Project reservoir is located immediately upstream of FirstLight's reservoir for the Turners Falls Project. Operation of Vermont Yankee affected Connecticut River water temperatures within the Vernon Project reservoir and downstream through the Turners Falls Project. On August 27, 2013, Entergy announced plans to decommission Vermont Yankee during the fourth quarter of 2014.⁹

10. Because the baseline environmental condition has changed since 2014, TransCanada's proposed aquatic studies would have produced invalid data if conducted while Vermont Yankee was still operating in 2014. Because of this circumstance, Commission staff hosted a technical meeting on November 26, 2013, to: (1) identify aquatic studies not affected by operation of Vermont Yankee that could be implemented in 2014; (2) identify aquatic studies likely affected by operation of Vermont Yankee; and (3) identify aquatic studies that may need modification due to the decommissioning of Vermont Yankee.

11. On February 21, 2014, the Director issued a subsequent study plan determination that required TransCanada to conduct its 20 proposed aquatic studies¹⁰ and the *Vernon*

⁸ Of the 13 studies proposed by TransCanada, seven were approved as filed by TransCanada, and six were approved with staff-recommended modifications.

⁹ Entergy decommissioned Vermont Yankee on December 29, 2014.

¹⁰ Of the 20 studies proposed by TransCanada, 16 were approved as filed by TransCanada, and four were approved with staff-recommended modifications.

Hydroacoustic Study.¹¹ Based on the information in the record, including the November 26, 2013, technical conference, the Director amended the schedule for 15 of the proposed aquatic studies under section 5.29(f)(2) of the Commission's regulations,¹² since these studies would likely be affected by the decommissioning of Vermont Yankee. Specifically, the Director delayed these 15 studies by one year until the 2015 field season and established March 1, 2016, as the due date for the final study report.

LICENSE TERMS EXTENSION REQUEST

12. TransCanada seeks to extend the term of each license by one year. TransCanada states that the extensions are necessary to “maintain the integrity” of the ILP pre-filing process in light of the delay in conducting numerous aquatic studies caused by the decommissioning of Vermont Yankee.

13. TransCanada states that the combination of study delays and the statutory deadline for filing new license applications results in a “nonsensical” application of the Commission's regulations. Because the initial field results for many of the aquatic studies would not be available until October and November 2015, and the Preliminary Licensing Proposals (PLP) or draft license applications (DLA) are due by December 4, 2015, under the current ILP process plan and schedule, TransCanada states that stakeholders would not have the opportunity to provide meaningful comments on the PLPs/DLAs because of the limited time to review the results of the aquatic studies. Therefore, the Commission would not have the information necessary to resolve any requests for additional information or studies made in comments on the PLPs/DLAs within 30 days of the filing of the final license applications, as required by section 5.19(d) of the Commission's regulations.¹³

14. TransCanada adds that other regulatory components of the study plan and application preparation processes would be eliminated for aquatic resources under the current ILP process plan and schedule and statutory deadline for filing new license applications. Specifically, TransCanada notes that it is important that all stakeholders, including the Commission and TransCanada, are able to exercise all available rights in the Commission's ILP pre-filing regulations, including participation in the study modification process after a final study report is filed with the Commission.

¹¹ On May 14, 2015, the Commission issued an Order on Rehearing that removed the *Vernon Hydroacoustic Study* from the Director's February 21, 2014, study plan determination. 151 FERC ¶ 61,116 (2015).

¹² 18 C.F.R. § 5.29(f)(2) (2014).

¹³ 18 C.F.R. § 5.19(d) (2014).

15. TransCanada states that one potential solution would be for the Commission to suspend the procedural schedule initiated upon the filing of a final license application, or to provide additional comment periods that track the Commission's ILP pre-filing regulations after the final license applications have been filed. However, it notes that this approach would result in two different procedural tracks for the aquatic and non-aquatic resource components of the final license applications, each with numerous, separate, regulatory deadlines. TransCanada indicates that this would cause confusion and impose an unnecessary burden on all relicensing participants.

16. TransCanada also states that it must incorporate the final results of 11 of its 15 delayed aquatic studies into its hydraulic and operations models in order to assess project effects and develop potential mitigation measures for its final license applications. However, if the information developed by the study process is not available when TransCanada is required to prepare its final license applications under the current process plan and schedule, or if the post-filing process is "distorted" by the need to segregate aquatic and non-aquatic components of the applications, then the opportunity for productive discussions and agreement among all stakeholders regarding project effects and potential mitigation measures would be diminished considerably.

17. By extending the license terms of its projects, TransCanada states that the relicensing process would be simplified because it could submit meaningful PLPs/DLAs that take into account the aquatic studies and assess study results with the hydraulic and operations models, including any potential mitigation measures. In response to complete applications, TransCanada indicates that stakeholders and the Commission would be able to provide constructive comments on aquatic resources. In addition, TransCanada states that it could avoid significant amendments to its final license applications, which would considerably diminish the administrative burden on all relicensing participants.

18. TransCanada states that extending the license terms of its projects would be consistent with section 6 of the FPA, which authorizes the Commission to issue licenses for terms of up to 50 years.¹⁴

PUBLIC NOTICE AND COMMENTS

19. The Commission issued a public notice of TransCanada's application on January 30, 2015, setting a deadline of March 2, 2015, for filing comments, motions to intervene, and protests. The following comments and motions to intervene were filed with the Commission:

¹⁴ 16 U.S.C. § 799 (2012).

Date	Entity	Type of Filing
February 10, 2015	Massachusetts Division of Fisheries and Wildlife	Comments
February 20, 2015	FirstLight	Comments and Intervention
February 27, 2015	Island Corporation	Intervention
February 27, 2015	Bellow Falls Historical Society	Intervention
February 27, 2015	Vermont Agency of Natural Resources and Vermont Department of Environmental Conservation	Comments and Intervention
March 2, 2015	State of New Hampshire and New Hampshire Department of Environmental Services	Comments and Intervention
March 2, 2015	Connecticut River Watershed Council	Comments
March 2, 2015	U.S. Fish and Wildlife Service	Comments

20. All entities filed comments in support of, or not in opposition to, TransCanada's request to extend the license terms of its projects. Several commenters indicated that the Commission should continue to process the five combined TransCanada and FirstLight projects on the same timeline and prepare a single EIS.

21. In its comments in support of TransCanada's request, FirstLight states that it does not have the option of seeking its own license extension, because the license for the Northfield Mountain Project is already at the maximum term allowed under the FPA. As long as the Commission continues to process the TransCanada and FirstLight projects together, FirstLight states that extending the license terms of the TransCanada projects would also benefit the process for the FirstLight projects.

DISCUSSION

22. It is not uncommon for studies conducted as part of an approved study plan in the ILP to be delayed because of anomalous environmental conditions or for other reasons. In certain cases, due to the statutory deadline for filing a new license application, it is necessary for a licensee to complete studies and file study reports after the filing of a final license application in order to gather useable data for Commission staff, resource agencies, and other stakeholders. In general, delayed studies can be incorporated into the post-filing process of a relicensing proceeding without disrupting the overall proceeding.

23. The decommissioning of Vermont Yankee created a unique situation where it was necessary to delay a significant number of studies to ensure that valid data would be collected. Unlike other projects with studies delayed during the ILP pre-filing process, in this case, the need to delay studies was established in consultation with TransCanada,

FirstLight, resource agencies, and other stakeholders during the study plan development process. Therefore, the Director amended the ILP process plan and schedule to delay 15 of TransCanada's proposed studies in the February 21, 2014, study plan determination. As TransCanada points out, the schedule for these delayed studies conflicts with some of the provisions and timelines in the Commission's ILP regulations.

24. Extending the license terms of TransCanada's projects would remedy many conflicts with the Commission's ILP regulations caused by decommissioning Vermont Yankee. Resource agencies and other stakeholders would have an opportunity to review a complete aquatic study report and comment and/or request modifications to the approved study plan prior to TransCanada filing its PLPs/DLAs and final license applications with the Commission. In addition, TransCanada could incorporate the results of the delayed aquatic studies and its hydraulics and operations models, and propose environmental measures, in its PLPs/DLAs and final license applications. The filing of more complete PLPs/DLAs and final license applications would enable resource agencies and other stakeholders to provide substantive comments.

25. Extending the license terms would create separate tracks for the TransCanada and FirstLight projects prior to Commission staff's environmental analysis, because the PLPs/DLAs and final license applications would no longer be filed on the same schedule. However, Commission staff can still prepare a single EIS for the TransCanada and FirstLight projects. Therefore, TransCanada's request to amend its licenses should be granted.

26. Commission staff will issue a revised ILP process plan and schedule for the five TransCanada and FirstLight projects in the near future.

The Director orders:

(A) TransCanada Hydro Northeast Inc.'s January 16, 2015, request to extend the license terms for the Bellows Falls Hydroelectric Project No. 1855, Wilder Hydroelectric Project No. 1892, and Vernon Hydroelectric Project No. 1904, is granted. The license expiration date for these three projects is extended to April 30, 2019.

(B) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2014). The filing of a request for rehearing does not

operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Jennifer Hill, Director
Division of Hydropower Administration
and Compliance