

170 FERC ¶ 62,121  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Wisconsin River Power Company  
Wisconsin Power & Light Company

Project Nos. 1984-223  
11162-131

ORDER EXTENDING LICENSE TERMS

(Issued March 2, 2020)

1. On March 1, 2019, Wisconsin River Power Company, licensee for the Petenwell and Castle Rock Hydroelectric Project No. 1984, and Wisconsin Power and Light Company, licensee for the Prairie du Sac Hydroelectric Project No. 11162 each filed an application with the Commission to extend the license terms for their projects so they expire on June 30, 2041. The projects are located on the Wisconsin River, in Adams, Columbia, Juneau, Sauk, and Wood counties, Wisconsin and do not occupy any federal lands.
2. Wisconsin River Power Company and Wisconsin Power and Light Company (collectively referred to as the licensees) filed the requests as part of a broader proposal to align the license expiration dates for 20 projects, all of which are located on the Wisconsin River, into three groupings based on each project's location on the Wisconsin River relative to the other projects. The two projects this order addresses are located on the "southern sub-basin" of the Wisconsin River. Concurrently with this order, two additional orders are issued as well: one for eight projects on the "northern" sub-basin of the Wisconsin River aligning the license expiration dates so they expire on June 30, 2035,<sup>1</sup> and another for ten projects on the "central sub-basin" of the Wisconsin River aligning the license expiration dates to expire on June 30, 2038.<sup>2</sup>

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<sup>1</sup> *Wisconsin Public Service Corporation*, 170 FERC ¶ 62,123 (2020) (delegated order).

<sup>2</sup> *Consolidated Water Power Company*, 170 FERC ¶ 62,122 (2020) (delegated order).

### **Licenses' Request**

3. The 30-year license for the Petenwell and Castle Rock Project<sup>3</sup> expires on November 30, 2031 and the 30-year license for the Prairie du Sac Project<sup>4</sup> expires on May 31, 2032. The licensees seek approval to extend the license terms for the two projects, so they expire on June 30, 2041. The licensees say the extensions would assist with the comprehensive study and analysis of the projects' cumulative environmental impact and would reduce stakeholder burden by integrating the relicensing consultation process. The licensees state that although the projects on the river are licensed to separate entities they are operated in a coordinated manner. Additionally, the licensees say that aligning the license expiration dates would eliminate redundancies during relicensing for all involved parties as the two projects on the southern sub-basin have similar vegetation, land cover, hydrology, and resource management concerns.

### **Public Notice**

4. On March 28, 2019, Commission staff issued a public notice of the licensees' request that was published in the *Federal Register*,<sup>5</sup> setting a deadline of April 29, 2019, for filing comments, motions to intervene, and protests. A timely motion to intervene was filed by the Big Eau Pleine Citizens Organization (BEPCO) was filed on April 12, 2019 in all dockets.<sup>6</sup> Timely notices of intervention were filed by the Michigan Department of Natural Resources (Michigan DNR) and the Wisconsin Department of Natural Resources (Wisconsin DNR) on April 11, 2019, in all dockets.<sup>7</sup>

5. On April 17, 2019, BEPCO filed comments stating that while it supports synchronizing license expiration dates of the projects, it believes the licensees' proposed configuration to align project expiration dates based on their location on the river basin would yield an excessive extension of the license terms. Specifically, BEPCO states that as proposed, extending the license terms based purely on project location would cumulatively result in extending the license terms by nearly 160 years, and extend the

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<sup>3</sup> *Wisconsin River Power Company*, 97 FERC ¶ 62,205 (2001).

<sup>4</sup> *Wisconsin Power and Light Company*, 99 FERC ¶ 62,225 (2002).

<sup>5</sup> 84 *Fed. Reg.* ¶ 13,035 (Apr. 3, 2019).

<sup>6</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2019).

<sup>7</sup> Timely notices of intervention are granted by operation of Rule 214(a)(2) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 214(a)(2) (2019).

license term of each project by an average of 8 years. BEPCO asserts that license extensions of this magnitude do not meet the equal protection clause of the Electric Consumers Protection Act of 1986 and would excessively delay stakeholder input in the relicensing process. As an alternative, BEPCO proposes reducing the number of years each project license is extended by extending license expiration dates for a shorter period based on when the licenses currently expire rather than on the geographical location of the project.

6. On April 19, 2019, Wisconsin DNR filed comments stating that it does not object with the licensees' proposal to extend the license terms. Wisconsin DNR raised some resource management concerns and stated that it plans to address these concerns individually with each licensee.

7. On April 23, 2019, the Long Lake of Phelps Lake District (Lake District) filed comments stating that it believes the length of the proposed license term extensions were too long and supports BEPCO's alternative proposal.

8. On April 26, 2019, Michigan DNR filed comments stating that like Wisconsin DNR it does not object to the proposed license term extensions and expresses concern regarding resource management. In addition, Michigan DNR states that its support for the license term extensions are conditioned upon certain recreational and environmental enhancements, and states that extending the license term without including these enhancements would be "damaging to the environment," as the delay in mitigation of adverse impacts at each project would result if the project licenses are extended. Michigan DNR further comments that the 2017 License Term Policy Statement<sup>8</sup> requires the licensees to propose "development, environmental, and recreational enhancements" in their applications to justify extending their license terms.

9. On April 29, 2019, the National Park Service (NPS) filed comments stating it had concerns regarding the length of license extensions for the projects included in this proposal, stating that the extended length of the extensions would defer significant environmental and recreational benefits. Similar to the Michigan DNR, the NPS cites the 2017 License Term Policy Statement as requiring the licensees to propose developmental, environmental, and recreational enhancements in their applications to justify extending their license terms.

10. On May 14, 2019 and May 24, 2019, the licensees individually filed similar comments in response to the above comments filed by the agencies and stakeholders. Specifically, the licensees believe that neither the 1994 Policy Statement nor the 2017

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<sup>8</sup> *Policy Statement on Establishing License Terms for Hydroelectric Projects*, 161 FERC ¶ 61,078 (2017) (License Term Policy Statement).

License Term Policy Statement require that license extensions be conditioned on recreational or environmental enhancements.

### **Discussion**

11. In 1994, the Commission stated that its policy was to “coordinate the expiration dates of licenses to the maximum extent possible, to maximize future considerations of cumulative impacts ... in contemporaneous proceedings at relicensing.”<sup>9</sup> The 1994 Policy Statement further acknowledges the possibility that the time needed to comprehensively analyze cumulative impacts of projects located on the same river basin could “entail unacceptably long delays in the relicensing process... [and]such delays could in themselves generate harm to the environment by delaying the implementation of necessary environmentally ameliorative construction or operation pursuant to a new license.”<sup>10</sup>

12. Contrary to the assertions of Michigan DNR and the NPS, the 2017 License Term Policy Statement does not require a licensee to propose “development, environmental, and recreational enhancements” to justify a license term extension. The License Term Policy Statement established a policy of issuing new and original licenses with a default 40-year term, replacing the Commission’s previous policy of issuing licenses for terms of 30-, 40-, or 50-years, depending on the circumstances of the project.<sup>11</sup> The License Term Policy Statement provides that the Commission will not extend license terms simply “on the basis of this new license term policy” (establishing a default 40-year term), and states that requests to extend licenses must be justified “for example by proposing development, environmental, and recreation enhancements.”<sup>12</sup> The License Term Policy Statement does not amend any aspect of the Commission’s currently policy regarding license term extensions. Commission staff has consistently found alignment of expiration dates as a proper justification for extending a license term.<sup>13</sup> The licenses for the projects included in the licensees’ proposal currently include provisions for recreation and environmental

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<sup>9</sup> *Policy Statement on the Use of Reserved Authority in Hydropower Licenses to Ameliorate Cumulative Impacts*, 69 FERC ¶ 61,337 (1994), FERC Stats. and Regs. ¶ 31,010 at p. 31,219 (1994 Policy Statement).

<sup>10</sup> *Id.* at p. 31,218.

<sup>11</sup> License Term Policy Statement, 161 FERC ¶ 61,078 at P 3.

<sup>12</sup> *Id.* at P 20.

<sup>13</sup> *See, e.g., N.E.W. Hydro, LLC*, 166 FERC ¶ 62,097 (2019); *Sappi Cloquet, LLC*, 162 FERC ¶ 62,087 (2018); *Allete, Inc.*, 158 FERC ¶ 62,132 (2017).

protection. Extending the terms of the licenses would not alter these provisions and would allow the licensees and various stakeholders to approach relicensing in a more comprehensive and collaborative way to propose further recreational and environmental enhancements.

13. Regarding BEPCO's assertion that the license term extensions would not meet the Federal Power Act section 4(e)<sup>14</sup> equal consideration clause, section 4(e) only applies to licensing actions, and this proceeding is not a licensing action as it does not authorize new project works or add new lands to the project.<sup>15</sup> Therefore, section 4(e) does not apply to this proceeding.

14. The licensees propose to relicense 20 projects on a 350 mile stretch of river in a coordinated manner. The relicensing process involves many stakeholders and BEPCO's alternative proposal to shorten the length of the license extensions would excessively burden stakeholders. Stakeholders with limited resources would be required to direct resources to multiple project relicensing proceedings in a shorter time period. In addition, BEPCO's alternative proposal diminishes the value of coordinating the relicensing of projects operated in a coordinated manner and with similar geographical characteristics, since projects within the same sub-basin would be relicensed at different times.

15. The licenses for the projects currently contain measures to protect cultural and environmental resources and maintain recreation opportunities; and extending the license terms would not alter any of these license provisions or impact the ability of stakeholders to comment on the relicensing process. Aligning the license expiration dates for the projects based on their location in the southern sub-basin of the Wisconsin River would allow the Commission, resource agencies, and stakeholders to perform a more comprehensive analysis of the cumulative environmental impacts of the projects. In addition, given the number of projects involved in coordinating relicensing on the river basin, the length of the licenses extensions is reasonable, and should be approved.

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<sup>14</sup> BEPCO asserted that these extensions would not meet the "Equal Consideration Clause of the Electric Consumers Protection Act of 1986." The Electric Consumers Protection Act of 1986, Pub. L. 99-495; 100 Stat. 1243 (Oct. 16, (1986)) amended section 4(e) of the FPA to include the equal consideration clause.

<sup>15</sup> *Pacific Gas and Electric Co.*, 106 FERC ¶ 61,065 at P 133 (2004); *on reh'g*, 107 FERC ¶ 61,232 (2004).

The Director orders:

(A) Wisconsin River Power Company's request to extend the license term for the Petenwell and Castle Rock Project No. 1984 filed on March 1, 2019, is approved.

(B) The license term for the Petenwell and Castle Rock Project is extended to June 30, 2041.

(C) Wisconsin Power and Light Company's request to extend the license term for the Prairie du Sac Project No. 11162 filed on March 1, 2019, is approved.

(D) The license term for the Prairie du Sac Project is extended to June 30, 2041.

(E) 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. § 8251 (2018), and the Commission's regulations at 18 C.F.R. § 385.713 (2019). 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.

Andrea Claros, Acting Chief  
Environmental and Project Review Branch  
Division of Hydropower Administration  
and Compliance

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