

UNITED STATES OF AMERICA 111FERC ¶62,333
FEDERAL ENERGY REGULATORY COMMISSION

Fall River Rural Electric Cooperative, Inc.

Project No. 11882-002

ORDER DISMISSING LICENSE APPLICATION AND DENYING REQUEST FOR
ABEYANCE

June 28, 2005

On May 27, 2004, Fall River Rural Electric Cooperative, Inc. (Fall River) filed an original license application for the Hebgen Dam Hydroelectric Project 11882, located on the Madison River in Gallatin County, Montana. The project is located within the Gallatin National Forest. For the reasons described below, I am dismissing the application and denying Fall River's request to hold this proceeding in abeyance.

BACKGROUND

Fall River proposes to build a new powerhouse with one, 6.7-megawatt generating unit at the existing Hebgen dam. The Hebgen dam is part of the Missouri-Madison Hydroelectric Project No. 2188, a nine-development project licensed to PPL Montana, LLC (PPL Montana).¹ The Hebgen Development has no power generating facilities. It is used as a storage facility, with releases providing head and flow downstream to the project's other eight developments, which have power generating facilities.

The Hebgen Development includes an earth-filled, concrete-core dam 721 feet long and 85 feet high with outlet works through the dam and a side-channel spillway, and an impoundment with a surface area of 13,000 acres and a storage capacity of 386,845 acre-feet at the normal maximum water surface elevation of 6,534.87 feet mean sea level. Discharges from the Hebgen Reservoir are made through a rectangular concrete intake tower, a conduit through the dam, and an outlet structure. The concrete intake tower is 47 feet long, 25 feet wide, and 76 feet high, and contains openings for four intake gates, two

¹ See the new license issued in *PP&L Montana, LLC*, 92 FERC ¶ 61,261 (2000). The Missouri-Madison Hydroelectric Project develops hydropower on a 324-mile stretch of the Madison and Missouri Rivers. Of the nine developments that comprise the project, the Hauser, Holter, Black Eagle, Rainbow, Cochrane, Ryan, and Morony are located on the Missouri River, and the Hebgen and Madison Developments are located on the Madison River.

of which presently contain gates measuring 7.3 feet wide by 10 feet high, which PPL Montana uses for reservoir discharges. The remaining two openings are presently closed with timber stoplogs.

The conduit is woodstave-lined with an unreinforced concrete encasement and provides water passage from the intake tower through the dam structure. The conduit is 12 feet in diameter and approximately 785 feet long from the intake structure to the outlet structure near the downstream toe of the dam at the left abutment. The portion of the conduit downstream from the reservoir is completely buried in the dam's earth fill, except for the outlet structure at the end of the conduit. The woodstave lining is 4 inches thick, and the concrete encasement varies from two to four feet thick.

The outlet structure is an irregularly-shaped concrete box structure that is 20 feet long, 40 feet wide, and 23.5 feet high and directs the discharge flow to the Madison River.

Fall River proposes to use the two currently unused, stop-log-covered openings in Missouri-Madison intake tower as well as the wood-stave conduit to feed water to its powerhouse. Fall River also proposes to steel-line and pressure grout the conduit.² It would bifurcate the existing conduit approximately 50 to 60 feet upstream from the outlet structure by incorporating into the conduit a valve house containing bifurcation and isolation valves. The valve house would channel the flow through an approximately 40-foot-long, 10-foot-diameter penstock to a new powerhouse, which Fall River would build approximately 80 feet downstream from the toe of the dam.³ From the new powerhouse, Fall River would build a 9.4-mile-long, 25-kilovolt underground transmission line that

² The application states that the existing conduit is entirely satisfactory for its present function but was not designed to withstand the full reservoir pressure that would be required for power generation. The newly-lined conduit and outlet works would be designed to pass approximately 97 percent of original design capacity at higher pool elevations and would pass peak flows and flushing flows in a manner similar to the existing conduit. See the application, volume entitled "Final License Application, Stage 3 Consultation Document," Exhibit A, p. A-3.

³ See *id.*, Exhibit A, p. A-3 and Exhibit F, Figure F-2. The application, *id.*, at p. A-6, states that the proposed project will have no access to reservoir storage for additional generation; that the project would operate in a run-of-river mode; and that therefore, the project would use only the flow PPL releases from the Hebgen reservoir, and consequently would not affect the reservoir pool elevation.

would connect the powerhouse to Fall River's existing Hebgen substation near Grayling, Montana.

After issuing a Notice of Application Tendered for Filing on June 10, 2004, staff sent Fall River a letter on July 7, 2004, identifying a potential problem with Section 6 of the Federal Power Act (FPA), 16 U.S.C. § 799, which prohibits the substantial alteration of a license without the consent of the licensee. The letter stated that, because Fall River's application proposed to modify the licensed project works of the Missouri-Madison Project, staff would have to dismiss the application, under 18 C.F.R. § 4.32(e)(2) (2004), as being precluded by the requirements of Section 6, unless PPL Montana agreed to the modifications.⁴ However, noting that the application, p. A-7, stated that Fall River has been working out a site-use and operation agreement with PPL Montana, staff stated that they would continue to process the application, conditioned on Fall River's filing additional information showing that negotiations with PPL Montana are moving forward and that PPL Montana has not ruled out an agreement. Fall River has since filed five status reports (on August 2, October 12, and December 15, 2004, and February 2 and May 6, 2005) providing updates of its negotiations of a site-use agreement with PPL Montana.

On April 29, 2005, PPL Montana filed a copy of a letter it sent to Fall River stating that they "have determined that they are not interested in proceeding any further with negotiations." In its latest update letter, filed on May 6, 2005, Fall River referred to PPL Montana's letter terminating negotiations. However, Fall River stated that it still intends to continue its efforts to resolve its differences with PPL Montana, and it requested that the Commission move forward with the licensing of the Hebgen Dam Project or hold the licensing process in abeyance until such time that Fall River and PPL Montana have resolved their differences. On June 15, 2005, PPL Montana filed a response stating that, despite the fact that the parties have engaged in discussions for a number of years, they remain very far apart on the terms of the site-use agreement, particularly regarding compensation to PPL Montana for Fall River's use of the Hebgen facility. PPL Montana reiterates its intention not to resume negotiations.

⁴ The Commission dismisses license applications for projects that are the subject of existing licenses, because they are "precluded by law," within the meaning of section 4.32(e)(2) of the Commission's regulations. See *City of Augusta, Kentucky, et al.*, 51 FERC ¶ 61,056 at p. 61,118 and n. 14 (1990).

DISCUSSION

A. FPA Section 6 Bars the Application

As noted, FPA Section 6 prohibits the alteration of a license without the mutual consent of the licensee and the Commission. Therefore, if Fall River's proposed development requires an alteration of PPL Montana's license, Fall River's application must be dismissed.

Fall River's proposed project would substantially alter PPL Montana's licensed project works. Fall River proposes to modify PPL Montana's existing intake structure by inserting new gates and screens in two presently-closed intake openings. Also, Fall River would bifurcate PPL Montana's outlet conduit by incorporating a new concrete valve house into the outlet conduit and would install at the bifurcation point a penstock extending to a new powerhouse to be constructed 80 feet downstream from the toe of the Hebgen Dam. Fall River's installation of its valve house to bifurcate the Hebgen outlet conduit (50 to 60 feet back from the end of the conduit) will require extensive excavation of the earth fill covering the conduit. These are the types of modifications to a licensed project that the Commission has found require the licensee's consent under Section 6 of the FPA.⁵ Without PPL Montana's consent for these alterations, the application must be dismissed. The dismissal is without prejudice to Fall River re-filing its application, in the event it is able to obtain PPL Montana's consent for use of the Hebgen Development.

B. Maintaining the License Application Would Serve No Public Purpose

In its May 6, 2005 filing (p. 1) Fall River states that, although it appears that its negotiations with PPL Montana have come to a stalemate, it plans to continue its efforts to resolve its differences with PPL Montana and arrive at an acceptable site-use agreement, allowing for the construction of its hydroelectric project. It requests that the Commission process its license application or, in the alternative, hold the licensing process in abeyance until such time that Fall River and PPL Montana have resolved their differences.

⁵ Compare *Niagara Mohawk Power Corporation*, 29 FERC ¶ 61,005 at p. 61,010 (1984), where the Commission found that a license applicant's proposal to alter an existing licensed project by modifying its headgate structure, rehabilitating a portion of the dam's right abutment, and constructing a powerhouse and penstocks (in addition to using cofferdams that temporarily curtailed project generation) required fundamental alterations to the licensed project works, and placed the license application "in clear violation of Section 6."

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No public purpose would be served by continuing to process the application or to hold the application in abeyance. This order has resolved the Section 6 issue, which bars the application absent PPL Montana's consent. PPL Montana's letter to Fall River filed April 29, 2005, states flatly that "we have determined that we are not interested in proceeding any further with negotiations," and its June 15, 2005 letter reiterates its intention not to resume negotiations. Nothing in the record indicates that granting additional time will enable Fall River to reach an agreement with PPL Montana. Therefore, Fall River's request for maintaining its license application on file is denied.⁶

The Director orders:

(A) The license application filed May 27, 2004, by Fall River Rural Electric Cooperative, Inc., is dismissed.

(B) The request by Fall River Rural Electric Cooperative, Inc., to continue to process the license application or hold this proceeding in abeyance is denied.

(C) This order constitutes final agency action. Requests for a rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR 385.713.

Ann F. Miles
Director
Division of Hydropower Licensing

⁶ Compare *Crown Hydro LLC*, 111 FERC ¶ 61,315 PP 29-30 and n. 22 (2005), citing *Symbiotics, LLC*, 110 FERC ¶ 61,235 at P 12 and n. 10 (2005) (Commission policy against holding hydroelectric applications in abeyance pending the outcome of future determinations).