

113 FERC ¶ 61,258
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Mt. Hope Waterpower Project, LLP

Project No. 9401-064

ORDER TERMINATING LICENSE

(Issued December 15, 2005)

1. On February 25, 2003, Commission staff issued a notice finding that Mt. Hope Waterpower Project LLP, licensee for the Mt. Hope Pumped Storage Project No. 9401, had failed to commence construction of the project by the statutory deadline, and notifying the licensee of the consequent probable termination of the license. The licensee filed comments opposing termination. For the reasons set forth below, we find that, for purposes of section 13 of the Federal Power Act (FPA), construction did not timely commence at the project site, and we terminate the license, as section 13 requires.

Discussion

2. The Mt. Hope Pumped Storage Project, which was to be located in Morris County, New Jersey, was licensed in 1992.¹ The project license authorized construction of an upper and lower reservoir, connected by a 2,800-foot-long, 25-foot-diameter, vertical intake shaft that bifurcated into five 11-foot-diameter penstocks, each equipped with a turbine and generator.

3. Section 13 of the Federal Power Act (FPA)² states in pertinent part:

...the licensee shall commence the construction of the project works within the time fixed in the license, which shall not be more than two years from

¹ 60 FERC ¶ 61,121 (1992).

² 16 U.S.C § 806.

the date thereof... . The periods for the commencement of construction may be extended once but not longer than two additional years... . In case the licensee shall not commence actual construction of the project works...within the time prescribed in the license..., then, after due notice given, the license shall...be terminated upon written order of the Commission.

4. Article 301 of the license required the licensee to commence construction within two years of license issuance, *i.e.*, by August 3, 1994.³ Pursuant to FPA section 13, Commission staff extended the deadline for the commencement of construction two years, until August 3, 1996.⁴

5. In 1996, Congress passed Public Law 104-247,⁵ which authorized the Commission to extend, at the licensee's request, the deadline for the commencement of construction to August 3, 1999, which the Commission did. In 1999, Congress authorized another extension of the construction deadline, this time until August 3, 2002.⁶ Upon the licensee's request, the deadline was extended to that date.⁷

6. On February 25, 2003, Commission staff notified the licensee of the probable termination of the license for failure to commence construction by the deadline.

7. On March 25, 2003, the licensee responded that a bill was pending in Congress which would have, if passed, authorized the Commission to extend the construction deadline to December 31, 2005.⁸ The licensee therefore requested that the Commission

³ 60 FERC ¶61,121, at 61,415 (1992).

⁴ Unpublished order issued June 8, 1994.

⁵ 110 Stat. 3147 (1996).

⁶ Pub. L. 106-121, 113 Stat. 1637.

⁷ Unpublished order issued April 7, 2000.

⁸ According to Mt. Hope's correspondence, H.R. 1391 was introduced on March 20, 2003.

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not terminate the license in order to give Congress an opportunity to consider the proposed legislation. No action was taken on H.R. 1391 in the 108th Congress.⁹

8. The licensee has failed to commence construction by the deadline established by section 13 of the FPA, notwithstanding the grant of an additional six years to do so. While the Commission has at times refrained from taking action to terminate licenses when Congress has been actively considering legislation to provide relief for individual projects from the section 13 deadlines,¹⁰ we are unaware of any pending legislation introduced for the purpose of extending Mt. Hope's construction deadline. Accordingly, we will terminate the license for Project No. 9401.

The Commission orders:

(A) The license for the Mt. Hope Pumped Storage Project No. 9401, issued on August 4, 1992, is terminated effective 30 days after the issuance date of this order unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal public holiday as described in 18 C.F.R. § 385.2007, in which case the effective date is the first business day following that day.

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2005).

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁹ The Chairman of the House of Representatives' Subcommittee on Energy and Air Quality requested the Commission's position on the extension request, to which the Commission's Chairman replied that the Commission opposes legislative extensions beyond ten years, in order to free up sites for other development proposals.

¹⁰ *Town of Telluride, Colorado*, 76 FERC ¶ 61,355 (1996).