

171 FERC ¶ 61,130
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

Sugar River Hydro II, LLC

Project No. 10934-034

ORDER DENYING REHEARING

(Issued May 21, 2020)

1. On January 14, 2020, Commission staff issued an order denying Sugar River Hydro II, LLC's (Sugar River Hydro) request to extend by 10 years its 30-year license for the Sugar River II Hydroelectric Project No. 10934 (Sugar River II Project), located on the Sugar River, in Sullivan County, New Hampshire.¹ On February 13, 2020, Sugar River Hydro filed a request for rehearing. For the reasons discussed below, we deny rehearing.

I. Background

2. In 1991, the Commission issued a 30-year license for the construction, operation, and maintenance of the Sugar River II Project, effective May 1, 1991, and expiring on April 30, 2021.² The license was amended on June 27, 1996, to increase the size of the dam and reservoir and to authorize the construction of a new penstock section.³

3. On October 7, 2016, William B. Ruger, Jr., the licensee at the time, filed a notice of intent to file an application for a subsequent license and a pre-application document. On January 26, 2017, Commission staff approved transfer of the license to the current licensee, Sugar River Hydro.⁴

¹ *Sugar River Hydro II, LLC*, 170 FERC ¶ 62,021 (2020) (January 14 Order).

² *William B. Ruger, Jr.*, 55 FERC ¶ 62,118 (1991) (Original License).

³ *William B. Ruger, Jr.*, 75 FERC ¶ 62,225 (1996) (License Amendment).

⁴ *William B. Ruger, Jr. and Sugar River Hydro II, LLC*, 158 FERC ¶ 62,053 (2017) (Transfer Order).

4. Since acquiring the project, Sugar River Hydro has refurbished the project and made repairs to project works damaged by ice and flooding in January 2018. On April 30, 2019, Sugar River Hydro filed a letter stating that it will not file an application for a subsequent license due to its inability to pay for the costs associated with project improvements and relicensing after paying to repair the damaged project works. Commission staff then issued a notice soliciting applications from potential applicants other than the existing licensee.⁵ In response, New Hampshire Renewable Resources, LLC (New Hampshire Renewable Resources) filed a notice of intent to file an application for a subsequent license for the project.⁶

5. On July 17, 2019, Sugar River Hydro requested a 10-year extension of the license term to extend the license expiration date from April 30, 2021, to February 28, 2031. Notice of Sugar River Hydro's request was published in the *Federal Register* on August 22, 2019, with comments and motions to intervene due September 16, 2019.⁷ Sugar River Hydro argued that the license term extension was justified in order to align the project expiration with the expiration of other projects located on the Sugar River, to allow for recoupment of costs associated with the refurbishments conducted in 2018, and because the license term should have been extended when the license was amended in 1996. Prior to filing its license term extension request, Sugar River Hydro sought comments from U.S. Fish and Wildlife Service, the New Hampshire Fish and Game Department, and the New Hampshire Department of Environmental Services, all of which commented that they do not support an extension of the license term.⁸

6. Commission staff issued an order denying the requested extension on January 14, 2020, explaining that since all the projects on the river were operated independent of each

⁵ *Sugar River II, LLC*, Notice Soliciting Pre-Application Documents and Notices of Intent to File a Subsequent License Application, Project No. 10934-000 (issued May 8, 2019).

⁶ Section 16.25 of the Commission's regulations requires New Hampshire Renewable Resources to file a license application at least 18 months from the date of filing its notice of intent (i.e., February 6, 2021). 18 C.F.R. § 16.25 (2019). If New Hampshire Renewable Resources fails to meet that deadline, Commission staff would direct Sugar River Hydro to file an application to surrender the license. *Id.* If the Commission does not act on a relicense application or a surrender application for the project by the time the existing license expires, the Commission will issue an annual license, effective until such time as the Commission acts.

⁷ 84 Fed. Reg. 43,799.

⁸ At the time these agencies provided comment, Sugar River Hydro was pursuing a subsequent license for the project, which Sugar River Hydro has since withdrawn.

other and because of the relative distance between the projects, the cumulative impacts analysis regarding the various projects would not be made simpler by aligning the license expiration dates. Commission staff also explained that the refurbishments in 2018 were made to maintain the project, rather than to increase capacity or enhance major project features, and thus were not grounds for a license extension. Further, Commission staff explained that the improvements made pursuant to the 1996 license amendment, approved 23 years ago, are not justification for a license term extension.

7. On February 13, 2020, Sugar River Hydro filed a request for rehearing. Sugar River Hydro argues that the Commission should grant its request to extend the current license term to August 31, 2031,⁹ for the reasons stated in its amendment application and because extension is warranted by equity concerns, largely that the additional revenue generated from the license term extension would help Sugar River Hydro finance repairs to a separate hydroelectric project also located on the Sugar River.

II. Discussion

8. The Commission has generally extended license terms only in very limited circumstances, primarily (1) to enable a licensee to amortize the cost of substantial new improvements to project facilities,¹⁰ (2) to coordinate the license expiration date with the expiration dates of other licenses in the same river basin,¹¹ or (3) because of unique

⁹ The original extension request was for an extended license term to February 28, 2031. January 14 Order, 170 FERC ¶ 62,021 at P 1. However, in its rehearing request, Sugar River Hydro requests an extended license term to August 31, 2031. Sugar River Hydro Request for Rehearing at 17.

¹⁰ See, e.g., *Idaho Power Co.*, 132 FERC ¶ 62,001 (2010) (10-year extension of the license term due to the \$75 million cost of raising the project's capacity from 11.87 MW to 60.875 MW and to coordinate license expiration with other projects); *PPL Holtwood, LLC*, 129 FERC ¶ 62,092 (2009) (16-year extension of license term due to costs associated increasing project capacity from 107.2 MW to 195.2 MW, implementing extensive environmental measures, and to coordinate license expiration with other projects); and *Wolf River Hydro Limited Partnership*, 116 FERC ¶ 62,166 (2006) (10-year extension of the license term due to costs associated with a number of new proposed environmental measures).

¹¹ See, e.g., *Northern States Power Company*, 149 FERC ¶ 62,090 (2014) (5-year extension of license term to combine relicensing activities with another project), *reh'g denied*, 150 FERC ¶ 61,028 (2015); *Black Bear Hydro Partners, LLC*, 140 FERC ¶ 62,194 (2012) and *Black Bear Hydro Partners, LLC*, 140 FERC ¶ 62,195 (2012) (3-year and 10-year extensions, respectively, of license terms for significant new construction and environmental measures and to coordinate expirations dates of the

circumstances or circumstances beyond a licensee's control.¹² These circumstances do not appear here.

A. Amortize Cost of Repairs and New Improvements

9. Sugar River Hydro argues that the license term should be extended to recoup the costs of project repairs made in 2018 and the associated lost revenue. The repairs were tied to flooding that caused ice jams on the Sugar River that rendered the project inoperable; thus, Sugar River Hydro reasons that these were not typical repairs done in the normal course of operation and maintenance and warrant cost amortization.¹³ Additionally, Sugar River Hydro argues that the Commission could have extended the license term when the license was amended in 1996 to authorize increasing the size of the dam and construction of a new penstock section, which also resulted in a new condition requiring fish passage facilities.¹⁴ Sugar River Hydro states that it was likely an oversight that the licensee at the time did not request a license term extension, and, as the current licensee, Sugar River Hydro should be allowed to amortize the costs that resulted from the license amendment.¹⁵

10. The Commission has granted license term extensions on the basis of cost amortization in situations involving installation of new generating capacity, physical improvements to enhance the environment, or the imposition of additional requirements on the licensee.¹⁶ However, where actions are taken by the licensee pursuant to the

licenses); and *Wisconsin Public Service Corporation*, 127 FERC ¶ 62,219 (2009) (15-month extension of license term to combine relicensing activities with another project).

¹² See, e.g., *South Carolina Electric & Gas Co.*, 105 FERC ¶ 61,226 (2003) (5-year extension to give the licensee adequate time to conduct studies needed to prepare its relicense application, some of which were not possible to conduct because of a reservoir drawdown during the pendency of a \$200 million dam rebuild); *Puerto Rico Electric Power Authority*, 168 FERC ¶ 62,095 (2019) (8-year extension granted to allow the licensee additional time to conduct relicensing studies and rebuild major project works after the project was heavily damaged by two major hurricanes).

¹³ Sugar River Hydro Request for Rehearing at 11-12 (citing *Wolf River Hydro Limited Partnership*, 116 FERC ¶ 62,166).

¹⁴ *Id.* at 14.

¹⁵ *Id.*

¹⁶ See, e.g., *Wolf River Hydro Limited Partnership*, 116 FERC ¶ 62,166 at 64,554.

requirements of the license as previously issued, an extension of the license term is not justified.¹⁷

11. We agree with staff's conclusion in the January 14 Order that an extension is not warranted on the basis of cost amortization. Unlike other instances in which we have granted a license term extension,¹⁸ Sugar River Hydro has not requested an extension as part of a major amendment to increase project capacity or add new environmental measures. Rather, Sugar River Hydro requests cost amortization for past repairs made to restore project operation, which it is already required to do under its current license¹⁹ and is not a sufficient justification to extend the license term. Regarding the 1996 license amendment, as explained in the January 14 Order, improvements made 23 years ago are not sufficient justification for this current request for a license term extension.²⁰ The improvements were made by the prior licensee, which did not request that the license term be extended. Sugar River Hydro has not demonstrated that there are any costs for it to recoup stemming from the 1996 amendment.²¹

B. Coordinate License Expiration Date with Other Projects on the Sugar River

12. Sugar River Hydro argues that the license term should be extended to align the relicensing of the Sugar River II Project with the relicensing of two other projects located

¹⁷ *ECOsponsible, LLC*, 167 FERC ¶ 61,245, at P 6 (2019) (denying rehearing of a denied request to extend a license term because repairs made to restore project operation is not a sufficient justification, as restoring project operation is required under the license) (citing *Montana Power Co.*, 47 FERC ¶ 61,277, at 61,963 (1989)).

¹⁸ See, e.g., *Idaho Power Co.*, 132 FERC ¶ 62,001 at P 84; *PPL Holtwood, LLC*, 129 FERC ¶ 62,092 at P 69.

¹⁹ Ordering Paragraph E of the license makes the licensee subject to standard conditions set forth in form L-12. Original License, 55 FERC ¶ 62,118 at 63,175. Article 16 of form L-12 states if the licensee allows project property to be destroyed or become unfit for use, without adequate replacement, the Commission will deem it the licensee's intent to surrender the license. *Standardized Conditions for Inclusion in Preliminary Permits and Licenses Issued Under Part I of the Federal Power Act*, 54 F.P.C. 1792, 1876 (1975).

²⁰ January 14 Order, 170 FERC ¶ 62,021 at P 12.

²¹ Transfer Order, 158 FERC ¶ 62,053.

on the Sugar River, the Lower Village Project No. 9088 (Lower Village Project)²² and the Sweetwater Project No. 10898 (Sweetwater Project),²³ as the licenses for both expire on February 28, 2031.²⁴ Sugar River Hydro asserts that coordinating the three projects' license expirations would maximize future considerations of cumulative impacts and create efficiencies for the licensees,²⁵ stakeholders, Commission staff, and resource agencies.²⁶ Sugar River Hydro argues that the January 14 Order erred in weighing too heavily the distance between the Sugar River II Project and the two other projects, and failed to explain why the distance between the projects was relevant.²⁷

13. We disagree. As explained in the January 14 Order, Commission policy is to amend license terms to align license expiration dates of projects located on the same river basin to “coordinate the expiration dates of the licenses to the maximum extent possible, to maximize future consideration of cumulative impacts . . . in contemporaneous proceedings at relicensing.”²⁸ However, the Commission generally does not favor actions that delay the completion of licensing proceedings, as the public interest is in the timely issuance of licenses that reflect current environmental and developmental

²² *Jason M. Hines & Lower Village Water Power Co.*, 36 FERC ¶ 62,297 (1986). The license was transferred to Sugar River Power, LLC, on November 10, 2016. *Jason M. Hines & Lower Village Water Power Co. and Sugar River Power, LLC*, 157 FERC ¶ 62,108 (2016).

²³ *Sweetwater Hydroelectric, Inc.*, 54 FERC ¶ 62,211 (1991).

²⁴ On October 10, 2018, Commission staff issued an order extending the license term for the Lower Village Project from August 31, 2026, to February 28, 2031, to align its expiration date with the nearby Sweetwater Project. *Sugar River Power, LLC*, 165 FERC ¶ 62,023 (2018).

²⁵ Sugar River Hydro speculates that the licensees of all projects would benefit from coordinated relicensing because it would allow the licensees to jointly participate in meetings with stakeholders and share consultants. Sugar River Hydro Request for Rehearing at 11.

²⁶ *Id.* at 9-11.

²⁷ *Id.* (stating that the Commission has granted license extensions in other cases where the distance between projects was significantly greater).

²⁸ *Use of Reserved Authority in Hydropower Relicenses to Ameliorate Cumulative Impacts; Policy Statement*, 59 Fed. Reg. 66,714 (1994); 18 C.F.R. § 2.23 (2019).

conditions at a project site.²⁹ Granting a license extension request delays the issuance of a new license with updated environmental measures. Accordingly, extending a license—and thereby delaying relicensing—in order to coordinate the environmental review of multiple projects can generally be justified only if the projects have significant cumulative impacts that warrant unified study. As we discuss below, this is not the case here. Further, the weight of this argument is lessened by the fact that the licensee raised it only after having decided not to seek a subsequent license.

14. Here, Commission staff determined that there would be little advantage to extending the license term for the Sugar River II Project to align the analysis of its cumulative impacts with those of the Lower Village Project and the Sweetwater Project.³⁰ Staff based this determination on the fact that all three projects operate independently, in run-of-river modes, and each project has its own fish passage facility.³¹ Additionally, the Sugar River II Project is relatively distant from the other two projects, located 15 miles upstream of the Lower Village Project and 18 miles upstream of the Sweetwater Project.³² As a result, staff determined the cumulative impacts analysis for each of the projects would likely be simple and straightforward and would not substantially benefit from being combined with the other two projects. Therefore, we agree with the conclusion in the January 14 Order that the cumulative impacts analysis would not meaningfully benefit from a license term extension.

15. Sugar River Hydro also argues that aligning the Sugar River II Project's license term with the other two projects would make relicensing more efficient for stakeholders and resource agencies; however, no stakeholders or resource agencies commented in support of the license term extension. The only input from resource agencies was comments made by U.S. Fish and Wildlife Service, the New Hampshire Fish and Game Department, and the New Hampshire Department of Environmental Services before Sugar River Hydro filed its extension request with the Commission. All three opposed a

²⁹ *City of River Falls, Wisconsin*, 154 FERC ¶ 61,214, at P 11 (2016).

³⁰ January 14 Order, 170 FERC ¶ 62,021 at P 10.

³¹ *Id.*

³² Sugar River Hydro points to cases that it asserts involve greater distances than here and argues that the distance between projects is not relevant. Request for Rehearing at 10-11. However, unlike here, in each case Commission staff determined that aligning expiration dates of the licenses would maximize consideration of cumulative impacts during relicensing. *Allete, Inc.*, 158 FERC ¶ 62,132, at P 8 (2017); *Ampersand Kayuta Lake Hydro, LLC*, 160 FERC ¶ 62,066, at P 7 (2017); *Erie Boulevard Hydropower, L.P.*, 161 FERC ¶ 62,021, at P 8 (2017); *Lyonsdale Associates, LLC* 160 FERC ¶ 62,181, at P 7 (2017).

license term extension, noting the distance of the Sugar River II Project from the other two projects.³³ More to the point, Sugar River Hydro rescinded its notice of intent to file a license application, removing any stake it has in the relicensing process. While Sugar River Hydro claims that New Hampshire Renewable Resources, the entity that filed a notice of intent to relicense the project, has agreed to delay or terminate the current relicensing proceeding should the extension be granted,³⁴ New Hampshire Renewable Resources has not filed any comments in the proceeding. Thus, there is no evidence in the record that indicates a license term extension is desired or needed to make relicensing more efficient for the parties involved.

C. Equitable Considerations

16. Sugar River Hydro makes several arguments for extending the license term on equity grounds, chiefly that it needs the revenue from the extended license term to fund project repairs for a different project.³⁵ Sugar River Hydro is solely owned by 169 Sunapee Street LLC, which holds the exemption for the Sugar River I Hydroelectric Project No. 3320 (Sugar River I Project),³⁶ located immediately upstream and in the same mill complex as the Sugar River II Project.³⁷ The Sugar River I Project is inoperable,³⁸ and Sugar River Hydro states that without the revenues from the extended license term, it may have to surrender the Sugar River I Project.³⁹ Sugar River Hydro also states that the

³³ Sugar River Hydro argues that Commission staff should not have relied on these comments received prior to the filing of an application, but even in the absence of these comments, there is no indication that any stakeholder or resource agency supports a license term extension.

³⁴ Sugar River Hydro Request for Rehearing at 17.

³⁵ *Id.* at 13 (citing *City of River Falls, Wisconsin*, 154 FERC ¶ 61,214).

³⁶ The exemption from licensing for the Sugar River I Project was transferred to 169 Sunapee Street, LLC from William B. Ruger, Jr. in November 2016. *See* Notice of Transfer of Exemption, Project No. 3320-004, (issued Nov. 23, 2016).

³⁷ Sugar River Hydro Request for Rehearing at 1-2.

³⁸ Sugar River Hydro notes that since filing its request for a license extension, the Sugar River I Project has experienced a catastrophic failure of its sole generator that requires its removal, refurbishment, and reinstallation. *Id.*

³⁹ *Id.*

project is part of an economic revitalization project involving affordable housing, which is a unique circumstance that the Commission should take into consideration.⁴⁰

17. The equitable considerations noted by Sugar River Hydro do not warrant an extension, particularly in light of its failure to seek a new license. In *City of River Falls*, the Commission extended the license term based on several unique circumstances, including unanimous stakeholder support, tying the extension to a comprehensive river corridor plan, and the fact that the licensee was a small municipality.⁴¹ The City had completed studies pursuant to the corridor plan and engaged with stakeholders.⁴² In contrast, Sugar River Hydro has provided no detail or evidence regarding the economic revitalization project, and, as discussed above, lacks stakeholder support. Financial support of a separate project is not sufficient justification, on its own, for the license term extension.⁴³

⁴⁰ *Id.* at 12. Sugar River Hydro also argues that the Commission has flexibility in administering its regulations and states that we should waive section 16.25 of our regulations, presumably in order to give Sugar River Hydro and New Hampshire Renewable Resources more time to decide whether to surrender the Sugar River I Project and Sugar River II Project. *Id.* at 14-15. This section is inapplicable to the license term extension request, as it addresses the situation in a relicensing proceeding when a licensee files a notice of intent to relicense, but does not file a license application, and so the Commission solicits applications from other potential licensees. 18 C.F.R. § 16.25(a) (2019). Commission staff did this on May 8, 2019, pursuant to section 16.25, and New Hampshire Renewable Resources filed a notice of intent to relicense. *See Sugar River II, LLC*, Notice Soliciting Pre-Application Documents and Notices of Intent to File a Subsequent License Application, Project No. 10934-000 (issued May 8, 2019). Not only does section 16.25 not apply to the license term extension request, but Sugar River Hydro has made no showing why it should be waived. Moreover, Sugar River Hydro has previously stated that it does not intend to file a subsequent license application.

⁴¹ *City of River Falls, Wisconsin*, 154 FERC ¶ 61,214 at P 8.

⁴² *Id.*

⁴³ As with licenses, when a project is exempted from licensing, the exemptee is responsible for maintaining project operation. *See, e.g., Brentwood Dam Ventures, LLC*, 158 FERC ¶ 61,037 (2017) (exemption terminated by implied surrender for failure to restore project operation).

The Commission orders:

Sugar River Hydro's request for rehearing is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.