

2. On August 12, 2019, Karl Meyer filed a timely request for rehearing of the Turners Falls and Northfield Transfer Orders.⁴ As discussed below, the rehearing request fails to comply with the Commission's rehearing rules and is rejected.⁵

I. Background

3. On May 14, 1968, the Federal Power Commission, the Commission's predecessor, issued a 50-year license for the Northfield Project to Connecticut Light and Power Company, the Hartford Light Company, and Western Massachusetts Electric Company.⁶ The Northfield Project is a 1,167-MW hydroelectric pumped storage project located on the Connecticut River, near the towns of Northfield and Erving in Franklin County, Massachusetts.⁷ On May 5, 1980, the Commission issued a 38-year license for the Turners Falls Project to Western Massachusetts Electric Company.⁸ The 68-megawatt (MW) project is also located on the Connecticut River, near the towns of Gill and Montague in Franklin County, Massachusetts; Vernon in Wyndham County, Vermont;

⁴ Karl Meyer August 12, 2019 Request for Rehearing (Rehearing Request).

⁵ 18 C.F.R. § 385.713(c)(2) (2019) (requiring rehearing requests to include a separate section "listing each issue in a separately enumerated paragraph"); *see also Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, 112 FERC ¶ 61,297 (2005), *order on reh'g*, Order No. 663-A, 114 FERC ¶ 61,284 (2006).

⁶ *W. Mass. Elec. Co.*, 39 FPC 723 (1968) (Northfield License Order) (granting an original license effective May 1, 1968). Subsequently, the Hartford Light Company transferred its license interest in the project to the remaining two licensees, which later transferred the license to Northeast Generation Company. *Hartford Elec. Light Co.*, 21 FERC ¶ 62,329 (1982); *Conn. Light and Power Co.*, 89 FERC ¶ 62,130 (1999). The license was then twice amended to reflect the licensee's name changes to NE Hydro Generating Company, then to FirstLight. *Ne. Generation Co.*, 118 FERC ¶ 62,080 (2007); *NE Hydro Generating Co.*, 119 FERC ¶ 62,035 (2007).

⁷ Northfield Order, 168 FERC ¶ 62,015 at P 1.

⁸ *W. Mass. Elec. Co.*, 11 FERC ¶ 61,124 (1980) (Turners Falls License Order) (granting a new license effective May 1, 1980). Subsequently, Western Massachusetts Electric Company transferred the license to the Northeast Generation Company. *Conn. Light and Power Co.*, 89 FERC at 62,130. The license was also then twice amended to reflect the licensee's name changes. *Ne. Generation Co.*, 118 FERC at 62,080; *NE Hydro Generating Co.*, 119 FERC at 62,035.

and Hinsdale in Cheshire County, New Hampshire.⁹ Articles 40 and 45 of the licenses for the Turners Falls and Northfield Projects, respectively, require coordinated operation of the projects.¹⁰

4. On October 31, 2012, FirstLight filed a notice of intent (NOI) and preliminary-application document (PAD) to relicense the projects using the Commission's Integrated Licensing Process (ILP).¹¹ On April 29, 2016, FirstLight filed an application to relicense the projects, seeking to combine the two project licenses into one.¹² However, FirstLight later rescinded this plan and now plans to maintain two separate licenses for the projects.¹³ The licenses for both projects expired on April 30, 2018, and the projects are operating under annual licenses with the same terms and conditions as the prior licenses.¹⁴ Under the ILP, FirstLight continues to perform studies and plans to file amended license applications in April 2020.¹⁵

5. On December 20, 2018, FirstLight filed applications to transfer licenses for the Turners Falls and Northfield Projects to FirstLight MA and Northfield, respectively.¹⁶ FirstLight requested the transfers as a part of a broader corporate reorganization and refinancing by FirstLight's indirect parent, Public Sector Pension Investment Board.¹⁷ The transferees were formed for the sole purpose of owning and operating the projects.

⁹ Turners Falls Order, 168 FERC ¶ 62,014 at P 1.

¹⁰ Turners Falls License Order, 11 FERC at 61,273 art. 40; Northfield License Order, 39 FPC at 747 art. 45.

¹¹ FirstLight October 31, 2012 NOI/PAD.

¹² FirstLight April 29, 2016 Final Application for New License.

¹³ FirstLight December 20, 2018 Application for the Turners Falls Project at n.2 (Turners Falls Application); FirstLight December 20, 2018 Application for the Northfield Project at n.2 (Northfield Application).

¹⁴ 83 Fed. Reg. 22,474 (May 15, 2018) (issuing annual licenses to the projects); *see also* 16 U.S.C. § 808(a)(1) (2018) (requiring the Commission to issue an annual license under the terms and conditions of the prior license until a new license is issued).

¹⁵ Turners Falls Order, 168 FERC ¶ 62,014 at P 3; Northfield Order, 168 FERC ¶ 62,015 at P 3.

¹⁶ Turners Falls Application; Northfield Application.

¹⁷ Turners Falls Order, 168 FERC ¶ 62,014 at P 5; Northfield Order, 168 FERC ¶ 62,015 at P 5.

FirstLight stated that direct operation of the Turners Falls and Northfield Projects will not change and that the transferees are in a financial position to own and operate the projects.¹⁸ On July 11, 2019, Commission staff issued orders approving the license transfer requests and substituting the transferees, FirstLight MA and Northfield, for the transferor, FirstLight, as applicants in the respective pending relicensing proceedings.¹⁹

6. On August 12, 2019, Mr. Meyer filed a timely request for rehearing of the Transfer Orders, arguing that Commission staff erred in finding that the license transfers are in the public interest. Specifically, Mr. Meyer alleges that Commission staff erred in finding that (1) the transferor is in compliance with the licenses and (2) the transferees demonstrated their fitness to comply with the terms and conditions of the licenses.

II. Discussion

7. Under Rule 713(c)(2) of the Commission's Rules of Practice and Procedure, a request for rehearing must include a separate section entitled "Statement of Issues" listing each issue presented to the Commission in a separately enumerated paragraph.²⁰ Any issue not so listed will be deemed waived.²¹ Mr. Meyer's rehearing request does not include a "Statement of Issues" and is, therefore, rejected.

8. In addition, the facts identified by Mr. Meyer in support of his arguments were not raised in his comments in the transfer proceedings, but rather provided after issuance of the Turners Falls and Northfield Transfer Orders. We have previously rejected parties' attempts to submit new facts and allegations at the rehearing stage because doing so "presents a moving target and frustrates needed finality."²² Therefore, we also reject Mr. Meyer's request for rehearing for improperly seeking to enlarge the scope of this proceeding, which is inappropriate at the rehearing stage.²³

¹⁸ Turners Falls Application at 5; Northfield Application at 5.

¹⁹ Turners Falls Order, 168 FERC ¶ 62,014 at ordering para. (A)–(B); Northfield Order, 168 FERC ¶ 62,015 at ordering para. (A)–(B).

²⁰ 18 C.F.R. § 385.713(c)(2).

²¹ *Id.*; see also *Alcoa Power Generating Inc.*, 160 FERC ¶ 61,097, at P 6 (2017).

²² *Boyce Hydro Power, LLC*, 162 FERC ¶ 61,116, at P 21 n.32 (2018) (citing *TransCanada Power Mktg. Ltd. v. ISO New England Inc.*, 122 FERC ¶ 61,049, at P 21 (2008) (*TransCanada Power Mktg. Ltd.*)).

²³ *TransCanada Power Mktg. Ltd.*, 122 FERC ¶ 61,049 at PP 20–21.

9. In any event, Mr. Meyer's rehearing request is without merit, as discussed below.

A. The Transferor Was in Compliance with the Licenses for the Projects

10. Mr. Meyer argues that Commission staff erred in finding that FirstLight was in compliance with the licenses for the projects.²⁴ Specifically, Mr. Meyer argues that FirstLight violated Articles 40 and 45 of the licenses for the Turners Falls and Northfield Projects, respectively, which require coordinated project operation. Mr. Meyer claims that on May 17, 2019, FirstLight decreased bypass flows at the Turners Falls Project, via the Northfield Project control room, even though spawning shortnose sturgeon had been documented downstream of the Turners Falls Project at the project's rock dam between May 9, 2019, and May 16, 2019, as part of a USGS study monitoring shortnose sturgeon spawning.²⁵ Mr. Meyer supports his claim with photos of the rock dam said to be taken at 7:30 a.m. on May 17, 2019, and the assertion that FirstLight responded to an inquiry from Fish and Wildlife Service (FWS) regarding fluctuating flows by stating that flows had been reduced at approximately 10:00 a.m. on May 17, 2019. According to Mr. Meyer, this demonstrates that FirstLight was not operating the projects in coordination, presumably because he believes that coordinated operation would have precluded reducing flows while shortnose sturgeon were present downstream. Further, Mr. Meyer argues that because no shortnose sturgeon were observed on May 17, 2019, the dewatering of the area below the Turners Falls Project resulted in the take of shortnose sturgeon, a federally listed species, in violation of section 9 of the Endangered Species Act (ESA).²⁶

11. Commission staff's review of the compliance history for the projects shows that FirstLight has complied with the licenses for the Turners Falls and Northfield Projects.²⁷ The Commission received no notification of a variance or deviation from the license requirements for either project during the days and times indicated by Mr. Meyer. Further, gage data from the U.S. Geological Survey's (USGS) S.O. Conte Anadromous Fish Research Center, located adjacent to the rock dam, does not show any unauthorized reduction in flow for May 17, 2019. Although FirstLight notified the Commission of

²⁴ Rehearing Request at 1, 4.

²⁵ *Id.*

²⁶ *Id.* at 1–2 (citing 16 U.S.C. § 1538(a) (2018)).

²⁷ Turners Falls Order, 168 FERC ¶ 62,014 at P 16; Northfield Order, 168 FERC ¶ 62,015 at P 16; *see also* 18 C.F.R. § 131.20(8) (2019) (requiring the transferor applicants to certify they have fully complied with the terms and conditions of their licenses).

maintenance work planned for May 17, 2019,²⁸ and may have reduced flows to some degree on that date, as indicated by its statement to FWS, nothing in the record indicates that flows were reduced below 400 cubic feet per second, the level required by Article 34 of the license for the Turners Falls Project.²⁹

12. In addition, the facts alleged by Mr. Meyer do not support a finding that FirstLight did not operate the Turners Falls and Northfield Projects in coordination, to the extent required by Articles 40 and 45 of the respective project licenses.³⁰ The required, “coordination” means that the licensees of projects cannot operate in a way that interferes with the operation of the other project, and not, as Mr. Meyer suggests, that the licenses preclude FirstLight from reducing flows while shortnose sturgeon are present downstream.³¹ Mr. Meyer’s rehearing request does not allege that the operation of the Turners Falls Project interfered with the operation of the Northfield Project or caused the violation of any requirement of that license and, thereby, lacks merit.

13. Last, we note that Mr. Meyer fails to demonstrate that operation of the projects resulted in a take of shortnose sturgeon.³² Mr. Meyer only speculates that because spawning shortnose sturgeon had been documented between May 9, 2019, and May 16, 2019, but no sturgeon were captured on May 17, 2019, FirstLight’s operations resulted in take. However, Mr. Meyer has proffered no evidence of actual death of, or injury to, any shortnose sturgeon.

14. Moreover, there is no reference to the alleged events in the record other than Mr. Meyer’s rehearing request. Although Mr. Meyer suggests that FWS was in contact

²⁸ FirstLight May 14, 2019 Potential Delay of Reinstallation of Public Safety Devices; FirstLight May 17, 2019 Reinstallation of Public Safety Devices.

²⁹ Turners Falls License Order, 11 FERC at 61,271–72 art. 34.

³⁰ *Id.* at 61,273 art. 40; Northfield License Order, 39 FPC at 747 art. 45.

³¹ For example, these articles arguably might mean that a licensee could not reduce releases from an upstream project to such a great degree that a downstream project could not meet its minimum flow requirements. Mr. Meyer does not argue that thus occurred here, nor would the record support such a contention.

³² 16 U.S.C. § 1532(19) (2018) (defining take as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct”); 50 C.F.R. § 222.102 (2019) (defining harm to include “significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering.”)

with FirstLight regarding the alleged event,³³ the record does not show the content of such contacts or that the FWS determined that a take occurred. Additionally, neither the National Marine Fisheries Service (NMFS)³⁴ nor FWS³⁵ contacted Commission staff about any alleged take or violation of the minimum flow required by the license, despite the fact that NMFS and FWS expressed concern about the effects of project operations on shortnose sturgeon in the underlying transfer proceedings.³⁶ Further, as discussed above, FirstLight maintained the minimum flow from the Turners Falls Project, as required by the project license.³⁷

B. The Transferees Demonstrated Their Fitness to Comply with the Licenses for the Projects

15. Next, Mr. Meyer argues that Commission staff erred in finding that FirstLight MA and Northfield demonstrated their fitness to comply with the terms and conditions of the licenses for the Turners Falls and Northfield Projects, respectively.³⁸ Specifically, Mr. Meyer contends that FirstLight lacks expertise because of its alleged take of shortnose sturgeon and that FirstLight MA and Northfield, therefore, cannot then benefit from access to such expertise, as Commission staff had determined in the underlying transfer proceedings.³⁹

³³ Rehearing Request at 3.

³⁴ NMFS administers ESA for anadromous fish, including shortnose sturgeon, as well as marine fish, turtles, invertebrates, plants, cetaceans, seals, and sea lions.

³⁵ FWS administers ESA for all other animals, birds, insects, and plants, mostly terrestrial and freshwater.

³⁶ NMFS February 7, 2019 Comment at 1–2 (noting that operations at the Turners Falls Project affect flows and water surface elevations, which affect listed species, including shortnose sturgeon); FWS February 7, 2019 Comment at 1–2 (advising that operational changes be made in the projects' relicensing to minimize and mitigate impacts to, among other species, shortnose sturgeon and their habitat). Additionally, FWS became a party to the underlying transfer proceedings upon its filing of a timely notice of intervention on February 7, 2019. *See* 18 C.F.R. § 385.214(a)(2) (2019).

³⁷ Issues relating to the effects on shortnose sturgeon at the Turners Falls and Northfield Projects will be analyzed in the respective relicensing proceedings.

³⁸ Rehearing Request at 1, 4.

³⁹ *Id.* at 4.

16. We disagree. The transferees demonstrated that they are qualified to be licensees for the projects. The Commission's regulations require that applicants seeking a license transfer detail the transferee's qualifications to hold and operate the property under the license.⁴⁰ Commission staff found that the transferees, FirstLight MA and Northfield, demonstrated their financial, technical, and legal qualifications to hold licenses for the Turners Falls and Northfield Projects, respectively.⁴¹

17. In support of its findings, Commission staff found that FirstLight MA and Northfield are affiliated with FirstLight, which has experience operating hydroelectric projects. Commission staff reasonably concluded that the transferees will, therefore, have access to the transferor's expertise.⁴² Commission staff also noted that the same personnel currently operating the projects will continue to operate the projects once the license transfers become effective.⁴³ Further, staff found that regardless of the corporate form of the license holder, the revenue generated from continued project operations for the Turners Falls and Northfield Projects will be sufficient to meet the financial cost of complying with the terms and conditions of the respective licenses.⁴⁴ Mr. Meyer does not attempt to refute these findings. Accordingly, we are satisfied that the transferees demonstrated their financial, technical, and legal qualifications to hold licenses for the projects.

⁴⁰ 18 C.F.R. § 9.2 (2019) (requiring the transferee's qualifications be the same as those required of license applicants).

⁴¹ Turners Falls Order, 168 FERC ¶ 62,014 at P 11; Northfield Order, 168 FERC ¶ 62,015 at P 11.

⁴² Turners Falls Order, 168 FERC ¶ 62,014 at P 12; Northfield Order, 168 FERC ¶ 62,015 at P 12.

⁴³ Turners Falls Order, 168 FERC ¶ 62,014 at P 12 (citing Turners Falls Application at 5); Northfield Order, 168 FERC ¶ 62,015 at P 12 (citing Northfield Application at 5).

⁴⁴ Turners Falls Order, 168 FERC ¶ 62,014 at P 12 (citing FirstLight February 15, 2019 Response to Comments and Protests and Answer in Opposition to Motions to Intervene at 11 (Response)); Northfield Order, 168 FERC ¶ 62,015 at P 12 (citing Response at 11).

The Commission orders:

The request for rehearing filed by Karl Meyer on August 12, 2019, is rejected.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.