

170 FERC ¶ 61,027
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Grand River Dam Authority

Project No. 1494-450

ORDER ON REQUEST FOR CLARIFICATION AND REHEARING

(Issued January 23, 2020)

1. On September 9, 2019, Commission staff issued an order extending the license term, modifying the relicensing process plan and schedule, amending the storm adaptive management plan, and extending the filing date for submitting revised Exhibit G drawings and a revised shoreline management plan for Grand River Dam Authority's (GRDA) Pensacola Hydroelectric Project No. 1494 (Pensacola Project).¹ On October 9, 2019, the City of Miami (City) filed a request for clarification and rehearing of the Amendment Order. We deny rehearing, but, provide clarification as to the timeline for a study in GRDA's relicensing proceeding.

I. Background

2. On April 24, 1992, the Commission issued a 30-year license to GRDA for the continued operation and maintenance of the Pensacola Project that would expire on March 31, 2022.² The project, which is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma, creates an impoundment known as Grand Lake O' the Cherokees (Grand Lake).

3. On February 1, 2017, GRDA filed a Notice of Intent and Pre-Application Document for relicensing the project. However, on February 15, 2017, Commission staff issued a letter order holding the relicensing process in abeyance until the Commission

¹ *Grand River Dam Authority*, 168 FERC ¶ 62,145 (2019) (Amendment Order).

² *Grand River Dam Authority*, 59 FERC ¶ 62,073 (1992).

acted on GRDA's request to amend the rule curve³ for the Pensacola Project.⁴ Following the Commission's August 15, 2017 order amending the rule curve,⁵ Commission staff issued a letter order lifting the abeyance and providing an Integrated Licensing Process (ILP) process plan and schedule.⁶ Commission staff's approved ILP process plan and schedule required GRDA to file an Initial Study Report by November 8, 2019, and an Updated Study Report by November 8, 2020. The ILP commenced on January 12, 2018.⁷

4. On November 8, 2018, as required by the ILP schedule, Commission staff issued a Study Plan Determination requiring GRDA to complete nine studies (approved study plan), including a Hydrologic and Hydraulic (H&H) Modeling Study.⁸ The H&H Modeling Study includes a provision for submitting a "model input status report" to allow the relicensing participants "to better understand the [Comprehensive Hydraulic Model] and Operations Model," and "obtain information on model runs proposed as part of the H&H [Modeling] Study[]," (Six-Month Model Input Status Report). The Six-Month Model Input Status Report is to be distributed to participants in the ILP approximately six months before the Initial Study Report is due.⁹ The H&H Modeling Study plan also includes a provision to hold a technical conference call within one month,

³ The rule curve requires GRDA to operate the Pensacola Project to maintain, to the extent practicable, seasonal target reservoir surface elevations.

⁴ See *Grand River Dam Authority*, Project No. 1494-438 (Feb. 15, 2017) (Abeyance of ILP Proceedings for the Pensacola Hydroelectric Project).

⁵ *Grand River Dam Authority*, 160 FERC ¶ 61,001 (2017).

⁶ See *Grand River Dam Authority*, Project No. 1494-438 (Aug. 24, 2017) (Letter Order Lifting Abeyance and Providing a Revised ILP Process Plan and Schedule).

⁷ 83 Fed. Reg. 2977.

⁸ The other studies required by the approved study plan are: (1) Sedimentation Study; (2) Aquatic Species of Concern Study; (3) Terrestrial Species of Concern Study; (4) Wetlands and Riparian Habitat Study; (5) Recreation Facilities Inventory and Use Study; (6) Cultural Resources Study; (7) Socioeconomics Study; and (8) Infrastructure Study.

⁹ See GRDA's April 27, 2018 Proposed Study Plan at Attachment A, p. 12; see also November 8, 2018, Study Plan Determination for the Pensacola Hydroelectric Project at B-5.

for relicensing participants to ask questions regarding the report.¹⁰ The approved study plan further requires that GRDA provide interim results of the H&H Modeling Study at the time of the Initial and Updated Study Reports.¹¹

5. On May 21, 2019, GRDA filed an application requesting a 57-month extension of its license term and to modify Commission staff's approved ILP process plan and schedule. In requesting a license term extension, GRDA noted that completing the H&H Modeling Study requires the collection of bathymetric data for Grand Lake, that GRDA had contracted with the U.S. Geologic Survey (USGS) to perform the survey, and that based on USGS's proposal, the bathymetric survey would be completed by "late Q1 or early Q2 2021."¹² GRDA argued that the license term extension was needed to allow GRDA to complete all necessary studies and comply with approved study plan schedules, which as noted above, are triggered by certain milestones within the ILP process plan and schedule.

6. On September 9, 2019, Commission staff issued the Amendment Order, granting a 38-month extension to the license term for the Pensacola Project, and revising the ILP process plan and schedule accordingly.¹³ Commission staff reasoned that the additional 38 months would allow sufficient time to complete the bathymetric survey while enabling GRDA to distribute the Six-Month Model Input Status Report and hold the associated technical conference call, to carry out the two full-year study seasons (after the completion of the bathymetric survey), and to complete all approved studies prior to GRDA filing the preliminary licensing proposal/draft license application.¹⁴ In revising the ILP process plan and schedule, the Amendment Order did not make any modifications or alterations to the express terms of the approved study plan; therefore, all aspects of the approved study plan (including the distribution of the Six-Month Model

¹⁰ See GRDA's September 24, 2018 Revised Study Plan at 19.

¹¹ See November 8, 2018, Study Plan Determination for the Pensacola Hydroelectric Project at B-5.

¹² See GRDA's May 21, 2019 License Amendment Application at 7-12 (Amendment Application).

¹³ Amendment Order, 168 FERC ¶ 62,145 at P 35.

¹⁴ *Id.* at P 35.

Input Status Report no less than six months before the Initial Study Report) were unchanged.¹⁵

7. On October 9, 2019, the City sought clarification and rehearing of the Amendment Order. The City requests that the Commission: (1) clarify that GRDA is required to notify stakeholders once the results of the bathymetric survey are available; (2) require GRDA to complete the Six-Month Model Input Status Report within three months of the completion of the [b]athymetric [s]tudy but no later than the end of 2020; and (3) modify the ILP process plan and schedule so as to require GRDA to file an Initial Study Report for the H&H Modeling Study prior to the Initial Study Report deadline for other studies.¹⁶

II. Procedural Matters

8. On October 24, 2019, GRDA filed an answer to the Rehearing Request. The Commission's Rules of Practice and Procedure do not permit answers to requests for rehearing.¹⁷ Accordingly, we reject GRDA's answer.

III. Discussion

A. Stakeholder Notification of Availability of Bathymetric Data

9. The City states that, because Grand Lake's last bathymetric survey was performed over ten (10) years ago, the updated information provided by the bathymetric survey "will be immediately useful" to stakeholders and other parties.¹⁸ Therefore, the City requests that the Commission "clarify on rehearing that GRDA is required to notify stakeholders and all interested parties as soon as the bathymetric data are received."¹⁹

10. GRDA's relicensing application is being processed pursuant to the ILP, which, as noted above, requires GRDA to submit an Initial Study Report, as well as an Updated Study Report in which GRDA must file the results of all studies completed to-date,

¹⁵ Amendment Order, 168 FERC ¶ 62,145 at P 33.

¹⁶ Rehearing Request at 3-4.

¹⁷ 18 C.F.R. § 713(d)(1) (2019).

¹⁸ Rehearing Request at 5.

¹⁹ *Id.*

including the bathymetric survey.²⁰ GRDA must submit the Initial Study Report no later than September 30, 2021, with the Updated Study Report due one year after the Initial Study Report.²¹ Because the ILP provides that stakeholders will receive the information in a timely manner, and notifying stakeholders of GRDA's receipt of the bathymetric data will not give them the data any earlier than provided by the schedule, we will not grant the City's request for clarification on this matter.

B. Modifying the Schedule for Completing the Six-Month Model Input Status Report

11. The City requests that the Commission "clarify" the Amendment Order by setting a deadline for the Six-Month Input Status Report at three months after the bathymetric survey is complete, or the end of 2020, whichever is sooner.²² The City states that while the Amendment Order requires GRDA to issue the Six-Month Model Input Status Report and hold a technical conference, it "fails to set a deadline for completion of this task."²³ The City asserts that "most of the work to set up" the Six-Month Model Input Status Report can be completed while USGS conducts the bathymetric survey, and that the City's consultant, has stated that three months would be plenty of time to incorporate the new bathymetric data into the Six-Month Model Input Status Report.²⁴ The City asserts that its proposed schedule for the Six-Month Model Input Status Report will allow sufficient time to incorporate the bathymetric data into the report, even if the USGS were to exceed its own schedule, which includes additional time for contingencies that may delay the study (i.e. storms, heavy boat traffic, etc.).²⁵

12. Contrary to the City's assertion that there is no deadline for the Six-Month Input Status Report, as previously noted, the Amendment Order did not amend the terms of the approved study plan, which requires the Six-Month Input Status Report no less than six months before submission of the Initial Study Report.²⁶ Nonetheless, for clarity we

²⁰ 18 C.F.R. § 5.15 (2019).

²¹ *Id.*; see also Amendment Order, 168 FERC ¶ 62,145 at P 33.

²² Rehearing Request at 5-7.

²³ *Id.* at 6.

²⁴ *Id.* at 6-7.

²⁵ *Id.*

²⁶ See November 8, 2018 Study Plan Determination for the Pensacola Hydroelectric Project at B-5 and Amendment Order, 168 FERC ¶ 62,145 at P 33 (stating

will describe in more detail below the schedule with respect to the Six-Month Model Input Status Report.

13. The revised ILP process plan and schedule in the Amendment Order set September 30, 2021, as the deadline to file the Initial Study Report.²⁷ Thus, per the approved study plan, GRDA is required to distribute the Six-Month Model Input Status Report no less than six months before this date, by March 30, 2021, and to hold the associated technical conference call no more than one month thereafter.²⁸ The City has not shown that this timeline is in any way unreasonable. We note, however, that GRDA is not prevented from distributing the Six-Month Model Input Status Report sooner than the required date.

14. Further, because the timing for submitting the Six-Month Model Input Status Report was approved in the Study Plan Determination and was not modified by the Amendment Order, the City's request for the Commission to "clarify" that the Six-Month Model Input Status Report is subject to a different timeline than that set by the approved study plan constitutes a request to modify the approved study plan. As Commission staff noted in the Amendment Order, "[p]rocedures and schedules for modifying the approved study plan...are stipulated by the Commission's regulations."²⁹ Because the ILP pre-filing process is ongoing, the Commission will not consider the City's request to modify the approved study plan in this proceeding.³⁰ Should the City wish to request a change to the approved study plan, it should do so pursuant to section 5.15(d) of the Commission's regulations.³¹

that "the time of the ISR" is "approximately 6 months after the [Six-Month Model Input Status Report]").

²⁷ Amendment Order, 168 FERC ¶ 62,145, Appendix A at p. 1.

²⁸ *Id.* P 33, Appendix A at p. 1.

²⁹ *Id.* P 9 (citing 18 C.F.R. § 5.15(d) (2019)).

³⁰ *Cf. FirstLight Hydro Generating Co.*, 162 FERC ¶ 61,235, at P 11 (2018) ("Any request to modify an approved...study is subject to section 5.15 of the Commission's regulations and 'must be accompanied by a showing of good cause why the proposal should be approved.'" (citing 18 C.F.R. § 5.15(d) (2017))).

³¹ 18 C.F.R. § 5.15(d) (2019).

15. For these reasons, the City's request for clarification on this matter is granted to the extent discussed, and denied in all other respects.

C. Preparation of Initial Study Report for H&H Modeling Study

16. Finally, the City requests that the Commission require that the Initial Study Report for the H&H Modeling Study be filed in advance of the Initial Study Report for the remaining ILP studies (approximately six months earlier than the Initial Study Report for other studies). The City reasons that filing the Initial Study Report for the H&H Modeling Study prior to the reports for the other studies would "allow time for any necessary corrections to the H&H [Modeling] Study" thus "reduc[ing] the risk" of wasted time in the relicensing process.³² The City asserts that "the current schedule can accommodate such sequencing," based on the schedule the City suggests above (i.e. requiring the Six-Month Model Input Status Report no later than the end of 2020). In addition to making the relicensing process more efficient, the City asserts that providing the Initial Study Report for the H&H Modeling Study sooner than the Initial Study Report for the other studies would have additional benefits, including an opportunity to "suggest further beneficial refinements to the existing storm adaptive management plan."³³

17. Despite the City's description of its request as "modifying the relicensing schedule" (i.e., the ILP process plan and schedule), the relief the City seeks again constitutes an improper attempt to modify the approved study plan. As discussed above, while the Amendment Order extended the license for the Pensacola Project by 38 months to provide GRDA with sufficient time to complete necessary studies before GRDA is required to submit the preliminary licensing proposal/draft license application, it did not modify the approved study plan.³⁴ The schedule for the H&H Modeling Study, as discussed in the Amendment Order, requires that the "results of the initial model runs" be available "at the time of the [Initial Study Report] (approximately six months after the [Six-Month Model Input Status Report])" consistent with the approved study plan.³⁵ The City's request would therefore entail a modification of the H&H Modeling Study, which has been approved by Commission staff in the Study Plan Determination, and which the City did not challenge.

³² Rehearing Request at 8.

³³ *Id.* at 9.

³⁴ *Supra* P 13.

³⁵ Amendment Order, 168 FERC ¶ 62,145 at P 33.

18. We are confident that the Amendment Order's revised ILP process plan and schedule, including the deadline for submitting the Initial Study Report, allows sufficient time for GRDA to communicate with stakeholders and Commission staff and, if necessary, make modifications to the studies, including the H&H Modeling Study. Therefore, the City's requests to modify both the ILP process plan and schedule and the approved study plan are denied.

The Commission orders:

(A) The City of Miami's October 9, 2019 request for rehearing is denied.

(B) The City of Miami's October 9, 2019 request for clarification is granted to the extent described above and denied in all other respects.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.