

150 FERC ¶ 61,028
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Northern States Power Company

Project No. 2610-010

ORDER DENYING REHEARING

(Issued January 22, 2015)

1. American Whitewater has filed a request for rehearing of a November 6, 2014 Commission staff order extending the term of Northern States Power Company's (Northern States) license for its Saxon Falls Project No. 2610 for five years.¹ The project is located on the Montreal River in Iron County, Wisconsin, and in Gogebic County, Michigan. This order denies rehearing.

I. Background

2. On December 22, 1989, the Commission issued to Northern States a minor license for its 1.5-megawatt (MW) Saxon Falls Project for a period of 30 years, terminating December 31, 2019.² Approximately five years later, on January 19, 1995, the Commission issued a major license to Northern States for its 1.65-MW Superior Falls Project, located 3.5 miles downstream of the Saxon Falls Project, for a period of 30 years, terminating December 31, 2024.³

3. On July 18, 2014, Northern States requested that the Commission extend the term of the Saxon Falls license for five years, from December 31, 2019, to December 31, 2024, in order to coordinate the expiration date with that of the Superior Falls license. In support of its request, Northern States claimed that coordinating the expiration of the two license terms would increase the efficiency of the relicensing proceedings and reduce the consultation and participation burden on agencies, tribes, the Commission, and other

¹ *Northern States Power Company*, 149 FERC ¶ 62,090 (2014).

² *Northern States Power Company*, 49 FERC ¶ 62,269 (1989).

³ *Northern States Power Company–Wisconsin*, 70 FERC ¶ 62,029 (1995).

stakeholders. The Michigan Department of Natural Resources (Michigan DNR), the Wisconsin Department of Natural Resources, the U.S. Fish & Wildlife Service, the Michigan State Historic Preservation Office, the Wisconsin State Historic Preservation Office, the Great Lakes Indian Fish & Wildlife Commission, and the Bar River Tribe all supported the extension without additional conditions.⁴

4. In response to the Commission's public notice of the application for extension, Michigan DNR, American Whitewater, and the National Park Service (NPS) filed motions to intervene⁵ and comments. American Whitewater and NPS both supported the proposed license extension in order to coordinate relicensing, but requested that the Commission require Northern States, as a condition of the extension, to improve access at the Saxon Falls Powerhouse for recreational use and provide additional information to improve recreation at the project. Staff rejected these arguments in the November 6 Order and approved the extension with no additional conditions, finding that the existing recreational facilities were adequate and that American Whitewater and NPS' requests would be more appropriately examined in the context of the relicensing proceeding.⁶

5. On December 8, 2014, American Whitewater filed a request for rehearing of the order extending the license term, reiterating its request that, as a condition of the license extension, the Commission require Northern States to provide recreational enhancements in the form of additional information on project operations and access to real-time flow information.⁷

⁴ Responses from these stakeholders and resource agencies are included in Northern States' request for extension filed on July 18, 2014. The U.S. Fish & Wildlife Service supported the extension, but felt that five years was excessive. The Service suggested advancing the termination date of the Superior Falls license, but section 15(e) of the Federal Power Act prohibits the Commission from issuing new license terms for less than 30 years. 16 U.S.C. § 808(e) (2012).

⁵ Michigan DNR and American Whitewater filed timely motions to intervene, which were granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2014). NPS filed a late motion to intervene, which was granted by Secretary's notice (unpublished) dated September 24, 2014.

⁶ *Northern States Power Company*, 149 FERC ¶ 62,090 at P 8.

⁷ American Whitewater states that it is no longer requesting improved access at the Saxon Falls Powerhouse. Based on communications with Northern States, American Whitewater feels satisfied that access is adequate through the extended term of the license.

II. Discussion

6. American Whitewater maintains additional recreation provisions are warranted as a condition of the five-year license extension. It requests that the Commission impose two requirements on Northern States. First, it requests that Northern States prepare and make available to the public a report on project operations and hydrology and their relationship to whitewater recreation. Second, American Whitewater requests that Northern States publish to the company's website a daily flow report with flow information and any operations planned that may affect flows,⁸ as well as the rating curve, which should be updated whenever it is recalibrated. American Whitewater requests these additional measures for the purposes of increasing public awareness of existing whitewater recreation opportunities and improving predictability of flows for boaters.

7. Commission staff denied these requests in the November 6 Order because American Whitewater did not adequately demonstrate why the extension, which does not authorize any change in operations and would not result in any new environmental impacts, merits requiring additional recreational enhancements. As support for its requests, American Whitewater cites to *PPL Holtwood, LLC*⁹ and *County of Antrim, Michigan*.¹⁰ In both of these cases, the licensee was granted an extension of its license term and was required to carry out additional conditions regarding recreation during the term of the extension. Furthermore, American Whitewater claims that *Wisconsin Public Service Corporation*¹¹ and *PacifiCorp*,¹² two cases in which the Commission approved license extensions with no additional conditions imposed, are not compelling because the extensions in those cases were only for 15 months. We disagree and find *Wisconsin Public Service* and *PacifiCorp* to be more persuasive with respect to the Saxon Falls Project than *PPL Holtwood* or *County of Antrim*.

8. In *PPL Holtwood*, the licensee applied to redevelop its project to increase installed capacity and to extend its license term by 16 years. The extension was granted as part of

⁸ American Whitewater notes that a flow recording is currently available, but that it is not always updated or reliable.

⁹ 129 FERC ¶ 62,092 (2009).

¹⁰ 88 FERC ¶ 62,158 (1999).

¹¹ 127 FERC ¶ 62,219 (2009).

¹² 71 FERC ¶ 62,068 (1995).

an order authorizing construction of an additional powerhouse and replacements at the existing powerhouse among other things. The additional recreation measures in the order were a result of the construction and change in operations at the site, as well as the result of a settlement agreement reached by the parties. In *County of Antrim*, a 14-year license term extension was granted to give the licensee more time to recoup some of its investment before a proposed decommissioning of the project. Because the project in *County of Antrim* was operating at a deficit, relicensing or shutting down the project were both economically unfavorable. Instead, the parties all consented to a settlement agreement, which included environmental mitigation and enhancement measures, and allowed continued project operations so the licensee could recoup more of its investment. The conditions in the settlement agreements in both of these cases were not conditions the Commission initiated, but rather were conditions the licensees and other parties agreed upon and offered to the Commission for approval.

9. With regard to the Saxon Falls Project, Northern States does not propose any new construction or change in operations during the extension. The parties here are not proffering a settlement agreement on recreation measures. Northern States is not requesting the extension to avoid the costs of relicensing and recoup more of its investment. Lastly, Northern States' five-year extension is significantly shorter than the extensions referenced above. Accordingly, *PPL Holtwood* and *County of Antrim* are not persuasive.

10. More similar to this case are *Wisconsin Public Service* and *PacifiCorp*. In each of these cases, the licensees requested extensions of their license terms so as to coordinate license expirations for multiple projects. The licensees did not propose new construction or operational changes along with the extensions. The Commission granted extensions in each of these cases with no additional recreation or other mitigation measures required. While the extensions in these two cases were for 15 months, shorter than Northern States' five-year extension, these cases are otherwise similar to the matter at hand.¹³

11. Under section 10(a)(1) of the Federal Power Act, the Commission balances the various, and often competing, interests affected by a project, including power and non-power values.¹⁴ As a minor project generating only 1.5-MW, Saxon Falls' existing

¹³ The extension here is consistent with our policy of coordinating the expiration dates of projects located in the same river basin, in order to maximize future consideration of cumulative environmental impacts. *Policy Statement on Use of Reserved Authority in Hydropower Relicenses to Ameliorate Cumulative Impacts*, 59 Fed. Reg. 66,714 (Dec. 28, 1994); 18 C.F.R. § 2.23 (2014).

¹⁴ 16 U.S.C. § 803(a) (2012).

recreational facilities, which include a boat ramp and access road as well as what American Whitewater recognizes as coordination with kayakers to provide access through a gate and stairway during optimal flows, are adequate at this time pending relicensing. American Whitewater's requests for additional recreational enhancements are requests that would be more appropriately examined in the context of the relicensing proceeding where all aspects of the project's developmental and environmental impacts will be examined in a comprehensive manner.

12. For the reasons discussed above, we deny American Whitewater's request for rehearing.

The Commission orders:

American Whitewater's request for rehearing, filed on December 8, 2014, is denied.

By the Commission. Commissioner Honorable is voting present.

(S E A L)

Kimberly D. Bose,
Secretary.