

UNITED STATES OF AMERICA  
 FEDERAL ENERGY REGULATORY COMMISSION

Public Service Company of New  
 Hampshire

Project Nos. 1893-080, 2456-082,  
 7528-024, 2457-042, 2288-055, and  
 2287-050

HSE Hydro NH Amoskeag, LLC  
 HSE Hydro NH Hooksett, LLC  
 HSE Hydro NH Garvin Falls, LLC  
 HSE Hydro NH Ayers Island, LLC  
 HSE Hydro NH Canaan, LLC  
 HSE Hydro NH Eastman Falls, LLC  
 HSE Hydro NH Gorham, LLC  
 HSE Hydro NH Smith, LLC

ORDER APPROVING TRANSFER OF LICENSES

(Issued July 16, 2018)

1. On December 29, 2017, Public Service Company of New Hampshire (transferor) and the transferees listed above filed a request to transfer the licenses for the six projects listed in the table below:

<b>Project Numbers</b>	<b>Project Names</b>	<b>Locations</b>	<b>Transferees</b>
P-1893-080	Merrimack River Project	Merrimack River, Merrimack and Hillsborough counties, NH	HSE Hydro NH Amoskeag, LLC HSE Hydro NH Hooksett, LLC HSE Hydro NH Garvin Falls, LLC
P-2456-082	Ayers Island Hydroelectric Project	Pemigewasset River, Belknap and Grafton counties, NH	HSE Hydro NH Ayers Island, LLC
P-7528-024	Canaan Project	Connecticut River, Coos County, NH	HSE Hydro NH Canaan, LLC
P-2457-042	Eastman Falls Project	Pemigewasset River, Belknap and Grafton counties, NH	HSE Hydro NH Eastman Falls, LLC

P-2288-055	Gorham Project	Androscoggin River, Coos County, NH	HSE Hydro NH Gorham, LLC
P-2287-050	J. Brodie Smith Project	Androscoggin River, Coos County, NH	HSE Hydro NH Smith, LLC

## I. Background

2. On February 9, 2018, the transferees filed additional information responding to an informal consultation meeting held on January 11, 2018 between the transferor, the transferees and Commission staff. The additional information discussed the following issues of the proposed transfer: (1) anticipated insurance protection, (2) implications arising from a possible dissolution of a transferee, and (3) the financial resources available to the transferees to meet their license obligations regarding operation, maintenance, contingencies and repair or replacement of project facilities.

3. For P-1893, Merrimack River Project

The Commission issued a new 40-year license to the Public Service Company of New Hampshire on May 18, 2007.<sup>1</sup>

4. For P-2456, Ayers Island Project

The Commission issued a new 40-year license to Public Service Company of New Hampshire on April 29, 1996.<sup>2</sup>

5. For P-7528, Canaan Project

The Commission issued a subsequent 30-year license to the Public Service Company of New Hampshire on January 16, 2009.<sup>3</sup>

---

<sup>1</sup> Order Issuing New License. *Public Service Company of New Hampshire*, 119 FERC ¶ 61,170 (2007).

<sup>2</sup> Order Issuing New License. *Public Service Company of New Hampshire*, 75 FERC ¶ 61,111 (1996).

<sup>3</sup> Order Issuing Subsequent License. *Public Service Company of New Hampshire*, 126 FERC ¶ 62,033 (2009).

6. For P-2457, Eastman Falls Project

The Commission issued a new 30-year license to the Public Service Company of New Hampshire on April 20, 2017.<sup>4</sup>

7. For P-2288, Gorham Project

The Commission issued a new 30-year license to the Public Service Company of New Hampshire on August 1, 1994.<sup>5</sup>

8. P-2287, J. Brodie Smith Project

The Commission issued a new 30-year license to the Public Service Company of New Hampshire on August 1, 1994.<sup>6</sup>

## II. Review

9. The Commission issued a public notice of the December 29, 2017 application for transfer of licenses on January 23, 2018, establishing February 22, 2018, as the deadline for filing comments, motions to intervene, and protests. The City of Berlin, New Hampshire (Berlin) filed a timely motion to intervene, objected to the applicants' proposed procedural timeline and filed a motion for designation for hearing on February 22, 2018. Berlin, in its motion, stated that it did not oppose the transfer of the license for the J. Brodie Smith Project (Smith Project), but rather seeks confirmation and assurances regarding four issues. Berlin appears to only have concerns with the Smith Project No. 2287, but filed its motion in all six license transfers.

10. On March 9, 2018, Public Service Company of New Hampshire and the transferees filed answers in opposition to Berlin's motion. On March 20, 2018, Berlin's motion to intervene was granted.<sup>7</sup>

11. Specifically, Berlin first seeks confirmation from HSE Hydro NH Smith, LLC that it will continue to maintain and provide routine maintenance of the Smith Project on a regular and orderly basis. Second, Berlin seeks confirmation and assurance from the HSE Hydro NH Smith, LLC that it will cooperate with Berlin with regard to the

---

<sup>4</sup> Order Issuing New License. *Public Service Company of New Hampshire*, 159 FERC ¶ 62,070 (2017).

<sup>5</sup> Order Issuing New License. *Public Service Company of New Hampshire*, 68 FERC ¶ 61,170 (1994).

<sup>6</sup> Order Issuing New license. *Public Service Company of New Hampshire*, 68 FERC ¶ 61,179 (1994).

<sup>7</sup> Notice Granting Intervention, P-1893-080, *et al.* (Mar. 20, 2018).

maintenance and administration of the Smith Project and lands within Smith Project's FERC boundaries in a manner consistent with the existing practices. Third, Berlin seeks commitment that HSE Hydro NH Smith, LLC will maintain and provide accurate and up-to-date records as to: (a) the plant in service pursuant to the FERC Uniform System of Accounts; (b) plant statistics (as would be disclosed on page 402 of a FERC Form 1); (c) income earned from capacity, power generation, renewable energy credits, and ancillary services; (d) depreciation; (e) expenses, including all upstream stored water payments pursuant to any headwater benefits or similar agreements; and (f) federal and state income tax credits. Fourth, Berlin seeks confirmation as to the specific rights and interests in land and utility plant that is to be transferred.

12. Additionally, Berlin asserts that the Commission should deny the request for an approval of the license transfer of the J. Brodie Smith Project by February 26, 2018 and should designate this matter for a full hearing to allow it to examine such witnesses as are necessary to address the issues raised.

### **III. Discussion**

#### Procedural Schedule

13. Berlin objects to the procedural schedule which requested Commission action by February 26, 2018. Due to the filing of the motion to intervene on February 22, 2018, the Commission reviewed the filing, granted intervention and was not able to act on the transferees' request by that date. Accordingly, Berlin's objection is now moot.

#### Request for Hearing

14. Berlin requests that the Commission designate this transfer proceeding for hearing pursuant to 18 C.F.R. §§ 385.501 and 502 so that it may examine witnesses that are necessary to address the issues raised. When the written record provides a sufficient basis for resolving the relevant issues, it is our practice to provide for a paper hearing.<sup>8</sup>

---

<sup>8</sup> See *NE Hub Partners, L.P.*, 83 FERC ¶ 61,043, at 61,192 (1998), *reh'g denied*, 90 FERC ¶ 61,142 (2000); *Pine Needle LNG Co., LLC*, 77 FERC ¶ 61,229, at 61,916 (1996). Moreover, the courts have repeatedly recognized that even where there are disputed issues "[the Commission] need not conduct such [an evidentiary] hearing if they may be adequately resolved on the written record." *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993). See also *Environmental Action v. FERC*, 996 F.2d 401, 413 (D.C. Cir. 1993); *Alabama Power Co. v. FERC*, 993 F.2d 1557, 1565 (D.C. Cir. 1993).

That is the case here, as all of the issues raised in Berlin's motion to intervene may be resolved on the basis of the existing paper record. Thus, there is no need for an evidentiary hearing.

#### Standard for Transfers

15. Section 8 of the FPA<sup>9</sup> which governs license transfers does not articulate a standard for approving a transfer application.<sup>10</sup> The Commission has held that a transfer may be approved on a showing that the transferee is qualified to hold the license and operate the project, and that a transfer is in the public interest.<sup>11</sup> In evaluating a license transfer application, Commission staff conducts a limited inquiry into the fitness of the transferee to carry out its responsibilities under the license, including the transferee's control over the project's facilities and payment of the project's annual charges under the FPA, and whether the transfer is in that sense in the public interest.<sup>12</sup> Section 8 of the FPA does not, however, require the Commission to revisit all issues that must be considered under FPA section 10(a)(1) before determining whether to, in this case, transfer the license for the project itself.<sup>13</sup>

16. The transfer application and supplemental materials provide the necessary information on the financial, technical, and legal qualifications for the transferees, including HSE Hydro NH Smith, LLC and demonstrates that the transferees have the necessary qualifications to hold the licenses for the projects. In addition, the transferees have agreed to accept all of the terms and conditions of the respective license and to be bound by the respective license as if it were the original licensee.

17. With respect to Berlin's request for confirmation and assurances regarding the continued maintenance of the Smith Project, we note that when a license is transferred, the new licensee steps into the shoes of the old licensee and is subject to any and all

---

<sup>9</sup> 16 U.S.C. §801 (2012).

<sup>10</sup> See *Eugene Water & Electric Board*, 155 FERC ¶ 62,242 (2016); *Potosi Generating Station, Inc. and Willow Creek Hydro, LLC*, 100 FERC ¶ 61,115 (2002).

<sup>11</sup> See, e.g., *Gallia Hydro Partners and Rathgar Development Associates, LLC*, 110 FERC ¶ 61,237 (2005); 18 C.F.R. pt. 9.3 (2015); *Confederated Salish and Kootenai Tribes*, 153 FERC ¶ 61,217 (2015).

<sup>12</sup> See *New England Power Company and US Gen New England, Inc.*, 83 FERC ¶ 61,272 at 62,134 (1998).

<sup>13</sup> *Id.*

(continued ...)

requirements to which the old licensee was subject under the license and the Commission's orders thereunder.<sup>14</sup> Moreover, the mere transfer of a license does not alter a project's environmental impacts, or the determination of what mitigation measures or accounting data are warranted. It is consequently unnecessary, and indeed inappropriate, to bring into transfer proceedings issues of project impacts, reporting requirements or proposed mitigation measures.<sup>15</sup>

18. Berlin requests the transferees maintain and provide it accurate and up-to-date accounting records. Although not relevant to this transfer proceeding, every major electric utility, licensee or other, as classified in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the provisions of the Federal Power Act must submit either a FERC Form No. 1 (18 C.F.R. § 141.1 (2017)) or a FERC Form No. 1-F (18 C.F.R. § 141.2 (2017)) and FERC Form 3-Q (18 C.F.R. §141.400 (2017)).<sup>16</sup> These reports are designed to collect financial and operational information from electric utilities and licensees. These reports are considered to be non-confidential public forms and are available to Berlin. As licensees, the transferees will be required to file these reports, as did Public Service Company of New Hampshire. Accordingly, we do not need to require the accounting information requested by Berlin to be included as a requirement in this transfer order.

19. As noted above, the transferees have agreed to accept all of the terms and conditions of the licenses and to be bound by the licenses as if they were the original licensee. The transferees, in the application for transfer of license, state that they have reviewed, understand and accept the terms and conditions of the licenses. The transferor agrees to pay annual charges that have accrued to the date of the transfers.

20. Approval of a license transfer is contingent upon the transfer of title to the properties under license, delivery of all license instruments, and a showing that such transfer is in the public interest.<sup>17</sup>

---

<sup>14</sup> See, e.g., *Flambeau Hydro, L.L.C.*, 113 FERC ¶ 61,236, at P 23 (2005).

<sup>15</sup> See *Menominee Company*, 74 FERC ¶ 61,023 (1996); *AER NY-Gen, LLC*, 133 FERC ¶ 62,143 (2010).

<sup>16</sup> Public Service Company of New Hampshire filed its latest Form No. 1 and FERC No. Form 3-Q on November 29, 2017 for the third quarter of 2017.

<sup>17</sup> 18 C.F.R. § 9.3 (2017).

21. The transferees will be required to comply with the requirements of the licenses as though they were the original licensee. Transfer of the licenses for these projects is consistent with the Commission's regulations and is in the public interest.

**The Director orders:**

(A) Transfers of the projects listed in the above table, are approved as modified by paragraphs (B) and (C) below.

(B) Public Service Company of New Hampshire shall pay all annual charges that accrue up to the effective date of the transfers.

(C) Approval of the transfer of licenses is contingent upon: (1) transfer of title of the properties under each license, transfer of all project files including all dam safety related documents, and delivery of all license instruments to transferees which shall be subject to the terms and conditions of the licenses as though they were the original licensee; and (2) the transferees acknowledging acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheet. Within 60 days from the date of this order, the transferees shall submit certified copies of all instruments of conveyance and signed acceptance sheets.

(D) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2017). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

CarLisa Linton  
Acting Director  
Division of Hydropower Administration  
and Compliance

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has caused its name to be signed hereto by \_\_\_\_\_, its President (or other authorized official), and its seal to be affixed hereto and attested by \_\_\_\_\_ its Secretary (or other authorized official), pursuant to a resolution of its Board of Directors (or other authorized officials) duly adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a certified copy of the record of which is attached hereto.

By \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary (or other authorized official)  
(Executed in triplicate)