

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

October 29, 2014

Senator Verdell Jackson  
555 Wagner Lane  
Kalispell, MT 59901-8079

Re: PPL Montana LLC  
North Western Corporation  
Project No. 5-094

Dear Senator Jackson:

This letter is in response to your request for clarification, filed on September 24, 2014, in the captioned proceeding. You pose several questions regarding the July 24, 2014 approval by Commission staff of the transfer of the license for the Kerr Hydroelectric Project (FERC No. 5) from PPL Montana LLC to North Western Corporation.

You first ask for a citation to a portion of the 1985 order that relicensed the Kerr Project which stated that the conveyance of the license from Montana Power Company (PPL Montana's predecessor) to the Confederated Salish and Kootenai Tribes of the Flathead Reservation (Tribes) would not require any further action by the Commission. The 1985 relicensing order<sup>1</sup> issued a joint license to Montana Power and the Tribes. Ordering Paragraph C of the order provided that the Tribes, in their sole discretion, could designate a date for the conveyance of the project to the Tribes. This paragraph also provided that on the conveyance date, Montana Power's interest in the Kerr Project would, "without any further action on the part of [Montana Power], the Commission, or any other entity, vest in the Tribes."<sup>2</sup>

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<sup>1</sup> *Montana Power Company and the Confederated Salish and Kootenai Tribes of the Flathead Reservation*, 32 FERC ¶ 61,070 (1985).

<sup>2</sup> *Id.* at 61,181.

You ask for a reference to any Commission regulation or rule that permits the Commission to allow a licensee to transfer its license to an entity that “is not required to follow state law, be regulated by state agencies, or submit to further Commission review.” I note that a Tribe that is a hydropower licensee is subject to the Commission’s regulatory authority to the same extent as any other licensee. Once the Kerr Project is conveyed to the Tribes, they will continue to be jurisdictional under Part I of the Federal Power Act (FPA). Should the Tribes desire to transfer the license in the future, they would be subject to Section 8 of the FPA.<sup>3</sup>

You ask, more specifically, why NorthWestern Corporation and the transfer to the Tribes should not be subject to review by the Montana Public Service Corporation. The FPA preempts state regulation as to matters within its jurisdiction, such as the issuance and transfer of FPA hydropower licenses. To the extent that NorthWestern Corporation or the Tribes offer retail electric service in Montana, the rates, terms, and conditions for that service may be subject to state regulation.

Next, you ask for the basis of any waiver by the Commission of the review of the Tribes in connection with either the 1985 relicense order or the current transfer proceeding. No such waiver has occurred. In the 1985 order, the Commission determined that the license issued – which included the provisions allowing for conveyance to the Tribes of Montana Power’s interest in the project, without further review – was best adapted to a comprehensive plan for improving or developing the waters in question. No entity sought rehearing or judicial review of that order, which is now final.

You ask whether, in the relicensing proceeding that culminated in the 1985 relicensing order, the Tribes obtained various consents from the Montana Public Service Commission, including findings that the license transfer would benefit consumers, was in the public interest, and did not violate state law. As explained above, the 1985 order made provisions for the conveyance of Montana Power’s interest to the Tribes. In addition, issuance of a license and the approval of any transfer of FPA hydropower licenses is a matter within the Commission’s sole jurisdiction, and any state regulation in this area has been preempted by Congress. Please note that the Montana Consumer Counsel was a party to the relicensing settlement and that the Montana Public Service Commission filed no objection to it.

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<sup>3</sup> 16 U.S.C. § 801 (2012).


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Finally, I note that, on October 22, 2014, you filed a request that the Commission extend the time for you to file a request for rehearing of the Commission's September 19, 2014 notice rejecting your August 24, 2014, request for rehearing. Please be aware that section 313(a) of the FPA establishes a 30-day deadline for filing rehearing requests, and that the Commission has no authority to extend that deadline.

If I can be of further assistance to you on this or any other Commission matter, please let me know.

Sincerely,



Jeff Wright, Director  
Office of Energy Projects

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