

148 FERC ¶ 62,072  
 UNITED STATES OF AMERICA  
 FEDERAL ENERGY REGULATORY COMMISSION

PPL Montana, LLC  
 NorthWestern Corporation

Project No. 5-094

**ORDER APPROVING TRANSFER OF LICENSE**

**(Issued July 24, 2014)**

1. By application filed January 10, 2014, PPL Montana, LLC (PPL Montana or transferor) and NorthWestern Corporation (NorthWestern or transferee) seek Commission approval to transfer the license for the Kerr Hydroelectric Project, FERC Project No. 5, from the transferor to the transferee.<sup>1</sup> The project is located on the Flathead River and Flathead Creek in Flathead Lake County, Montana.

2. The Federal Power Commission issued a 50-year license to the Rocky Mountain Power Company (a subsidiary of Montana Power Company) on May 23, 1930.<sup>2</sup> The project was transferred to the Montana Power Company (Montana Power) in 1938. An annual license was issued to the Montana Power on April 24, 1980.<sup>3</sup> The Commission issued a 50-year license on July 17, 1985,<sup>4</sup> to Montana Power and the Confederate Salish and Kootenai Tribes of the Flathead Reservation (Tribes). The Commission issued a transfer of license on July 7, 1999,<sup>5</sup> to PPL Montana, LLC (PPL Montana) and the Tribes.

3. The Commission issued a public notice of the current application for transfer on February 3, 2014, that established March 5, 2014, as the deadline for filing comments and motions to intervene. Motions to intervene were filed on February 27,

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<sup>1</sup> The application for transfer of license was for four projects: Kerr, FERC Project No. 5; Thompson Falls, FERC Project No. 1869; Missouri-Madison, FERC Project No. 2188; and Mystic Lake, FERC Project No. 2301. On March 25, 2014, the Commission approved the transfer of three of the projects, but deferred action on the Kerr Project. *PPL Montana, LLC and NorthWestern Corporation*, 146 FERC ¶ 62,215 (2014).

<sup>2</sup> Tenth Annual Report of the Federal Power Commission, 1930 at 222.

<sup>3</sup> Notice of Issuance of Annual License, 45 Fed. Reg. 27,814 (1980).

<sup>4</sup> 32 FERC ¶ 61,070, Order Approving Settlement and Issuing License (1985).

<sup>5</sup> 88 FERC ¶ 62,010, Order Approving Transfer of License (1999).

2014, by the United States Department of Agricultural, U.S. Forest Service (Forest Service), and on March 5, 2014 by the United States Department of the Interior (Interior), to be parties to the proceedings for Project Nos. 5, 1869, 2188, and 2301. A motion to intervene and protest was filed on the application by the Tribes for the Kerr Project on January 17, 2014. Additional timely comments on the application for transfer of licenses were filed by the Tribes on March 5, 2014.

4. The Tribes' motion to intervene and protest states that it and PPL Montana are co-licenses for the Kerr Project. Under the terms of the July 17, 1985 license, a 50-year license was issued jointly to Montana Power and the Tribes. Montana Power would hold and operate the project for the first 30-years of the term, and the Tribes would hold and operate the project for the balance of the term and any annual license thereafter.<sup>6</sup> The Tribes have consistently expressed their intent to acquire the Kerr Project at their earliest opportunity, which is September 5, 2015. The Tribes' protest states the Commission should reject the transfer application.

5. By letter dated May 2, 2014, the Commission extended the deadline for filing comments and motions to intervene to June 2, 2014. Comments were filed by the Flathead County, Board of Commissioners (Flathead County), the Flathead Business & Industry Association (Flathead Association), the **Bayside Park & Marine Center, LLC (Bayside Park)** and the Eagle Bend Yacht Harbor (Eagle Bend). Motions to intervene were filed by Montana Senator Verdell Jackson (Senator Jackson) and Lake County Board of Commissioners (Lake County), to be parties to the proceeding. On July 8, 2014, the Commission granted intervention in this transfer proceeding to Senator Jackson and Lake County.

6. **Senator Jackson, Lake County, Flathead County, Flathead Association, Bayside Park and Eagle Bend raise concerns about the conveyance of the Kerr Project to the Tribes, not about PPL Montana's conveyance of the project to NorthWestern.** This proceeding is limited to the license transfer from PPL Montana to NorthWestern. The 1985 Order Approving Settlement and Issuing License set forth that Montana Power would hold and operate the project for the first 30 years of the term and that the Tribes would hold and operate the project for the balance of the term and any annual license term thereafter.<sup>7</sup>

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<sup>6</sup> See 32 FERC ¶ 61,070 (1985) at 61,177, 61,181.

<sup>7</sup> License Article C(1) states:

(C)(1) From the Effective Date until the Conveyance Date (as hereafter defined), MPC shall control, operate, maintain and have exclusive right to, and interest in, the project. During that period MPC shall have all of the rights and obligations of the licensee under this license. At any time between the 29<sup>th</sup> and 39<sup>th</sup> anniversaries of the

7. On June 13, 2014, the Tribes filed a notice of withdrawal of protest and comments. The Tribes stated that the concerns regarding the transfer of the Kerr Project from PPL Montana, LLC to NorthWestern Corporation are being addressed and support the Commission's expeditious approval of the transfer of the Kerr Project license.

8. The transferee has agreed to accept all of the terms and conditions of the license, including conveyance of the license to the Tribes, and to be bound by the license as if it were the original licensee. Transferor has generally complied with the terms and conditions of the license and agrees to pay annual charges that have accrued to the date of the transfer. The transferee will be required to comply with the requirements of the license as though it were the original licensee. Transfer of the license for this project is consistent with the Commission's regulations and is in the public interest.

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Effective Date the Tribes may, in their sole discretion, on at least one year's written notice to MPC, the Secretary of the Interior (the Secretary), the Flathead, Mission, and Jocko Valley Irrigation Districts, (the Districts), and the Commission, designate a date for the conveyance of the project to the Tribes (the Conveyance Date), which date shall be no earlier than the 30th anniversary of the Effective Date and no later than the 40th anniversary of the Effective Date. On the Conveyance Date, upon receipt by MPC from the Tribes of the Estimated Conveyance Price (as hereafter defined) in effect on such date, all of MPC's interest in the project, free of any mortgages, liens, or encumbrances, shall, without any further action on the part of MPC, the Commission, or any other entity, vest in the Tribes. Thereafter, for the remainder of the term of this license, and any immediately following annual licenses, the Tribes will control, operate, maintain and have exclusive right to, and interest in, the project, and will have all of the rights and obligations of the licensee under this license, including right to any payment by any successor licensee or by the United States on takeover of the project. Upon the failure of the Tribes either (a) to designate a Conveyance Date within the time specified above, or (b) having timely designated a Conveyance Date, to pay the Estimated Conveyance Price on or before such date, the Tribes' right to have the project conveyed to them under this license shall terminate, and MPC shall continue to control, operate, maintain, and have exclusive right to, and interest in, the project for the remainder of the term of this license and any immediately following annual licenses. Unless the context connotes otherwise, the term "Licensee" shall, as used in this license, refer to MPC with respect to the license term prior to conveyance of the project, and, with respect to the remainder of the license term, refer to the Tribes.

The Director orders:

(A) Transfer of the license for the Kerr Hydroelectric Project, FERC Project No. 5, from PPL Montana, LLC to NorthWestern Corporation is approved.

(B) PPL Montana, LLC shall pay all annual charges that accrue up to the effective date of the transfer.

(C) Approval of the transfer is contingent upon: (1) transfer of title of the properties under license, transfer of all project files including all dam safety related documents, and delivery of all license instruments to NorthWestern Corporation which shall be subject to the terms and conditions of the license as though it were the original licensee; and (2) NorthWestern Corporation acknowledging acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheet. By October 15, 2015, the transferee shall submit certified copies of all instruments of conveyance and the signed acceptance sheet.

(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 § 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2014). 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.

Charles K. Cover, P.E.  
Chief, Project Review Branch  
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 corporate name to be signed hereto by \_\_\_\_\_, its President, and its corporate seal to be affixed hereto and attested by \_\_\_\_\_ its Secretary, pursuant to a resolution of its Board of Directors duly adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a certified copy of the record of which is attached hereto.

By \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary  
(Executed in triplicate)

Document Content(s)

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