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November 30, 2005

Elizabeth O'Donnell
Executive Director
Public Service Commission of Kentucky
211 Sower Boulevard
Frankfort, Kentucky 40602

RECEIVED

DEC 6 1 2005

PUBLIC SERVICE
COMMISSION

Re: *In the Matter of: The Application of Kentucky Utilities Company Regarding the Transfer of Any Real Property Associated with the Lock No. 7 Hydroelectric Project, Project No. 539 to Lock 7 Hydro Partners, LLC*
Case No. 2005-00405

Dear Ms. O'Donnell:

On November 23, 2005, the Federal Energy Regulatory Commission ("FERC") issued an Order approving the transfer of the license for the Lock No. 7 Hydroelectric Project, FERC Project No. 539, from Kentucky Utilities Company to Lock 7 Hydro Partners, LLC. A copy of the FERC Order is enclosed for your reference and inclusion in the record of the above-referenced docket.

Should you have any questions, please do not hesitate to contact me at (502) 627-4110.

Very truly yours,

John Wolfram
Manager, Regulatory Affairs

113 FERC ¶62,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Kentucky Utilities Company
Lock 7 Hydro Partners, LLC

Project No. 539-006

ORDER APPROVING TRANSFER OF LICENSE

(Issued November 23, 2005)

By application filed September 27, 2005, Kentucky Utilities Company (the transferor) and Lock 7 Hydro Partners, LLC (the transferee) request approval to transfer the license¹ for the Lock No. 7 Hydroelectric Project, FERC Project No. 539, from the transferor to the transferee. The transferee also requests that the name of the project be changed to the Mother Ann Lee Hydroelectric Station. The project is located at the U.S. Army Corps of Engineers' Kentucky River Lock and Dam No. 7 on the Kentucky River in Mercer County, Kentucky. The application will be granted, as described below.

The Commission issued public notice of the transfer application. The Kentucky River Authority (KRA) filed comments. No protests or motions to intervene were filed.

The application includes an Asset Purchase Agreement dated September 25, 2005, executed by the transferor and the transferee, which provides for the sale of the licensed assets of the Lock No. 7 Project from the transferor to the transferee upon Commission approval of the license transfer application.

The license currently excludes the lock and dam because they are federal facilities and therefore not subject to the Commission's jurisdiction. As noted in the license order,² if and when the Corps transfers the lock and dam to a nonfederal entity, the licensee is required by Article 402 of the license to acquire all rights necessary to operate and maintain the project under the requirements of the license and the Federal Power Act (FPA), and is also required to file a license amendment to include the dam and reservoir within the project boundary.

¹ 59 FERC ¶ 62,186 (1992).

² Id. at p. 63,485.

Project No. 539-006

-2-

KRA, which leases the lock and dam from the Corps, comments that it expects in the near future to take possession from the Corps of the lock and dam and adjacent land. KRA states further that it intends, to ensure compliance with applicable state laws, to execute a lease/sublease agreement with the transferee for the property necessary to operate the hydroelectric project. Under the provisions of the lease/sublease, KRA will sublease the lock and dam to the transferee prior to KRA obtaining ownership of the lock and dam to allow the transferee to occupy the lock and dam facilities to rehabilitate the licensed project works and to operate the project.³

After KRA takes ownership of the lock and dam, the lease/sublease will, by its wording, automatically become a lease of the facilities.⁴ The application contains a draft copy of the lease/sublease the transferee has negotiated with KRA. A copy of the signed lease will be submitted upon its completion.⁵

³ The project was damaged by a flooding event and requires repairs to bring it back online. On November 2, 2005, the Environmental and Public Protection Cabinet of the Department for Environmental Protection of the State of Kentucky filed a water quality certification for the transferee's proposed rehabilitation work. However, the Commission has found that such rehabilitation work that brings a licensed project back on line in compliance with the license does not require water quality certification. *See, e.g., Marysville Hydro Partners*, 63 FERC ¶ 61,271, at p. 62,751 (1993).

⁴ *See* Article III, section 1 of the lease, included in Exhibit E of the application. As noted, the licensee must file an application to amend the license to include the lock and dam when the Corps transfers those facilities to a private entity.

⁵ Standard license Article 5 requires licensees to acquire and retain title in fee to, or the right to use in perpetuity, project property sufficient to accomplish all project purposes. The Commission has found a lease of project property to be an acceptable deviation from the strict ownership requirements of license Article 5 where the lease conveys rights to the licensee sufficient to accomplish all license requirements; provides for the rights of future licensees; and enables the Commission, through the licensee, to fulfill its obligations to regulate the project. *See Menominee Company and N.E.W. Hydro, Inc.*, 74 FERC ¶61,023 (1996). The draft lease appears to be acceptable because, consistent with the *Menominee* order, it is transferable in conjunction with the transfer of the project's license; the lease term extends for the term of the current project license and is automatically renewed for a term identical to any subsequent license term; and the lease contains a savings provision, which provides that, notwithstanding any of the other provisions of the lease agreement, the licensee will have the right to perform any and all acts ordered by the Commission.

Project No. 539-006

-3-

The applicants state that the Project is adjacent to the Pleasant Hill Shaker community on land once owned by the Shakers. The transferee wishes to acknowledge the historical connections of the area to the Shakers by renaming the Project for the founder of the Shakers, Mother Ann Lee. This request will be granted.

The transferor has complied with the terms and conditions of the license. The transferor has paid and agrees to continue to pay annual charges that accrue until the transfer is effective.

The transferee is a limited liability company, organized under the laws of the Commonwealth of Kentucky, and authorized to conduct business in Kentucky. The transferee is qualified to hold the subject license and to operate the property under the license. It has agreed to accept all the terms and conditions of the license, and to be bound by the license as if it were the original licensee.

The proposed transfer is consistent with the Commission's regulations and is in the public interest.

The Director orders:

(A) Transfer of the license for the Lock No. 7 Hydroelectric Project No. 539 from Kentucky Utilities Company to Lock 7 Hydro Partners, LLC, is approved.

(B) Kentucky Utilities Company 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 and delivery of all license instruments to Lock 7 Hydro Partners, LLC, which shall be subject to the terms and conditions of the license as though it were the original licensee; and (2) Lock 7 Hydro Partners, LLC, 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, Lock 7 Hydro Partners, LLC, shall submit certified copies of all instruments of conveyance and the signed acceptance sheet.

(D) The name of the Project is changed to the Mother Ann Lee Hydroelectric Station as of the effective date of the transfer.

Project No. 539-006

-4-

(E) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR § 385.713.

Joseph D. Morgan
Director, Division of Hydropower
Administration and Compliance

Project No. 539-006

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, Lock 7 Hydro Partners, LLC, this _____ day of _____, 20____, has caused its name to be signed hereto by _____, its _____, and its seal to be affixed hereto and attested by _____, its Secretary, pursuant to a resolution of its _____, duly adopted on the _____ day of _____, 20____, a certified copy of the record of which is attached hereto.

By _____

Attest:

Secretary
(Executed in quadruplicate)