

168 FERC ¶ 62,145

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Grand River Dam Authority

Project No. 1494-448

ORDER EXTENDING LICENSE TERM, MODIFYING RELICENSING PROCESS
PLAN AND SCHEDULE, GRANTING EXTENSIONS OF TIME, AND AMENDING
STORM ADAPTIVE MANAGEMENT PLAN

(September 9, 2019)

1. On May 21, 2019, Grand River Dam Authority (GRDA or licensee) filed a request with the Federal Energy Regulatory Commission (Commission or FERC) to: (1) extend the license term for the Pensacola Hydroelectric Project No. 1494 (Pensacola Project) by 4 years and 9 months to December 31, 2026; (2) modify the project's Integrated Licensing Process (ILP) plan and schedule; (3) modify the approved relicensing Study Plan; (4) extend the filing date for an updated Shoreline Management Plan (SMP); and (5) extend the filing date for revised Exhibit G drawings. GRDA amended the application on June 17, 2019, to correct clerical errors.

Background and ProposalLicense Term and ILP Process Plan and Schedule

2. On April 24, 1992, the Commission issued a 30-year license to GRDA for the continued operation and maintenance of the Pensacola Project that expires on March 31, 2022.¹ The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma, and occupies federal land.² On February 1, 2017, in accordance with section 15(b)(1) of the Federal Power Act (FPA),³ GRDA filed a Notice of Intent (NOI) and Pre-Application Document (PAD) for relicensing the project.

¹ *Grand River Dam Authority*, 59 FERC ¶ 62,073 (1992).

² In its April 11, 2018 filing, the Bureau of Indian Affairs (BIA) provided documentation that lands held in trust by the BIA for the benefit of one or more federally recognized Indian tribes occur within the existing Pensacola Project boundary.

³ 16 U.S.C. § 808(b)(1) (2012).

3. On February 15, 2017, Commission staff issued a letter order⁴ holding the relicensing process in abeyance until the Commission acted on GRDA's May 6, 2016 request⁵ to amend the project's license to modify the project's reservoir elevation rule curve. The Commission acted on GRDA's request by issuing an order amending the project's license on August 15, 2017.⁶ Subsequently, on August 24, 2017, Commission staff issued a letter order lifting the abeyance and providing an ILP process plan and schedule.⁷ The ILP commenced January 12, 2018.⁸

4. The ILP process plan and schedule established pre-filing deadlines for scoping, and for developing and conducting studies to support the relicensing process. As required by the Commission's regulations, GRDA must file a preliminary licensing proposal (PLP) or draft license application (DLA) by November 2, 2019.⁹ Under section 15(c)(1) of the FPA, licensees seeking new licenses must submit an application at least two years before the expiration date of the existing license.¹⁰ Therefore, the new license application is due by March 31, 2020.

5. On November 8, 2018, as part of the ILP, Commission staff issued a Study Plan Determination that requires GRDA to complete nine studies, including: (1) Hydrologic and Hydraulic (H&H) Modeling Study; (2) Sedimentation Study (STM Study); (3) Aquatic Species of Concern Study; (4) Terrestrial Species of Concern Study; (5) Wetlands and Riparian Habitat Study; (6) Recreation Facilities Inventory and Use Study; (7) Cultural Resources Study; (8) Socioeconomics Study; and (9) Infrastructure Study. Of these studies, two were approved as filed by GRDA, six were approved with

⁴ Letter Order Holding the Pensacola Project's Pre-filing Process in Abeyance, P-1494-438 (Feb. 15, 2017).

⁵ GRDA's Application for Non-Capacity Related Amendment of License, Including Possible Temporary Variance for 2016, P-1494-437 (May 6, 2016).

⁶ *Grand River Dam Authority*, 160 FERC ¶ 61,001 (2017) (2017 Amendment Order).

⁷ Letter Order Lifting Abeyance and Providing a Revised ILP Process Plan and Schedule, P-1494-438 (Aug. 24, 2017).

⁸ See Notice of Intent to File License Application, Filing of Pre-Application Document (PAD), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests, 83 Fed. Reg. 2977 (Jan. 22, 2018).

⁹ 18 C.F.R. § 5.16(a) (2019).

¹⁰ 16 U.S.C. § 808(c)(1) (2012).

staff-recommended modifications, and one new study (Infrastructure) was required. The ILP process plan and schedule requires GRDA to file an initial study report (ISR) on November 8, 2019, and an updated study report (USR) on November 8, 2020. These study reports are meant to provide stakeholders the opportunity to review, comment, and, if necessary, request modifications to the studies conducted in support of the ILP.

Extension Request

6. GRDA requests an extension of the current license term by 4 years and 9 months (57 months) and modification of the ILP process plan and schedule to reflect the longer license term. GRDA states that the request is based on the delay in initiating the ILP, because the Commission's regulations would otherwise require the filing of a PLP/DLA before studies are completed under the existing ILP process plan and schedule, and because the Study Plan Determination requires bathymetric data collection for the H&H Modeling Study, which GRDA states cannot be completed within the 2-year study timeframe anticipated by the ILP.

7. GRDA proposes to modify the overall study schedule to include annual interim progress reports and meetings in years 1, 2, and 3 (2020, 2021, and 2022), followed by the ISR and meeting in year 4 (2023) and USR and meeting in year 5 (2024). GRDA would also modify the schedule to align the study years with calendar years (January – December) to reduce confusion and maximize the summer field season. Additionally, GRDA proposes to use the lengthened license term to conduct more extensive pre-filing cultural resource surveys and site evaluations in consultation with an established Cultural Resources Working Group.¹¹

8. GRDA included with its application correspondence from the U.S. Fish and Wildlife Service (FWS); Oklahoma Department of Wildlife Conservation (Oklahoma DWC); Oklahoma Water Resources Board (Oklahoma WRB); Oklahoma State Historic

¹¹ The Cultural Resources Working Group includes representatives from the Advisory Council on Historic Preservation, Bureau of Indian Affairs, Department of the Interior Solicitor's Office, FERC, Oklahoma Archaeological Survey, Oklahoma State Historic Preservation Office, and Tribal Historic Preservation Officers or other representatives from the Alabama-Quassarte Tribal Town, Apache Tribe of Oklahoma, Caddo Nation of Oklahoma, Cherokee Nation, Delaware Nation, Delaware Tribe of Indians, Eastern Shawnee Tribe of Oklahoma, Iowa Tribe of Oklahoma, Kiowa Tribe, Little Traverse Bay Bands of Odawa Indians, Miami Tribe of Oklahoma, Modoc Tribe of Oklahoma, Muscogee (Creek) Nation, Osage Nation, Otoe-Missouria Tribe of Indians, Ottawa Tribe of Oklahoma, Peoria Tribe of Oklahoma, Quapaw Nation, Sac and Fox Nation of Oklahoma, Seneca-Cayuga Nation, Shawnee Tribe of Oklahoma, Tonkawa Tribe of Oklahoma, United Keetoowah Band of Cherokee Indians, Wichita and Affiliated Tribes, and Wyandotte Nation.

Preservation Office (Oklahoma SHPO); Osage Nation Historic Preservation Office; City of Grove, Oklahoma; South Grand Lake Area Chamber of Commerce; Shangri-La Golf Club Resort & Marina; and Arrowhead Yacht Club supporting GRDA's requested license term extension of 57 months. The Bureau of Indian Affairs and Miami Tribe of Oklahoma provided comments stating they have no objection to the proposed license term extension. Correspondence from the City of Miami, Oklahoma (City of Miami) requested additional information from GRDA on its proposal.

Study Plan Modification

9. In addition to requesting a license term extension, GRDA requests to amend the ILP Study Plan. GRDA proposes to modify the study plan to: (1) adopt a revised STM Study Plan, filed June 17, 2019, in place of the study plan approved in the Study Plan Determination; (2) approve the expanded schedule for the Cultural Resources Study; and (3) extend the various reporting dates and schedules appearing in the individual study plans to conform to the new process plan and schedule proposed by GRDA. Procedures and schedules for modifying the approved study plan, including allowing opportunity for stakeholder comment and input, are stipulated by the Commission's regulations.¹² Because the ILP pre-filing process, including study plan implementation, is ongoing, GRDA's request to adopt a revised study plan for the STM Study will not be entertained in this order. GRDA should follow the procedures and schedules established under 18 C.F.R. section 5.15(d) for proposing modifications to the study plan, including those for receiving stakeholder comment and input. Modifications to study schedules, based on an extended license term, are discussed in detail, below.

Shoreline Management Plan Update

10. An SMP for the project was approved by Commission staff on October 17, 2013.¹³ Ordering paragraph (I) requires that GRDA file an SMP update within six years of the issuance of the order.¹⁴ GRDA is requesting that the SMP be filed concurrently with the final license application so it can be reviewed by Commission staff as part of the relicensing proceeding. GRDA proposes a filing date of December 31, 2024.

11. GRDA states that while there are minor refinements needed to the SMP, there is no pressing need to revise the SMP at this time. GRDA states that the benefits of delaying the SMP update include: (1) decreasing or eliminating duplicative efforts for Commission staff, resource agencies, and other interested parties and decreasing

¹² 18 C.F.R. § 5.15(d) (2019).

¹³ *Grand River Dam Authority*, 145 FERC ¶ 62,041 (2013) (2013 Order).

¹⁴ *Id.* at ordering para. (I).

confusion regarding various comment deadlines and participatory opportunities between the SMP update and relicensing effort; (2) avoiding potential conflicts between any near-term Commission decisions on the SMP update and similar issues raised in relicensing; and, (3) allowing the relicensing studies to inform proposed modifications to the SMP under a new license.

12. As part of the updated SMP, GRDA must develop, in consultation with FWS and Oklahoma DWC: (1) provisions¹⁵ for (a) quantifying the effects of permitted vegetation removal¹⁶ and (b) mitigating these effects through the enhancement or protection of riparian vegetation in other areas;¹⁷ (2) provisions for (a) identifying existing wetlands potentially affected by proposed shoreline activities and evaluating their functions and values, (b) assessing the probable effects of proposed activities on wetlands, and (c) addressing adverse effects on wetlands, from permitted activities, through appropriate mitigation; and (3) provisions for (a) identifying wildlife habitats potentially affected by proposed shoreline activities and evaluating their functions and values, (b) assessing the probable effects of proposed activities on wildlife habitats, and (c) addressing adverse effects on wildlife habitats from permitted activities through appropriate mitigation.¹⁸

13. The SMP update must include: (1) discussion of new provisions (as described above) and any resulting modifications to other provisions of the SMP; (2) any other necessary modifications to the SMP; (3) a summary of how the SMP was revised; and (4) a plan and schedule for filing future updates to the SMP.

¹⁵ The 2013 Order used the term “plans” rather than “provisions.” Here, “provisions” is used for clarity.

¹⁶ Under the current SMP, GRDA allows for adjacent property owners to implement certain vegetation management activities within specific shoreline classifications either with or without a permit from GRDA, depending on the specific activity involved, and only if no wetlands have been identified. A GRDA permit is not required for limited tree pruning, woody vegetation removal, and understory trimming. A GRDA permit is required for establishing new lawns, large-scale vegetation removal, and establishing access corridors.

¹⁷ As part of the information to be considered in developing the provisions, GRDA must track annually, for a period of five years, authorized vegetation management activities that may have cumulative effects on shoreline resources.

¹⁸ *Grand River Dam Authority*, 145 FERC ¶ 62,041 (2013) at Ordering Paragraph (I).

Exhibit G Drawings

14. A February 22, 2007 letter from Commission staff, in part, required GRDA to bring the project's boundary maps (Exhibit G drawings) up to current standards to comply with sections 4.39 and 4.41(h) of the Commission's regulations.¹⁹ To accomplish this, GRDA undertook an effort to update and clarify the exhibits. During this process, GRDA identified 228 discrepancies on the Exhibit G drawings, grouping the discrepancies into 64 of first priority and 164 of second priority. Commission staff, in a letter issued November 13, 2014, acknowledged that GRDA satisfied the first priority discrepancy requirements with GRDA's March 6, 2014 filing of the aperture cards and electronic files for the approved Exhibit G drawings.²⁰

15. On March 31, 2009, Commission staff issued an order requiring GRDA to submit a plan and schedule, within 180 days of the issuance date of the order, to address the 164 second priority project boundary discrepancies.²¹ On April 21, 2016, GRDA filed a plan and schedule to address the discrepancies. Commission staff, in a May 13, 2016 letter, found GRDA's plan and schedule to address the second priority discrepancies, and revise the Exhibit G drawings during the relicensing process, to be reasonable and satisfied the requirement of ordering paragraph (D) of the 2009 Order.²² With approval of GRDA's plan and schedule to address the second priority discrepancies as part of the relicensing proceeding, the revised Exhibit G drawings are due with the PLP/DLA. GRDA is still requesting to file revised Exhibit G drawings as part of its PLP/DLA. If GRDA's license term extension request of 57 months is granted, GRDA proposes a

¹⁹ Letter Order Accepting Grand River Dam Authority's Final Mitigation Report on Implementation of Specific Measures to Mitigate for Unauthorized Shoreline Clearing Activities on Grand Lake, P-1494-298 (Feb. 22, 2007).

²⁰ Commission staff issued six orders approving revised Exhibit G drawings that addressed the first priority concerns. *See Grand River Dam Authority*, 135 FERC ¶ 62,233 (2011), *Grand River Dam Authority*, 138 FERC ¶ 62,091 (2012), *Grand River Dam Authority*, 139 FERC ¶ 62,093 (2012), *Grand River Dam Authority*, 141 FERC ¶ 62,042 (2012), *Grand River Dam Authority*, 144 FERC ¶ 62,001 (2013), and *Grand River Dam Authority*, 146 FERC ¶ 62,060 (2014).

²¹ *Grand River Dam Authority*, 126 FERC ¶ 62,249, at ordering para. (D) (2009) (2009 Order).

²² Letter Order Accepting Grand River Dam Authority's Filing of a Plan and Schedule to Address Second Priority Project Boundary Discrepancies Related to Exhibit G Drawings, P-1494-355 (May 13, 2016) (2016 Letter).

deadline for filing the Exhibit G drawings of June 30, 2024, coincident with the filing of the PLP/DLA.

Public Notice, Comments, and Interventions

16. The Commission issued public notice of GRDA's request on June 11, 2019, setting a deadline of July 11, 2019, for filing comments, motions to intervene, and protests. A timely motion to intervene and comments were filed by the City of Miami.²³ In addition, comments were filed by Ms. LeAnne E. Reeves; Mr. N. Larry Bork, representing 445 individuals and businesses in Ottawa County, Oklahoma (Plaintiffs); the Eastern Shawnee Tribe of Oklahoma; the Ottawa Tribe of Oklahoma; and Mr. Early Hatley, Grand Riverkeeper, and Ms. Rebecca Jim, Tar Creekkeeper, representing Local Environmental Action Demanded Agency, Inc. (LEAD Agency).²⁴ On July 25, 2019, GRDA filed an answer to the motion to intervene and comments.²⁵

17. On August 9, 2019, the City of Miami filed an answer to GRDA's answer, and on August 13, 2019, GRDA filed an answer to the City of Miami's August 9, 2019 answer. These filings largely reiterate comments previously filed in the proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibit answers to answers.²⁶ Accordingly, the City of Miami's August 9, 2019 answer, and GRDA's August 13, 2019 answer are rejected.

Extension Request

18. The City of Miami objects to GRDA's license extension request of 57 months as being unduly long.²⁷ The City of Miami argues that the additional information gained

²³ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c)(1) (2019).

²⁴ Comments of the Eastern Shawnee and Ottawa Tribes of Oklahoma were received on July 12, 2019, and comments of LEAD Agency were received July 29, 2019. All were filed after the deadline for comments. They are considered herein, along with other timely filed comments.

²⁵ Although the Commission's Rules of Practice and Procedure generally do not permit answers, 18 C.F.R. § 385.213(a)(2) (2019), GRDA's July 25, 2019 answer is accepted because it provides clarification and information that has assisted in decision making.

²⁶ 18 C.F.R. § 385.213(a)(2) (2019).

²⁷ See the City of Miami's July 11, 2019 Intervention and Comments at 7-11.

from a longer study period during the extended license term does not outweigh the need to resolve the issues that have been raised throughout the existing license term and during ILP scoping regarding upstream flooding at the project. Instead, the City of Miami recommends a license extension of 24 months, to March 31, 2022, on condition that the H&H Study be completed within 6 months of the finalization of the bathymetry data and that the results of the study be provided to the parties identified in the Storm Adaptive Management Plan,²⁸ to facilitate consultation on the implementation of that plan under the existing license.²⁹ Plaintiffs, the Eastern Shawnee Tribe of Oklahoma, and the Ottawa Tribe of Oklahoma concur with the City of Miami's request.³⁰ LEAD Agency filed comments opposing any extension of the license term, and asserting that the license extension constitutes a major federal action, requiring analysis under the National Environmental Policy Act, Endangered Species Act, and National Historic Preservation Act.³¹

19. The City of Miami recommends a revised ILP process plan and schedule based on a license extension of 24 months.³² This schedule anticipates completion of the bathymetric survey by June 2020, as indicated by the U.S. Geological Survey (USGS), with whom GRDA has contracted to complete the survey.³³ The City of Miami's schedule would then allow six months to complete Study Year 1, with the ISR due February 28, 2021. Study Year 2 would conclude with the filing of the USR by December 31, 2021. Under the City of Miami's recommended 24-month extension, the PLP/DLA would be due November 1, 2021, and the final license application would be due March 31, 2022. The Plaintiffs, the Eastern Shawnee Tribe of Oklahoma, and the Ottawa Tribe of Oklahoma concur with the City of Miami's process plan and schedule.³⁴

²⁸ Ordering paragraph (D) of the 2017 Amendment Order approved GRDA's Storm Adaptive Management Plan.

²⁹ See the City of Miami's July 11, 2019 Intervention and Comments at 7-11.

³⁰ See Plaintiff's July 11, 2019 comments at 4; Shawnee Tribe's July 12, 2019 Comments at 2; Ottawa Tribe's July 12, 2019 Comments at 2.

³¹ See LEAD Agency's July 29, 2019 Comments at 1-13.

³² See the City of Miami's July 11, 2019 Intervention and Comments at 11- 18.

³³ The USGS's schedule for completing the bathymetric survey was provided by GRDA in its amendment application.

³⁴ See Plaintiff's July 11, 2019 comments at 4; Shawnee Tribe's July 12, 2019 Comments at 2; Ottawa Tribe's July 12, 2019 Comments at 2.

20. In its July 25, 2019 answer,³⁵ GRDA reiterates the need for a 57-month license extension, citing support for the longer license term from most stakeholders, the potential for delays in the schedule set forth by the USGS to complete the bathymetric survey, the benefits of an enhanced Cultural Resource study with five full study seasons, and the need to prepare a complete PLP/DLA and final license application as justification for the extended license term.

Storm Adaptive Management Plan

21. The City of Miami requests that the Commission clarify GRDA's obligations under the Storm Adaptive Management Plan in light of the experience gained through implementing the Storm Adaptive Management Plan since 2015.³⁶ First, the City states that although GRDA keeps stakeholders informed about decisions made by GRDA and the U.S. Army Corps of Engineers (Corps) during flood events, GRDA does not involve stakeholders in the decision-making process itself. Second, the City believes the Commission should clarify that GRDA is expected to consult with stakeholders under the Storm Adaptive Management Plan on when and how quickly it lowers Grand Lake after a flood event because such decisions can affect the project's capacity for mitigating subsequent floods.³⁷ Input that the City of Miami might provide in Storm Adaptive Management Plan briefings includes the City's independent observation of lake levels and flooding impacts, and its consultants' regular monitoring of the relevant USGS gages. The City of Miami cites storms that occurred this past May and June as examples of subsequent floods that reached higher elevations because gates were not opened as aggressively as needed to draw down Grand Lake in advance of the subsequent storms.³⁸ As further evidence, the City of Miami cites Ms. Reeves' July 1, 2019 comments, summarized below.

22. Ms. Reeves provides comments on the effectiveness of GRDA's Storm Adaptive Management Plan during a storm event that occurred in April and May 2019. In light of this past spring, Ms. Reeves says the Storm Adaptive Management Plan is a failure

³⁵ See GRDA's July 25, 2019 Answer at 2 – 11 (GRDA Answer).

³⁶ While Ordering paragraph (B) of the 2017 Amendment Order approved GRDA's current Storm Adaptive Management Plan, GRDA had previous iterations of the plan.

³⁷ See the City of Miami's July 11, 2019 Intervention and Comments at 22 – 23.

³⁸ *Id.* 20 -22.

because it allows increased lake levels without requiring proactive pre-releases when a storm is anticipated or aggressive post-releases after a storm has passed.³⁹

23. GRDA uses the Storm Adaptive Management Plan in anticipation of, and during major precipitation events, within the Grand/Neosho River Basin that might result in high water conditions upstream or downstream of Grand Lake. According to the plan, GRDA reviews, at a minimum, and on a daily basis, the following information: (1) weather forecasts in the watershed; (2) Grand Lake surface elevation data; (3) data from USGS gages upstream and downstream of the project; (4) surface elevations at the Corps' upstream John Redmond Reservoir and downstream Lake Hudson (the reservoir for GRDA's FERC-licensed Markham Ferry Project No. 2183); and (5) other relevant information affecting surface elevations at Grand Lake during the potential flood period.

24. If GRDA's daily review of the information indicates a probability of high water conditions in the Grand/Neosho River basin near the project, per the Storm Adaptive Management Plan, GRDA immediately provides the information to federal and state resource agencies, local government officials, Commission staff, tribes, and other interested stakeholders.⁴⁰ In conjunction with the distribution of this information, GRDA schedules a conference call with all of these participants. Prior to the call, GRDA consults with the Corps to determine whether any reservoir management actions could be taken to avoid, reduce, or minimize high water upstream or downstream of the project. During the call, GRDA notifies the participants of any decisions that the Corps and/or GRDA have made, and any actions they intend to take, and then GRDA solicits comments or recommendations from the participants. GRDA continues regular communication with all participants during each event to keep them informed of prevailing conditions.

25. Although the protocols in the Storm Adaptive Management Plan are separate and distinct from the protocols in GRDA's Emergency Action Plan for the project, the Storm Adaptive Management Plan complements the Emergency Action Plan and involves many of the same entities. According to the Storm Adaptive Management Plan, if the Emergency Action Plan is triggered, the communication protocols in the Emergency

³⁹ See LeAnne Reeves' July 1, 2019 Comments at 1 - 2.

⁴⁰ The contact list for this plan at the time of the 2017 Amendment Order included: Commission staff, the Corps, National Weather Service, Oklahoma Secretary of Energy and Environment, Oklahoma DWC, Oklahoma WRB, Oklahoma Office of Emergency Management, FWS, City of Miami, Ottawa County Office of the County Commissioner, Ottawa County Emergency Management, Modoc Tribe, United Keetoowah Band of Cherokees, Quapaw Nation, Oklahoma SHPO, and the Oklahoma Archeological Survey. The contact list is subject to change at any time as other entities express an interest or need for participation.

Action Plan supersede those included in the Storm Adaptive Management Plan until the emergency is resolved.

26. The Storm Adaptive Management Plan includes provisions regarding historic properties in the project area that could be adversely affected by high water levels. The plan specifies that, if the Oklahoma SHPO concludes that any actions to address high water levels at Grand Lake would adversely affect any archaeological site or other cultural resources in the project area, GRDA would consult with the Oklahoma SHPO and the Oklahoma Archeological Survey to develop a site-specific plan for the protection or mitigation of the site. The plan also includes a provision for the discovery of unidentified burial sites in the project area.

Discussion

License Term Extension and ILP Process Plan and Schedule

27. With the exception of LEAD Agency, all entities that have commented in the proceeding, including the City of Miami, support an amendment to extend GRDA's license for the Pensacola Project. Both GRDA and the City of Miami⁴¹ acknowledge the effects of the abeyance on the ILP schedule and recognize the need for GRDA to complete the collection of bathymetry data as part of the approved H&H Modeling Study. Collecting this data is required for the development of models predicting changes in flow, reservoir levels, and sediment transport through the Grand/Neosho River system. Further, the results of the H&H Modeling Study are required to complete the Aquatic Species of Concern, Terrestrial Species of Concern, Wetlands and Riparian Habitat, Cultural Resources, and Infrastructure Studies.

28. Developing a license application could occur without a license extension. Although the Commission is unable to change the deadline for filing a license application without amending the license to extend the license term, the Commission's regulations provide mechanisms that enable staff to delay its environmental analysis for projects where additional information is needed.⁴² The delay caused by requiring post-filing studies, however, has the potential to subsequently delay a decision on a new license. In the case of a relicense, when such a scenario occurs, the licensee receives annual licenses until such time as the Commission acts on its application for a new license. Further, if the license is not extended, stakeholders' ability to review a PLP/DLA would be limited because the information obtained from studies would not yet be available.

⁴¹ See the City of Miami's July 11, 2019 Intervention and Comments at 9.

⁴² See 18 CFR §§ 5.19(d); 5.20(a); 5.21 (2019).

29. Regarding LEAD Agency's assertion that Commission staff must prepare an environmental impact statement for the license extension,⁴³ the Commission's regulations categorically exclude license amendments that do not involve ground-disturbing activities or changes to project works or operations from the requirement to prepare an environmental assessment or environmental impact statement.⁴⁴ LEAD Agency also has not demonstrated how an extension of GRDA's license would cause a prohibited take of Endangered Species Act-listed species, or require additional consultation under the National Historic Preservation Act.

30. GRDA's proposed 57-month license term extension would provide for 5 study seasons aligned with calendar years 2019 through 2024. Each study season would conclude with a summary report and meeting to discuss the ongoing studies, including 3 annual progress reports as well as the ILP-required ISR and USR. The 5 study seasons would conclude in December 2024 with the filing of GRDA's PLP/DLA. In contrast, the 24-month license extension suggested by the City of Miami includes two study seasons (Study Year 1, which would conclude in February 2021 with the ISR, and Study Year 2, which would conclude in December 2021). Under the City of Miami's proposal, GRDA would file their PLP/DLA in November 2021, before completion the USR, but would file their license application after, by March 31, 2022.

31. Both proposed license extension requests rely on the USGS's June 2020 completion date for the bathymetric survey as a basis for the revised schedules. While the City of Miami's proposal provides no room for slippage in the schedule, GRDA adds 9 months to accommodate potential delays in completing the bathymetric survey. In its filings, GRDA has already documented a 3-month delay in the bathymetric survey, which USGS commenced March 30, 2019.⁴⁵

32. GRDA's process plan and schedule provides a full year for integrating the bathymetry into the H&H Modeling Study and calibrating the model (Study Year 3), and a second year for conducting model runs (Study Year 4). The City of Miami's proposal allows six months to complete data integration, model calibration, and initial model runs.

33. In the approved H&H Modeling Study plan, GRDA's schedule included: (1) a model input and calibration report and associated technical conference call approximately 6 months following approval of the study (6-Month Model Input Status Report); (2) results of initial model runs at the time of the ISR (approximately 6 months after the

⁴³ See LEAD Agency's July 29, 2019 Comments at 2-3.

⁴⁴ 18 C.F.R. § 380(a)(13) (2019); See also *South Carolina Elec. & Gas Co.*, 109 FERC ¶ 61,099, at P 22 (2004).

⁴⁵ See GRDA Answer at 4.

status report); and (3) a USR that would address any written comments received at the time of the ISR (one year following the ISR). Neither GRDA's nor the City of Miami's proposed schedules include all milestones outlined in the H&H Modeling Study Plan; nor do they provide sufficient support for modifying the study plan beyond an extension of time for completing the bathymetric survey. As required in the Study Determination, GRDA should hold the 6-Month Model Input Status Report and technical conference call after bathymetry is complete.

34. GRDA also proposes to use the additional study seasons to conduct a more robust Cultural Resources Study. GRDA states that the additional time would allow for several years of archaeological fieldwork, completion of a traditional cultural properties (TCP) study, and development of a historic properties management plan (HPMP). GRDA describes this work as enhancing the approved Cultural Resources Study. However, as approved in the Study Plan Determination, the Cultural Resources Study already requires GRDA to undertake archaeological survey work, complete the TCP study, and consult on the development of an HPMP. The difference between the "enhanced" study and the study as approved is that GRDA may be able to complete more of the archaeological fieldwork and site evaluations required to comply with section 106 of the National Historic Preservation Act⁴⁶ before, rather than after, license issuance.⁴⁷ Any license term extension would provide the benefit of allowing GRDA to complete more up-front survey work than anticipated, although such up-front survey work is not a requirement of the Cultural Resources Study Plan as approved.

⁴⁶ See 54 U.S.C. § 300101 *et seq.* (Pub. L. No. 113-287, 128 Stat. 3187, Dec. 19, 2014).

⁴⁷ As specified in 36 C.F.R. 800.4(b)(2) of the implementing regulations for section 106, for large undertakings, an agency "may also approve a phased identification and evaluation process and defer final identification and evaluation of historic properties if it is specifically provided for in a memorandum of agreement executed pursuant to 36 CFR 800.6." While the Commission encourages licensees and applicants to identify and evaluate all historic properties within a project's area of potential effects prior to the submittal of a final license application, it is not always possible to do so. In such situations, any executed Programmatic Agreement would call for the implementation of a management plan that clearly specifies all outstanding activities, including any additional identification and evaluation efforts, and a process and schedule to complete them. This alternative to the standard section 106 process is also consistent with the guidance provided in the Advisory Council on Historic Preservation (Advisory Council) and Commission's joint document *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects* (2002).

35. In summary, GRDA's amendment application does not provide sufficient evidence of the need for an additional 57 months to execute its required studies, including collecting the bathymetry data. However, the City of Miami's proposed 24-month license extension would not provide sufficient time or flexibility to ensure that stakeholders are able to review all final study reports prior to GRDA filing the PLP/DLA. Therefore, the license for the Pensacola Project will be extended by 3 years and 2 months (38 months). Ordering paragraph (B) sets the license expiration date for the Pensacola Project as May 31, 2025. This extension will allow: (a) sufficient time to complete the bathymetric survey, with some flexibility for delays outside of GRDA's control; (b) the 6-Month Model Input Status Report and technical teleconference, as required in the Study Plan Determination; (c) two full-year study seasons (including an ISR and USR) following completion of bathymetry; and (d) completion of all studies prior to GRDA's filing of the PLP/DLA. Ordering paragraph (C) of this order waives the deadlines for filing the ISR and USR and adopts a new ILP process plan and schedule.⁴⁸ Appendix A of this order includes a new ILP process plan and schedule.

Shoreline Management Plan Update

36. GRDA requests to extend the deadline to file the SMP update to coincide with the filing of the final license application. As discussed further below, in general, GRDA's extension of time for filing the SMP update is reasonable and should be beneficial.

37. Several of the studies required for the ILP (e.g., Aquatic Species of Concern, Terrestrial Species of Concern, and Wetlands and Riparian Habitat) would inform the SMP update, particularly the requirement that GRDA develop provisions to address potential impacts of shoreline activities and vegetation removal on shoreline resources, wetlands, and wildlife habitats. In particular, one of these three required provisions (related to vegetation removal impacts) specifically requires GRDA to track and quantify annually, over a period of five years, its authorized permits for vegetation management activities. In this regard, GRDA must continue to track its authorized permits and collect the specified data annually during the extension and incorporate this additional data into the required plan to quantify impacts of vegetation removal and mitigation resulting from its permitted activities. In turn, this information should be incorporated into the required SMP update.

38. In support of its request to incorporate the SMP update into the pending relicensing proceeding, GRDA identifies specific benefits for Commission staff, resource agencies, and other stakeholders. However, GRDA's request does not explain why it proposes to file the SMP update as part of its final license application instead of its

⁴⁸ GRDA requests clarification that the license extension will not require GRDA to re-file the NOI and PAD. Per the revised ILP process plan and schedule outlined in Appendix A of this order, GRDA is not required to re-file its NOI and PAD.

PLP/DLA. In order to provide the full benefits identified in its request and allow Commission staff to be able to consider the SMP update as part of its comprehensive analysis of the relicense application and provide stakeholders the full opportunity to review and provide recommendations on the SMP update prior to GRDA's submission of its final license application, GRDA should file the SMP update as part of its PLP/DLA. This would also allow GRDA the opportunity to address any comments or recommendations received from the stakeholders as part of its final license application and better support its SMP update submittal.

39. Ordering paragraph (D) of this order requires GRDA to file a SMP update, including all of the provisions and plans required for the 2019 SMP update, concurrent with its PLP/DLA that is due January 1, 2023.

Exhibit G Drawings

40. GRDA's request to extend the deadline to file revised Exhibit G drawings to maintain the deadline as part of its PLP/DLA is justifiable and the extension is approved. Ordering paragraph (E) of this order requires GRDA to file Exhibit G drawings that address the second priority discrepancies and are prepared in accordance with the Commission's regulations, as part of its PLP/DLA that is due January 1, 2023.

Storm Adaptive Management Plan

41. As a preliminary matter, GRDA claims that the City of Miami's efforts to amend the Storm Adaptive Management Plan are barred by section 6 of the FPA,⁴⁹ which "requires mutuality between the Commission and the licensee for any license amendment," and states that GRDA does not consent to any amendment of this plan.⁵⁰ GRDA further asserts that the City of Miami's requested modifications to the Storm Adaptive Management Plan constitute an impermissible collateral attack on the 2017 Amendment Order.⁵¹ GRDA states that because the City of Miami failed to seek rehearing of the 2017 Amendment Order, section 313 of the FPA prevents the City of Miami from seeking to modify the Storm Adaptive Management Plan now.

42. Both of GRDA's arguments fail. While GRDA is correct that section 6 of the FPA requires the licensee to consent to license amendments, ordering paragraph (D) of the 2017 Amendment Order reserved the Commission's authority to "modify the Storm

⁴⁹ 16 U.S.C. § 799 (2012).

⁵⁰ See GRDA Answer at 14.

⁵¹ *Id.*

Adaptive Management Plan...based on information provided by the licensee; and any federal, state, local, or tribal government....”⁵² This reservation of authority is “a recognized means of obtaining the licensee’s consent to any future modifications to project...operations that may be required.”⁵³ Further, contrary to GRDA’s assertion, the City of Miami’s requested clarifications regarding the Storm Adaptive Management Plan are not a “collateral attack” on the 2017 Amendment Order, rather, the City of Miami is availing itself of a mechanism provided by the Commission to seek modifications to the Storm Adaptive Management Plan when new or updated information becomes available.

43. In addition, GRDA claims that the Commission does not have authority to “grant the relief under the [Storm Adaptive Management Plan] the City seeks” because decisions regarding responses to flooding, including pre-release and post-flooding drawdowns, are reserved to the Corps.⁵⁴ To the extent that the City of Miami wishes to be involved in decisions regarding pre-release in anticipation of flooding or post-flooding drawdowns at Grand Lake, the Commission has previously noted that when reservoir elevations in Grand Lake are (or are projected to be) within 745 and 755 feet (the flood pool), the Corps “maintains exclusive jurisdiction over operations....”⁵⁵ However, this reservation of authority does not impact Commission staff’s ability to consider the City of Miami’s requested modifications to the Storm Adaptive Management Plan that is included in GRDA’s license.

44. The City of Miami is incorrect in arguing that the Storm Adaptive Management Plan requires GRDA (or the Corps) to share decision-making authority for flood control operations with the stakeholders named in the plan.⁵⁶ The Storm Adaptive Management Plan is a communication and consultation tool, designed to keep stakeholders informed about an upcoming or ongoing flood. It requires GRDA to give stakeholders the opportunity to provide comments and recommendations on GRDA’s (and the Corps’) decisions, but does not require GRDA to adopt those recommendations. In its argument,

⁵² 2017 Amendment Order, 160 FERC ¶ 61,001 at ordering para. (D).

⁵³ *Hydro-Kennebec LLC*, 164 FERC ¶ 61,199, at P 21 n.26 (2018) (citing *U.S. Dep’t of Interior v. FERC*, 952 F.2d 538 (D.C. Cir. 1992); *Wisconsin Public Service Corp v. FERC*, 32 F.3d 1165 (7th Cir. 1994)).

⁵⁴ See GRDA response at 14.

⁵⁵ See 2017 Amendment Order, 160 FERC ¶ 61,001 at PP 48 - 49 n.67; see also 1992 Letter of Understanding – Pensacola Dam and Reservoir, signed by the Corps and GRDA.

⁵⁶ See the City of Miami’s July 11, 2019 Intervention and Comments at 20 -23.

the City cites language in the Commission's August 14, 2015 Order Approving Request for Temporary Variance,⁵⁷ which approved the first Storm Adaptive Management Plan on a temporary basis, in which the Commission said:

The storm adaptive management process should be implemented in consultation with federal, state, and local agencies and other stakeholders, and must involve the stakeholders in decision making.⁵⁸

45. While the above statement was made in the order approving the 2015 plan, no such similar statement was made by the Commission in the order approving the temporary Storm Adaptive Management Plan in 2016, or in the 2017 Amendment Order approving the permanent Storm Adaptive Management Plan. There are no statements in the currently approved Storm Adaptive Management Plan or in the Commission's recent orders indicating that GRDA's decision-making must be shared with stakeholders named in the Storm Adaptive Management Plan. GRDA is responsible for making water management decisions at its projects, and the Commission looks solely to its licensees for license compliance.

46. Further, the City and Ms. Reeves are incorrect in assuming that the Storm Adaptive Management Plan is a prescriptive document, i.e., that it requires specific pre-releases or post-releases for a given storm event.⁵⁹ As the Commission pointed out in its 2017 Amendment Order:

GRDA also proposes to implement its Storm Adaptive Management Plan. This plan, which would be implemented year-round, could help mitigate impacts associated with flooding if GRDA is able to effectively forecast and release water in Grand Lake to lower the reservoir in anticipation of a storm. However, uncertainties in forecasting and storm dynamics do not always permit these *pre-releases* [emphasis added].⁶⁰ Notwithstanding this concern, the

⁵⁷ *Grand River Dam Authority*, 152 FERC ¶ 61,129 (2015).

⁵⁸ City of Miami's July 11, 2019 Intervention and Comments at 21 (citing *Grand River Dam Authority*, 152 FERC ¶ 61,129 (2015)).

⁵⁹ See the City of Miami's July 11, 2019 Intervention and Comments at 20 -23; Ms. Reeves' July 1, 2019 Comments at 1 - 2.

⁶⁰ For example, a pre-release may not be advisable if such a release would spill water into an already flooded section of the Grand River downstream.

Storm Adaptive Management Plan would help GRDA coordinate with federal, state, local, and tribal governments during a storm event.⁶¹

47. Each storm event is different, and must be evaluated and handled in accordance with those differences. The Storm Adaptive Management Plan was never intended to be, nor can it be, a plan that dictates specific flood control actions to be taken by GRDA for a given flood. Again, the Storm Adaptive Management Plan is primarily a communication and consultation tool that provides GRDA flexibility in how to respond to each specific storm, while also requiring GRDA to provide a forum for it to inform the stakeholders named in the Storm Adaptive Management Plan.

48. Based on the experience of Commission staff during the most recent implementation of the Storm Adaptive Management Plan that occurred during the spring 2019 storms,⁶² the City and Ms. Reeves are correct, to the extent that, at the conclusion of the Storm Adaptive Management Plan implementation for a specific event, a period of time may occur when interested parties are no longer receiving information on GRDA's and/or Corps' operational decisions. Ordering paragraph (F) of this order amends the Storm Adaptive Management Plan to require GRDA to hold a final conference call at the conclusion of its implementation of the Storm Adaptive Management Plan for a specific event, and during this call, GRDA must identify its intended plan to return the reservoir elevation to the rule curve elevation. This will provide the interested parties an opportunity to provide comments on GRDA's operational decisions and serve as a definitive conclusion to the implementation of the Storm Adaptive Management Plan.

The Director orders:

(A) GRDA's request to extend the license term for the Pensacola Hydroelectric Project No. 1494, filed on May 21, 2019, is approved with modifications.

(B) The license term for the Pensacola Project is extended to May 31, 2025.

(C) The revised ILP Process Plan and Schedule included as Appendix A of this order is approved. The deadlines for filing the Initial Study Report and Updated Study

⁶¹ 2017 Amendment Order, 160 FERC ¶ 61,001 at P 51.

⁶² Commission staff participated in the Storm Adaptive Management Plan calls during this storm event. In addition, Commission staff conducted the Annual Dam Safety Inspection during May 2019 and witnessed the storms and flooding in the area. Commission staff witnessed flooding in Miami, but had to leave to take cover shortly after arriving due to tornado warnings. Commission staff witnessed flooding in all the communities along the Neosho River from Miami to Chouteau.

Report required by sections 15.15(c)(1) and 15.15(f) of the Commission's regulations are waived and replaced with the dates included in Appendix A.

(D) This order extends the deadline to file an updated Shoreline Management Plan (SMP) to January 1, 2023, concurrent with GRDA's extended deadline for filing its preliminary licensing proposal/draft license application. The SMP update must include all of the provisions and plans required for the 2019 SMP update. Throughout the approved extension period, GRDA must continue the annual data collection and tracking of the authorized permits for vegetation management to quantify impacts of vegetation removal and mitigation resulting from its permitted activities, as required for the 2019 SMP update, and incorporate this additional data as part of the filed SMP update.

(E) This order extends the deadline to file revised Exhibit G drawings to January 1, 2023, concurrent with GRDA's extended deadline for filing its preliminary licensing proposal/draft license application. The revised Exhibit G drawings must address the second priority discrepancies and be prepared in accordance with the Commission's regulations.

(F) This order amends the Storm Adaptive Management Plan approved in ordering paragraph (B) of the August 15, 2017 Order Amending License and Dismissing Application for Temporary Variance. GRDA must hold a final conference call at the conclusion of its implementation of the Storm Adaptive Management Plan, and during this call, GRDA must identify its intended plan to return the reservoir elevation to the rule curve elevation. This call will provide the interested parties an opportunity to provide comments on GRDA's operational decisions and serve as a definitive conclusion to the implementation of the Storm Adaptive Management Plan.

(G) 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 (2018). 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.

Terry L. Turpin
Director
Office of Energy Projects

APPENDIX A

REVISED PROCESS PLAN AND SCHEDULE FOR THE ILP RELICENSING OF THE PENSACOLA HYDROELECTRIC PROJECT

This process plan replaces all previously distributed process plans.

(shaded milestones are unnecessary if there are no study disputes; if due date falls on a weekend or holiday, the due date is the following business day)

18 C.F.R.	Lead	Activity	Timeframe	Deadline
§ 5.5(a)	GRDA	Filing of NOI and PAD	Actual filing date	2/1/2017
§ 5.7	FERC	Initial Tribal Consultation Meeting	Waived	12/13 and 12/14/2017
§5.8	FERC	FERC Issues Notice of Commencement of Proceeding and Scoping Document (SD1)	Waived	1/12/2018
§5.8 (b)(3)(viii)	FERC/ Stakeholders	Public Scoping Meetings and Environmental Site Review	Within 30 days of NOI and PAD notice and issuance of SD1	Week of 2/5/2018
§ 5.9	Stakeholders/ FERC	File Comments on PAD, SD1, and Study Requests	Within 60 days of NOI and PAD notice and issuance of SD1	3/13/2018
§5.10	FERC	FERC Issues Scoping Document 2 (SD2), if necessary	Within 45 days of deadline for filing comments on SD1	4/27/2018
§5.11(a)	GRDA	File Proposed Study Plans	Within 45 days of deadline for filing comments on SD1	4/27/2018
§5.11(e)	GRDA/ Stakeholders	Study Plan Meetings	Within 30 days of deadline for filing proposed Study Plans	Week of 5/21/2018
§5.12	Stakeholders	File Comments on Proposed Study Plan	Within 90 days after proposed study plan is filed	7/26/2018
§5.13(a)	GRDA	File Revised Study Plan	Within 30 days following the deadline for filing comments on proposed Study Plan	9/24/2018
§5.13(b)	Stakeholders	File Comments on Revised Study Plan (if necessary)	Within 15 days following Revised Study Plan	10/24/2018
§5.13(c)	FERC	FERC Issues Study Plan Determination	Within 30 days following Revised Study Plan	11/8/2018
§5.14(a)	Mandatory Conditioning Agencies	Notice of Formal Study Dispute (if necessary)	Within 20 days of Study Plan determination	11/28/2018
§5.14(l)	FERC	Study Dispute Determination	Within 70 days of notice of formal study dispute	2/06/2019
§5.15(a)	GRDA	Conduct First Season Field Studies	November 2018 – September 2021	
§5.15(c)(1)	GRDA	File Initial Study Reports	No later than one year from Study Plan approval (WAIVED)	9/30/2021

18 C.F.R.	Lead	Activity	Timeframe	Deadline
§5.15(c)(2)	GRDA	Initial Study Results Meeting	Within 15 days of Initial Study Report	10/15/2021
§5.15(c)(3)	GRDA	File Study Results Meeting Summary	Within 15 days of Study Results Meeting	10/30/2021
§5.15(c)(4)	Stakeholders/ FERC	File Meeting Summary Disagreements/Modifications to Study/Requests for New Studies	Within 30 days of filing Meeting Summary	11/29/2021
§5.15(c)(5)	GRDA	File Responses to Disagreements/Modifications/ New Study Requests	Within 30 days of disputes	12/29/2021
§5.15(c)(6)	FERC	Resolution of Disagreements/ Study Plan Determination (if necessary)	Within 30 days of filing responses to disputes	1/28/2022
§5.15	GRDA	Conduct Second Season Field Studies	October 2021 – September 2022	
§5.15 (f)	GRDA	File Updated Study Reports	No later than two years from Study Plan approval (WAIVED)	9/30/2022
§5.15(c)(2)	GRDA	Second Study Results Meeting	Within 15 days of Updated Study Report	10/15/2022
§5.15(c)(3)	GRDA	File Study Results Meeting Summary	With 15 days of Study Results Meeting	10/30/2022
§5.15(c)(4)	Stakeholders/ FERC	File Meeting Summary Disagreements/ Modifications to Study Requests/Requests for New Studies	Within 30 days of filing Meeting Summary	11/29/2022
§5.15(c)(5)	GRDA/ Stakeholders	File Responses to Disagreements/Modifications/ New Study Requests	Within 30 days of disputes	12/29/2022
§5.15(c)(6)	FERC	Resolution of Disagreements/ Study Plan Determination (if necessary)	Within 30 days of filing responses to disagreements	1/28/2023
§5.16(a)	GRDA	File Preliminary Licensing Proposal (or Draft License Application) with the FERC and distribute to Stakeholders	Not later than 150 days before final application is filed	1/1/2023
§5.16 (e)	FERC / Stakeholders	Comments on GRDA Preliminary Licensing Proposal, Additional Information Request (if necessary)	Within 90 days of filing Preliminary Licensing Proposal (or Draft License Application)	4/1/2023
§5.17 (a)	GRDA	License Application Filed		5/31/2023

Document Content(s)

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