UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Georgia Power Company Project No. 2177-056

ORDER DENYING REHEARING AND ON CLARIFICATION

(Issued May 6, 2005)

1. Georgia Power Company (Georgia Power) has filed a request for rehearing of Commission staff's December 27, 2004 Order issuing a new license for the continued operation and maintenance of the 129.4-megawatt (MW) Middle Chattahoochee Project, located on the Chattahoochee River in Harris and Muscogee Counties, Georgia, and Lee and Russell Counties, Alabama.[1] For the reasons discussed below, we deny rehearing. We also clarify certain matters raised by Georgia Power in a separate pleading. This order is in the public interest, as it confirms and clarifies the Commission's policy regarding the term of hydropower licenses.

BACKGROUND

2. The Middle Chattahoochee Project consists of three developments -- the 39.7-megawatt (MW) Goat Rock development, the 60-MW Oliver development, and the 29.6-MW North Highlands development. In 1959, the Commission issued a 50-year license for the project, with a term expiring on December 31, 2004.[2]

3. On July 31, 2000, Georgia Power filed an application to amend the project license to replace two of six horizontal Francis turbine generator units at the Goat Rock development with new horizontal pit bulb units. Georgia Power stated that the proposed construction, which it stated would begin in March 2001 and be completed by

[1] 109 FERC ¶ 62,246 (2004).

[2] 21 FPC 296 (1959).

January 2002, would increase the project's capacity from 116.7 MW to 129.3 MW.[3] In the application, the company made no reference with respect to the then-upcoming project relicensing.

4. Several entities intervened in the proceeding, arguing that the proposed upgrades should be considered during relicensing, and that allowing the company to spend money on these facilities would improperly narrow the range of alternatives given serious consideration on relicensing.[4] Georgia Power responded that it was for the company to take any risk associated with the amendment, and that the Commission's selection of alternatives would be ripe for consideration in the relicensing proceeding.[5]

5. On March 29, 2001, the Commission issued an order approving the amendment.[6] In response to the arguments that the project upgrade was premature, the Commission stated, in a footnote, that

> [p]ermitting Georgia Power to spend money on adding capacity at this time will not, as the parties and commenter argue, narrow the range of alternatives considered in the Commission's future relicensing analysis. Approval of a license amendment provides no guarantee that the costs the licensee decides to incur will be recovered at relicense. Georgia Power continues to assume the risk that our balancing of all public interest considerations in a future amendment or relicense proceeding will result in mitigation or enhancement requirements that may diminish the economic value of the project.[7]

---

[3] *See* Georgia Power amendment application at 7; 9. *See also Environmental Assessment, Middle Chattahoochee Project* (Office of Energy Projects, March 29, 2001); 94 FERC ¶ 61,379 at 62,401 (2001).

[4] *See, e.g.,* American Rivers motion to intervene (filed September 14, 2000).

[5] *See* Georgia Power answer in opposition to motion to intervene (filed September 29, 2000).

[6] *See Georgia Power Company,* 94 FERC ¶ 61,379 (2001).

[7] *Id.* at 62,399, n.8 (citations omitted).

6. On December 13, 2002, Georgia Power filed an application for a new license for the project. The company asked for a 50-year license term, based on consistency with an interstate compact, its proposals to protect and enhance environmental resources, and expenditures including the upgrade authorized by the 2001 amendment.[8]

7. On December 27, 2004, Commission staff issued a new license for the project. With respect to license term, the order stated that, because the new license authorizes "a relatively minor amount of new environmental mitigation and enhancement measures, and no new construction or capacity . . . a 30-year term of license for the Middle Chattahoochee Project is appropriate."[9]

8. On January 26, 2005, Georgia Power filed a timely request for rehearing, arguing that, based on the cost of the Goat Rock turbine upgrades, the Commission should have issued it a 40-year license.

DISCUSSION

9. Section 15(e) of the Federal Power Act (FPA)[10] provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years from the date on which the license is issued. Our policy is to relate the length of the new license term to the amount of redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures that are authorized or required under the license. Thus, we grant 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures, 40-year terms for projects with a moderate amount thereof, and 50-year terms for projects with an extensive amount thereof.[11]

10. On rehearing, Georgia Power asks the Commission to increase the term of the license to 40 years, based on the approximately $16.6 million cost of the Goat Rock upgrades. The company notes that while the license order, at paragraph 56, references the upgrades, they are not mentioned in the discussion of license term. The company also

---

[8] *See* license application, executive summary, at 5-6.

[9] 109 FERC ¶ 62,246 at P 62.

[10] 16 U.S.C § 808 (e).

[11] *See Southern California Edison,* 77 FERC ¶ 61,313 at 62,435 (1996).

states that ordering paragraph B(2)(a) mistakenly describes the replacement turbines as 3-MW units, they are in fact 9.3-MW units. Georgia Power opines that these facts may indicate that Commission staff did not consider the Goat Rock upgrades in setting the license term.

11. In fact, Commission staff was aware of the costs of the Goat Rock upgrades, and included them in its economic analysis of the project. The figure for the cost of producing power, which appears in section VI of staff's environmental analysis,[12] is based on information provided by Georgia Power in its application and applicant-prepared environmental assessment. That information included operation and maintenance costs, as well as Georgia Power's net investment in the project (including the capital costs of the Goat Rock turbine upgrades).

12. Georgia Power is correct, however, that Commission did not take the cost of the upgrades into account in setting the license term. That is because the Commission does not, in setting the term of a new license, consider expenditures by a licensee under a prior license. For example, in *Ford Motor Company*,[13] we recently rejected an argument that the costs of extensive shoreline restoration, protection measures, and project upgrades voluntarily performed by a licensee immediately preceding and during relicense proceedings should be a factor in establishing a new license term.

13. Georgia Power also argues that the 2001 amendment order contemplated consideration of the cost of the upgrades at relicensing, relying on footnote 8 of that order, cited above. Georgia Power asserts that the Commission determined that the company assumed the risk that the cost of the upgrades would not be recovered at relicensing, not the risk that the costs would not be considered then.

14. Georgia Power reads far too much into the footnote at issue. There, the Commission responded to arguments that it was premature to consider the amendment application by stating that the company would bear the risk that it might not be able to recover the costs of the upgrades under the terms and conditions of a new license. The Commission was not asked to, and did not, address the question of whether the costs of the upgrades would have a bearing on the term of a new license.

15. In light of the foregoing, we deny Georgia Power's request for rehearing with respect to the term of the license for the Middle Chattahoochee Project.

---

[12] *See Environmental Assessment, Middle Chattahoochee Hydroelectric Project* (Office of Energy Projects, April 2004) at 82-84.

[13] 110 FERC ¶ 61,236 at P 6-8 (2005).

16. In a separate pleading, also filed on January 26, 2005, Georgia Power submitted "Technical Comments and Errata," requesting changes to the December 27, 2004 Order. The majority of these have been dealt with by an errata notice issued March 22, 2005. The January 26, 2005 pleading also raises three substantive matters. Although the company did not seek rehearing on these matters, we nonetheless address them below, in order to provide clarification.

17. Paragraph 2 of the licensing order contains a footnote with reference to the Goat Rock development, stating that if the flashboards at its reservoir are tripped due to high inflows, they cannot be reset until the reservoir elevation drops sufficiently. Georgia Power proposes the addition of a similar footnote with respect to the North Highlands development. The existing footnote is purely descriptive, and is true for many projects. There is thus no need to repeat the footnote with respect to North Highlands.

18. Georgia Power requests that the National Park Service be deleted from license Article 410 as an agency to be consulted with respect to the required project recreation plan, because the Middle Chattahoochee Project does not occupy federal lands. The National Park Service was included as an agency to be consulted not because the project is located on national park lands, but because of its expertise in recreation. Therefore, its inclusion as a consulted agency is appropriate.

19. Georgia Power suggests that the required time set forth in license Article 404 for providing a schedule of non-emergency drawdowns be changed from "at least 10 days prior to the non-emergency drawdown" to "within 10 days after the non-emergency drawdown." We will not make this change. The 10-day notification will give the Commission and resource agencies advance notice of drawdowns, thus giving them the ability to respond appropriately before these activities take place. Moreover, Georgia Power should be able to plan sufficiently in advance of non-emergency drawdowns to provide at least the 10-day notification.

The Commission orders:

The request for rehearing filed by Georgia Power Company on January 26, 2005 is denied.

By the Commission. Chairman Wood dissenting in part with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Georgia Power Company | Project No. 2177-056

(Issued May 6, 2005)

WOOD, Chairman, *dissenting in part*:

I concur with the order to the extent that it accurately reflects Commission precedent that costs incurred during a current license term will not be considered in setting the term of a new license. However, I believe that it is time for us to reconsider our license-term policy in light of today's realities.

For a number of years, the Commission has granted 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures, 40-year terms for projects with a moderate amount thereof, and 50-year terms for projects with an extensive amount thereof.[14] I am not convinced that it any longer makes sense to tie license term to what is in essence the level of financial expenditure required in a new license term. Relicensing proceedings are lengthy and expensive; the burden of these proceedings is shared by customers, licensees, federal and state resource agencies, non-governmental organizations, and other interested entities. The costs of relicensing are generally passed on to customers in the form of increased rates. All licenses that we issue contain extensive environmental measures, as well as reopeners reserving our right to impose additional requirements during the license term if changed environmental conditions so require. Thus, a longer license term does not have negative implications for the environment.

I think that, because of the benefits of increased certainty and the reduction in costs that would occur if relicensing proceedings were further apart, it is in the public interest for us to change our policy on license term. I would like to see the Commission consider, in the absence of a compelling justification to the contrary, which may include considerations such as setting license terms so that licenses within a river basin will expire concurrently, setting all license terms at 50 years. I hope we can take up this issue in the near future.

____
Pat Wood, III
Chairman

---

[14] *See Southern California Edison,* 77 FERC ¶ 61,313 at 62,435 (1996).