

172 FERC ¶ 62,053

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PSEG Fossil, LLC
Jersey Central Power & Light Company

Project No. 2309-031

Yards Creek Energy, LLC

ORDER APPROVING PARTIAL TRANSFER OF LICENSE

(Issued July 30, 2020)

1. On March 30, 2020, PSEG Fossil, LLC (PSEG or transferor) and Jersey Central Power & Light Company (JCPL), which are the current co-licensees, and Yards Creek Energy, LLC (YCE or transferee) filed a joint application, pursuant to section 8 of the Federal Power Act (FPA),¹ for a partial transfer of the license of the Yards Creek Pumped Storage Hydroelectric Project No. 2309 (Yards Creek Project or project) to replace PSEG with YCE as co-licensee. Commission staff issued a 40-year license to PSEG and JCPL on May 9, 2013.² Currently, JCPL and PSEG equally own the project and JCPL operates the project.³ The project is located on Yards Creek in Warren County, New Jersey. The project does not occupy federal lands.

Application

3. PSEG and JCPL request Commission approval to replace PSEG with YCE as the co-licensee of the project. JCPL will remain a co-licensee. Their request is precipitated by an Asset Purchase Agreement between YCE and PSEG that provided that YCE would acquire PSEG's ownership interest in the project upon Commission approval of the partial transfer.

¹ 16 U.S.C. § 801 (2018).

² *PSEG Fossil, LLC and Jersey Central Power & Light Company*, 143 FERC ¶ 62,102 (2013).

³ See Application at 2.

Public Notice

4. On April 30, 2020, the Commission issued a public notice of the transfer application, establishing May 30, 2020, as the deadline for filing comments, interventions, and protests.⁴ On April 17, 2020, FirstEnergy Service Company filed an unopposed motion to intervene to become a party to the proceeding.⁵ No other comments, interventions, or protests were filed.

Discussion

5. Section 8 of the FPA provides that no voluntary transfer of any license, or the rights thereunder granted, must be made without the written approval of the Commission.⁶ An application requesting the Commission's approval of a transfer must show that the transfer is in the public interest.⁷ The application must also provide in appropriate detail the qualifications of the transferee to hold such license and to operate the property under the license, which qualifications must be the same as those required of license applicants.⁸ Approval of a transfer of a license is contingent on the transfer of title to properties under the license and delivery of all license instruments.⁹

6. The proposed partial transfer of license is in the public interest because the transferee is legally, technically, and financially competent to hold the license and to

⁴ 85 Fed. Reg. 26,973. Because the deadline fell on a Saturday, a day on which the Commission is closed, the deadline was extended to the close of Commission business of the next day, which was Monday, June 1, 2020. *See* 18 C.F.R. § 385.2007(a)(2) (2019).

⁵ Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214(c)(1) (2019).

⁶ 16 U.S.C. § 801 (2018).

⁷ 18 C.F.R. § 9.3(a) (2019).

⁸ *Id.* § 9.2.

⁹ *Id.* § 9.3(a).

operate and maintain the project. YCE is a Delaware limited liability company, formed for the sole purpose of owning and operating power generation facilities, including the project, and is authorized to engage in any lawful activity to accomplish this purpose.¹⁰ It is an indirect, wholly-controlled subsidiary of LS Power Development, LLC (LS Power), which operates a portfolio of companies, totaling over 10,000 megawatts of generation, and manages an annual operating budget of over \$150 million.¹¹

7. Moreover, the transferor certifies that it has fully complied with the terms and conditions of the license and will pay all annual charges accrued under the license with respect to the property interests being transferred. The transferee states that it will submit certified copies of all instruments of conveyance by which PSEG's ownership interest in project properties is conveyed to YCE upon Commission's approval of the transfer. The partial transfer of license for this project is consistent with the Commission's regulations and is in the public interest and is approved.

The Director orders:

(A) The partial transfer of the license for the Yards Creek Pumped Storage Hydroelectric Project No. 2309 from PSEG Fossil, LLC to Yards Creek Energy, LLC as co-licensee to Jersey Central Power & Light Company is approved as modified by paragraphs (B) and (C) below.

(B) PSEG Fossil, LLC and Jersey Central Power & Light 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 the license, transfer of all project files including all dam safety related documents, and delivery of all license instruments to Yards Creek Energy, LLC, which shall be subject to the terms and conditions of the license as though it were the original co-licensee; and (2) Yards Creek Energy, 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, Yards Creek Energy, LLC shall submit certified copies of all instruments of conveyance and the signed acceptance sheet.

¹⁰ See Exhibit A-1, A-2, and A-3 of the Application.

¹¹ LS Power's subsidiaries include the licensees of Kinzua Pumped Storage Project No. 2280, *Seneca Generation, LLC*, 152 FERC ¶ 62,045 (2015), and Bath County Pumped Storage Project No. 2716, *Va. Elec. & Power Co.*, 57 F.P.C. 24 (1977).

(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 section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2018), and the Commission's regulations at 18 C.F.R. § 385.713 (2019). 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.

Kelly Houff
Chief, Engineering Resources 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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