



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 9709-071]

### ECOspensible, LLC; Soliciting Notices of Intent To File a New License Application and Pre-Application Documents

The current license for the Herkimer Hydroelectric Project No. 9709 was issued to the original licensee, Trafalgar Power, Inc., on April 22, 1987, for a term of 40 years, ending March 31, 2027.<sup>1</sup> The project has fallen into disrepair and has not operated since 2006. The license was transferred to the current licensee, ECOspensible, LLC, (ECOspensible) on March 12, 2015.<sup>2</sup> The 1,680-kilowatt (kW) project is located on West Canada Creek in Herkimer County, New York.

The project works consist of: (1) a timber crib dam with: (a) a 9-foot-high, 95-foot-long section with a crest elevation of 420.0 feet mean sea level (msl) and (b) a 12-foot-high, 145-foot-long section with a crest elevation of 419.2 feet msl; (2) an impoundment with a surface area of 19 acres, a storage capacity of 163 acre-feet, and a normal water surface elevation of 420.5 feet msl; (3) timber flashboards; (4) an intake structure; (5) a reinforced concrete and steel powerhouse containing four turbine-generating units with a capacity of 400 kW each and an 80-kW minimum flow generator for a total installed capacity of 1,680 kW; (6) a 50-foot-long, 13.2-kilovolt transmission line; and (7) appurtenant facilities.

At least five years before the expiration of a license for a major water power project subject to sections 14 and 15 of the Federal Power Act, the Commission's regulations require the license applicant to file with the Commission a notice of intent (NOI) that contains an unequivocal statement of the licensee's intention to file or not to file an application for a new license, details on the principal project works and installed plant capacity, and other information.<sup>3</sup> Accordingly, NOIs for the Herkimer Project were

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<sup>1</sup> *Trafalgar Power, Inc.*, 39 FERC ¶ 62,077 (1987). The original license was for a minor project with an authorized installed capacity of 1,050 kilowatts (kW). In 1988 Trafalgar Power applied to amend its license to increase the authorized installed capacity of the Herkimer Project to 1,680 kW. The increase caused the project to be redefined as a major project. *Trafalgar Power, Inc.*, 48 FERC ¶ 62,105 (1989).

<sup>2</sup> *Trafalgar Power, Inc.*, 150 FERC ¶ 62,144 (2015).

<sup>3</sup> 18 CFR 5.5(d) (2023); *id.* at 16.6(b-c); *see also* 16 U.S.C. 808(b)(1) ("Each existing licensee shall notify the Commission whether the licensee intends to file an application for a new license or not. Such notice shall be submitted at least 5 years before the expiration of the existing license.

due by March 31, 2022. On March 9, 2022, Stone Ridge Hydro, LLC, filed an NOI to file an application for a small hydropower project exemption for the Herkimer Project, which was rejected on May 17, 2022.<sup>4</sup> On March 31, 2022, Mr. Dennis Ryan, Jr. filed an NOI to file a relicense application for the Herkimer Project, which Commission staff is rejecting in an order issued in conjunction with this notice.<sup>5</sup>

Because all timely-filed NOIs have been rejected, the Commission is soliciting applications from applicants other than the existing licensee. An existing licensee that fails to timely file an NOI is prohibited from filing an application for a new license or exemption for the project, either individually or in conjunction with an entity or entities that are not currently licensees.<sup>6</sup>

Any party interested in filing a license application for the project must first file an NOI<sup>7</sup> and PAD<sup>8</sup> pursuant to Part 5 of the Commission's regulations. Although the integrated licensing process (ILP) is the default pre-filing process, section 5.3(b) of the Commission's regulations allows a potential license applicant to request to use the traditional licensing process or alternative procedures when it files its NOI.<sup>9</sup>

This notice sets a deadline of 90 days from the date of this notice for interested applicants, other than the existing licensee, to file NOIs, PADs, and requests to use the traditional licensing process or alternative procedures. Applications for a new license from potential (non-licensee) applicants must be filed with the Commission at least 24 months prior to the expiration of the current license.<sup>10</sup> Because the current license

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<sup>4</sup> Division of Hydropower Licensing May 17, 2022 Rejection of Notice of Intent. The Commission's regulations state that if there is an unexpired license in effect for a project, the Commission will accept an application for exemption only if the exemption applicant is the licensee. 18 CFR 4.33(d)(ii) (2023); *see also Stone Ridge Hydro, LLC*, 180 FERC ¶ 61,123 (2022).

<sup>5</sup> *See* Division of Hydropower Licensing April 2, 2024 Order Rejecting Notice of Intent and Pre-Application Document. Commission staff finds: (1) Mr. Ryan, Jr. failed to demonstrate that the existing licensee filed the NOI, (2) the entity that filed the NOI was not a valid business entity at the time of filing, and (3) Mr. Ryan, Jr. was not authorized to act for the entity that filed the NOI.

<sup>6</sup> 18 CFR 16.24(a)(1) (2023); *see also id.* 16.23(a) (deeming failure to file an NOI as the same as filing an NOI indicating an intention not to file an application for a new license.). Note that this prohibition extends only to the existing licensee.

<sup>7</sup> 18 CFR 5.5 (2023).

<sup>8</sup> 18 CFR 5.6.

<sup>9</sup> 18 CFR 5.3(b).

<sup>10</sup> 18 CFR 16.9(b)(1).

expires on March 31, 2027, applications for a license for this project must be filed by March 31, 2025.

Questions concerning this notice should be directed to Jody Callihan at (202) 502-8278 or [jody.callihan@ferc.gov](mailto:jody.callihan@ferc.gov).

Dated: April 3, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

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