

December 26, 2007

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First St., NE
Washington, DC 20426

***Re: Hydro Matrix Limited Partnership - Gathright Hydroelectric Project, FERC Project No. 12737-____
Notice of Intent to File Application for Original License, Pre-Application Document, Request for Use of Traditional Licensing Process, Request for Waiver of Commission Regulations, Request for Applicant's Designation as the Commission's Non-Federal Representative for Purposes of Consultation under Section 7 of the Endangered Species Act, and Request to Initiate Consultation under Section 106 of the National Historic Preservation Act***

Dear Secretary Bose:

The Hydro Matrix Limited Partnership, holder of a preliminary permit in the above-captioned docket ("HMP," "Applicant"), represented by its General Partner, W.V. Hydro, Inc., respectfully submits an electronic filing and a paper original and two paper copies and 9 electronic copies (on CD) by regular mail of the following pursuant to Part 5 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") regulations:

- 1) Notice of Intent to File Application for Original License;
- 2) Pre-Application Document;
- 3) Request for Use of Traditional Licensing Process ("TLP Request" or "TLP"); and
- 4) Request for Waiver of Commission Regulations on review time ("Waiver Request")
- 5) Request for Applicant's Designation as the Commission's non-Federal Representative for Purposes of Consultation under Section 7 of the Endangered Species Act ("Designation Request");
- 6) Request to Initiate Consultation under Section 106 of the National Historic Preservation Act ("Consultation Request").

All this material is Public in classification. HMP's Notice of Intent and Pre-Application Document are attached hereto, and its TLP Request, Waiver Request, Designation and Consultation Requests follow below. As further explained below, HMP respectfully requests expeditious Commission action on its TLP Request and Waiver Request to meet the review time changes in the Waiver Request.

HMP is simultaneously distributing copies of each of these documents to the agencies, tribes and potentially interested members of the public included in the

Distribution List¹ attached hereto. Further, as required by Section 5.2 of the Commission's regulations, copies of the Notice of Intent and Pre-Application Document are available for review and reproduction at the City of Covington Library located at 406 W Riverside Street, Covington VA 24426-1221, phone (540) 962-3321.

Consistent with Section 5.3(d)(1) of the Commission's regulations, HMP advises stakeholders that comments on this TLP Request must be filed with the Commission by January 25, 2008. Such comments, which should reference FERC Project No. 12737, may be filed with the Commission at the above address or online through the Commission's website, www.ferc.gov, pursuant to 18 C.F.R. § 385.2003(c). Further, HMP is also publishing notice of the filing of its Notice of Intent, Pre-Application Document, TLP Request and Waiver Request, including the information required by section 5.3(d)(2) of the Commission's regulations, in the Covington Virginian Review, which has the largest daily circulation in Alleghany County, Virginia. HMP will file evidence of this publication shortly. As discussed in detail below, this notice will also include advance notice of the Joint Meeting (18 C.F.R. § 4.38(b)(3)), to be held on February 25, 2008 at the City Library in Covington.²

Background

HMP received a preliminary permit for the Project site, in the above-captioned docket, on January 17, 2007. HMP determined it should pursue licensing of the Project and complete the development of the Project. Accordingly, HMP respectfully requests FERC's approval of its TLP Request and Waiver Request for the reasons stated below.

Request to Use the Traditional Licensing Process

Pursuant to Section 5.3 of the Commission's regulations, HMP respectfully requests Commission approval to proceed with licensing the Gathright Hydroelectric Project using the Commission's Traditional Licensing Process. As reflected in the attached Pre-Application Document, HMP has proposed a simple installation scheme with minimal construction and similar operation to the existing project and consulted with interested agencies and stakeholders regarding issues of potential concern. HMP believes that issuance of a license will occur on a more expeditious timeline using the TLP than using the Integrated Licensing Process ("ILP") and that the costs of licensing the Project will be substantially less under the TLP. Further, HMP anticipates that the resource issues implicated by Project licensing will not be complex or substantially controversial, and that there is little potential for significant disputes regarding studies or protection, mitigation and enhancements (PM&E's). As further detailed below, HMP expands these several reasons for the Commission to grant HMP's request to use the TLP.

¹ The Distribution List includes all persons required to be notified by 18 C.F.R. § 5.5(c) and 5.6(a).

² This proposed date for the Joint Meeting is contingent upon the Commission's ruling on the TLP Request and Waiver Request set forth below.

First, while HMP believes, as discussed below, that there are no substantial or intractable issues that will impede issuance of a license under either the ILP or TLP, HMP submits that the use of the TLP is likely to speed issuance of a license for the Project. The ILP process imposes definite time frames on consultation, study development and the National Environmental Policy Act process that, while they likely offer efficiencies for complex, controversial projects, would slow the process here and result in the plant beginning generation substantially later. For example, the procedure for study plan development, comment and decision are not likely to be useful, but would add a substantial amount of time and effort to the process. The applicant has held some discussions with the resource agencies and is convinced that issues in dispute are not likely to be complex. The applicant foresees no studies that are necessary. Disputes over any studies required are expected to be non-existent or minor based on recent consultation with key agencies. Given the relatively small size of the Project and the non-intrusive (except to the Corps of Engineers) installation plan, the ILP process would likely slow license issuance, without beneficial results for agencies, the public, FERC or HMP.

Second, HMP has proposed a plan that does not require any civil construction and duplicates the operation of the present dam. With the planned operation in mind, the applicant reviewed the potential Project effects and does not believe there will be any complex, contentious issues that will not be relatively easily resolved. Potential project effects requiring PM&E's or design modification identified to date include avoiding changes in water quality downstream and recreation on and around the lake. The applicant has proposed a plan that duplicates current operation that produces the desirable water quality downstream. The applicant will make the same releases as the Corps determines comply with its present operating plan with a minor exception during the winter and spring at the latter stages of a flood release. HMP's proposal in its PAD reflects discussions with the agencies regarding these issues, including modifications to the Project design and other PM&E measures. For example, in response to the issue regarding water quality downstream and maintaining lake levels, HMP has agreed to install an intake system to duplicate the amount and level of withdrawal of water from the lake that the Corps of Engineers presently uses. This action should avoid any change in water quality downstream. In the unlikely event that unidentified issues may arise, HMP submits that the anticipated level of controversy should be minimal, as HMP anticipates complying with resource agencies' reasonable requests to accommodate such issues.

Third, HMP does not anticipate significant study disputes which might require the study plan review, comment and decision procedures included in the ILP. As explained in the PAD, HMP is proposing an installation and operation plan that should avoid the need for studies in order to satisfy the information needs of FERC and the agencies prior to Project construction. HMP will take agency and stakeholder comments into account in developing its study program with the goal of resolving any disputes early so as not to delay performance of the studies or, ultimately, license issuance.

Fourth, HMP estimates that the cost of licensing the Project under the ILP would greatly exceed the costs expected under the TLP. As an initial matter, licensing under the ILP, because of its highly structured nature requiring approximately 4 to 5.5 years of procedures prior to FERC action on a license application, would unnecessarily delay the

timing of such FERC action. The applicant expects to file its license application in late May, 2008 using the TLP with the reduction requested in review in the PAD and draft license application. Inherent in this delay for the ILP are additional costs, including the loss of potential returns from commencing operations earlier under a license issued as a result of the TLP, and the expected increase in the cost of construction services and materials. HMP anticipates that the cost of licensing the Project, including any necessary studies, under the TLP is approximately \$400,000. Under the ILP, HMP anticipates that licensing the project would cost \$900,000, not including the costs of delay discussed above. The project licensed under the TLP should begin generation 3 years earlier or more than under the ILP.

Fifth, the simplicity of the installation scheme with no civil works will minimize the impacts on present operation of the federal facility. The planned plant is relatively small, 3.7 MW, with a single generating unit. This simple plan lends itself to the simplicity of the project review in the TLP.

For the above-stated reasons, HMP respectfully requests that the Commission grant its request for use of the TLP.

Request for Waiver of Commission Regulations

HMP requests that the Commission permit certain reductions in the review times in the normal TLP, as set forth in Section 4 of the Commission's regulations, in order to tailor the TLP to the simple circumstances of the Project and expected simplicity of the review period. The applicant does not wish to reduce the review period by any party in a way that would minimize their review. However, the issues of importance in the Gathright Dam are addressed in the PAD and will be similarly done in the license application. This suggests that agencies and other interested parties can promptly state their approval or concern over the proposed plan, especially given the 90 days before comments on the PAD are due.

As discussed above, recognition that HMP is pursuing a relatively simple project that is fundamentally consistent with the present operation of the reservoir. The requested reduction in review time is important bringing this new capacity of renewable energy on line at an earlier date. HMP has reviewed the TLP regulations and believes that the following modified process for pre-filing consultation would be appropriate for the Project and consistent with the intent of FERC regulations. With the changes proposed below by the applicant, the review time before a license can be filed is reduced from 9.5 months to about 5 months, assuming no studies are necessary.

This reduction is achieved by making review of the PAD and FERC's decision on use of the TLP simultaneous and reducing review time of the PAD and draft. In the following chart, Time refers to the time in days allowed for completion of the Action listed in the same row, following completion of the previous listed Action. Modified Time presents the appropriate expedition HMP proposes to reduce unnecessary delay. All timeframes are in days.

Pre-Filing Schedule

Entity	Action	Usual Time	Requested Time
HMP	File NOI, PAD, TLP Request and Waiver Request		
Stakeholders	Comment on HMP's TLP Request and Waiver Request	30	30
FERC	Action on TLP Request and Waiver Request; Assume Approval	60	45
HMP, Stakeholders	Hold Joint Meeting after TLP approval	30-60	15 (60 days after PAD filed)
Stakeholders	Comments on HMP's proposal and PAD after Joint Meeting	60	31 (91 days after PAD filed)
HMP, Stakeholders	Resolve any study disputes, conduct studies		0 expected
HMP	Circulate Draft License Application and Study Results for Stakeholder Comment		15 expected
Stakeholders	Comment on Draft License Application and Study Results	90	30
Agencies, Tribes	Notify HMP of any Disagreement Regarding Protection, Mitigation and Enhancement Measures		15 days from distribution of Draft Application
HMP, Agencies, Tribes	Hold Meeting, if Necessary, to Resolve Disputes Regarding PM&Es	Not later than 60 days after comments on Draft Application	5 -10 days following Notice of Disagreement
HMP	Finalize and File License Application with FERC		15 expected

Implementation of the above-described schedule would require three modifications to the Commission's existing TLP review schedule. HMP describes these three changes in detail below.

First, HMP requests a reduction in the time otherwise required, by 18 C.F.R. § 4.38(b)(3)(iii), for holding the Joint Meeting in Phase 1 of the pre-filing consultation and the review time by FERC on use of the TLP. These are related changes. FERC's regulations require this public meeting to be held no earlier than 30 days and no later than

60 days after FERC approval of a request to use the TLP. HMP requests approval to hold the Joint Meeting 61 days after it distributes the NOI and PAD, *i.e.* 61 days from filing. Under the TLP, prior to the adoption of the Part 5 regulations, stakeholders would have a minimum of 30 and a maximum of 60 days to review the applicant's initial information package, now the PAD, prior to the Joint Meeting. This reduction in review time of the PAD is accomplished by making the review of the PAD by the agencies simultaneous with FERC's decision on allowing use of the TLP. We ask that FERC make this decision within 47 days of filing of the PAD rather than 60. So this request is a reduction in the time for a decision on using the TLP, which affects the timing of the public meeting by making these events (review and TLP decision) simultaneous instead of sequential. Making the TLP decision and review of the PAD simultaneous still allows sufficient review time of the PAD.

HMP believes this request for a reduction of the comment period and TLP decision is reasonable inasmuch as, by the comment due date, stakeholders will have had the PAD in their possession for a total of 90 days, a sufficient time for review. This modification will not deprive interested stakeholders of sufficient review because the issues are not likely to be complex, the PAD is not overly lengthy and stakeholders have two opportunities to offer initial comments – at the Joint Meeting and in writing.

HMP believes that its proposal to allow for 60 days after filing the PAD strikes the proper balance between the need to allow stakeholders time to review the PAD and prepare for the Joint Meeting, and the need and ability to expedite the licensing process for this Project. Moreover, rather than provide only 14 days notice of the Joint Meeting, HMP is providing an initial notice of the Joint Meeting about 60 days before the meeting, through this filing and through the newspaper publication of this filing. Consistent with FERC regulations, HMP will publish notice of the Joint Meeting, including the time, location and agenda, 14 days prior to the Meeting, after FERC decides on the TLP. Hopefully, the Commission can decide on the TLP in less time.

Second, HMP requests that FERC approve a reduction in the time for comment on the proposal and PAD from 60 days after the Joint Meeting, 18 C.F.R. § 4.38(b)(5), to 30 days. As stated above, this reduction still allows agencies 90 days to review the PAD from initial receipt.

Third, HMP requests that FERC partially waive the requirements of 18 C.F.R. § 4.38(c)(5), which allows agencies, stakeholders and tribes 90 days to comment on the Draft License Application. HMP requests that FERC allow a reduction of this time frame to 30 days. The applicant believes that the draft will be very similar to the PAD, for which each reviewer has recently provided comments. As mentioned in the TLP request, the project plan is simple and deviates little from present reservoir operation. Therefore, 30 days should be enough time to prepare comments on a document (PAD to draft) that has changed little.

In addition, in order to expedite the identification and resolution of any disputes (though as stated above HMP does not anticipate significant disputes because of previous review by key agencies), HMP requests approval to request that agencies and tribes notify HMP of any disagreements regarding PM&E's 15 days following distribution of the Draft

License Application. HMP believes that the PAD, with suggested protection, mitigation and enhancement (PM&E) measures, will prepare agencies for the draft license application and allow a reduced review time of the draft to be sufficient for any new comments on the plan. Further, HMP requests approval to hold a meeting to resolve any disputes regarding PM&Es, if necessary, within 5 to 10 days following the notice of such a disagreement.

HMP believes that the agencies and tribes are likely to identify disputes early in their review of the Draft License Application. HMP's proposal seeks to achieve the early resolution of those disputes, such that any changes can be appropriately reflected in the final application.

These three are the only changes requested in the TLP review process as defined in the Commission's regulations.

Designation and Consultation Request

To facilitate the licensing process, it is requested that HMP be:

(1) designated as the Commission's non-federal representative for the purposes of informal consultation regarding the Project relicensing with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act; and

(2) authorized, pursuant to the provisions of 36 C.F.R. § 800.2(c)(4), to initiate and conduct day-to-day consultations on cultural resource management with the State Historic Preservation Officers and any appropriate interested tribal, agency or other entities consistent with the requirements of Section 106 of the National Historic Preservation Act. (It is understood that the authorization under 36 C.F.R. § 800.2(c)(4) does not alter the Commission's ultimate authority and responsibilities under Section 106 for consultation with respect to cultural resources, including its responsibility for government-to-government relationships with Indian tribes.)

HMP appreciates the Commission's timely consideration of this important request and urges the Commission to embrace this important opportunity to demonstrate regulatory flexibility and support prompt new capacity development when, as here, the market opportunity arises.

Respectfully submitted,



President, General Partner,
Hydro Matrix Limited Partnership

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing document by first class mail postage prepaid upon each person listed in the attached Distribution List.

Dated at Aiken, SC this 26th day of December 2008.

James B. Price

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