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DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission

Northern States Power Company - Wisconsin

Docket No. UL20-1-000

NOTICE OF PENDING JURISDICTIONAL INQUIRY
AND SOLICITING COMMENTS,
PROTESTS, AND MOTIONS TO INTERVENE

On December 30, 2019, and supplemented on January 22, 2020, Northern States Power Company – Wisconsin filed a preliminary application document (PAD) and notice of intent to file a license application for the Saxon Falls and Superior Falls Hydroelectric Projects (FERC Project Nos. 2610 and 2587, respectively). Commission staff’s review of the PAD found information stating that the Gile Flowage was created to augment river flows in the Montreal River during the summer and winter low-flow periods at the downstream Saxon Falls and Superior Falls Projects, and that both projects depend on flow augmentation from Gile Flowage during these periods. The Gile Flowage is in Iron County, Wisconsin. As a result, the Commission is beginning a review of the Gile Flowage to determine whether it is subject to the Commission’s mandatory licensing jurisdiction under section 23 of the Federal Power Act (FPA).

Pursuant to section 23(b)(1) of the FPA, 16 U.S.C. 817(1) (2018), a non-federal hydroelectric project must be licensed (unless it has a still-valid pre-1920 federal permit) if it: (1) is located on a navigable water of the United States, (2) occupies lands or reservations of the United States, (3) uses the surplus water or water power from a government dam; or (4) is located on a stream over which Congress has Commerce Clause jurisdiction, is constructed or modified on or after August 26, 1935, and affects the interests of interstate or foreign commerce.

Section 4(e) of the FPA authorizes the Commission to issue licenses for hydroelectric project works, including reservoirs. Section 23(b)(1) of the FPA requires (with exceptions not relevant here) a Commission license for the operation of non-federal hydroelectric project works, including reservoirs, that are used to generate electric power on any navigable waters of the United States. Storage reservoirs that are not directly connected to other project works must be licensed if they are necessary or appropriate in the maintenance and operation of a complete unit of hydropower improvement or development. The Commission makes this finding by examining the facts in each case, considering the reservoir’s effect on downstream generation and its storage capacity, location, and purpose, to determine if there are significant generation benefits to a downstream project or projects. The Commission has found, and the DC Circuit has

affirmed, that a contribution to downstream electric generation of at least 2 percent amounts to a significant generation benefit.¹

The Commission is soliciting comments, motions to intervene, and protests in these proceedings. Comments, motions to intervene, and protests must be filed by thirty **(30) days from notice or March 2, 2020**. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure, 18 CFR 385.210, 211, and 214. In determining the appropriate action to take, the Commission will consider all protests or comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The first page of any filing should include docket number UL20-1-000.

For further information, please contact Jennifer Polardino at (202) 502-6437 or Jennifer.Polardino@ferc.gov.

DATED: January 31, 2020

Kimberly D. Bose,
Secretary.

¹ See *Domtar Maine Corp., Inc. v. FERC*, 347 F.3d 304, 309 (D.C. Cir. 2003); *Chippewa and Flambeau Improvement Co. v. FERC*, 325 F.3d 353 (D.C. Cir. 2003).

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