



## **I. BACKGROUND**

On July 25, 2016, Cube Yadkin and APGI jointly filed the Application for Approval of Transfer of License and Substitution of Applicant (Application), proposing to transfer the Project license from APGI to Cube Yadkin. In their Application, Cube Yadkin and APGI demonstrated that Cube Yadkin meets the Commission's established standard for transfer of the existing license because Cube Yadkin is legally, technically, and financially qualified to hold the license. They explained that Cube Yadkin is part of a well-funded and financially capable organization with experienced owners and operators of a number of Commission-licensed hydroelectric projects, that Cube Yadkin intended to retain the specific expertise of the APGI employees currently operating the Project, and that Cube Yadkin has agreed to accept all of the terms and conditions of the license and to be bound by the license as if it were the original licensee. Cube Yadkin and APGI therefore demonstrated that Cube Yadkin, the transferee, is qualified to hold the license and operate the Project. Cube Yadkin and APGI requested that the Commission issue an order approving the Application by September 30, 2016, such that Cube Yadkin and APGI can close the transaction consistent with the acquisition agreement governing Cube Yadkin's purchase of the Project.

On August 1, 2016, the Commission issued a notice requesting any interventions, comments, or protests by August 31, 2016. Motions to intervene and comments were filed by the Trading Ford Historic District Preservation Association; North Carolina Wildlife Resources Commission (North Carolina WRC); American Rivers; Riverkeeper; NECP; the City of Salisbury, North Carolina; Central Park NC; the State of North

Carolina; Stanly County, North Carolina; and the North Carolina Department of Environmental Quality (North Carolina DEQ).

## II. MOTION FOR LEAVE TO ANSWER

Cube Yadkin submits this answer to the interventions, protests, and comments filed by NECP, the State of North Carolina, Riverkeeper, and Central Park NC.<sup>2</sup> Cube Yadkin seeks leave pursuant to Rule 213 of the Commission's Rules of Practice and Procedure,<sup>3</sup> to the extent such leave is necessary, to file an answer to the protests filed by the State of North Carolina and Riverkeeper in this proceeding.<sup>4</sup>

Good cause exists to grant Cube Yadkin leave to answer the protests filed by the Riverkeeper and the State of North Carolina. Cube Yadkin's response provides valuable and relevant information, clarifies the record, responds to new issues, and will assist the Commission in reaching an expeditious decision in this proceeding.<sup>5</sup> Therefore, Cube

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<sup>2</sup> New Energy Capital Partners, LLC's Notice of Intervention, Alternative Motion to Intervene and Motion to Intervene and Corrected Comments on Application for Transfer of License and Motion to Intervene, Project No. 2197-109 (filed Aug. 31, 2016) (NECP Comments); Comments and Protest of the State of North Carolina in Opposition to the Application for Commission Approval of Transfer of Project License, Substitution of Project License Applicant and Request for Expedited Consideration filed by Alcoa Power Generating, Inc. and Cube Yadkin Generation LLC, Project No. 2197-109 (filed Aug. 31, 2016) (State of North Carolina Comments); Motion to Intervene and Comments and Protest of the Yadkin Riverkeeper, Inc. in Opposition to the Application for Commission Approval of Transfer of Project License, Substitution of Project License Applicant and Request for Expedited Consideration filed by Alcoa Power Generating, Inc. and Cube Yadkin Generation LLC, Project No. 2197-109 (filed Aug. 31, 2016) (Riverkeeper Comments); Motion to Intervene by Central Park NC in the Application for Transfer of License, Project No. 2197-109 (filed Aug. 31, 2016) (Central Park NC Comments).

<sup>3</sup> 18 C.F.R. § 385.213.

<sup>4</sup> Cube Yadkin notes that Rule 213(a)(2) generally does not allow an answer to a protest, *id.* § 385.213(a)(2), but both the Riverkeeper and the State of North Carolina's filings could have been styled as motions to intervene and comment, as NECP's filing was styled, which would have entitled Cube Yadkin to respond without leave. *Id.* § 385.213(a)(3).

<sup>5</sup> The Commission has found that good cause exists to allow an answer where one is not automatically permitted by its rules when the answer leads to a more accurate and complete record, helps the Commission understand the issues before it, clarifies certain errors or misstatements, responds to new issues, or provides useful and relevant information which will assist in the decision-making process. *See, e.g., DCR Transmission, LLC*, 153 FERC ¶ 61,295 at P 8 (2015); *New Summit Hydro, LLC*, 149 FERC ¶ 61,033 at P 3 n.4 (2014); *S.C. Elec. & Gas Co.*, 109 FERC ¶ 61,234 at P 7 n.10 (2004). Indeed, the Commission "generally finds that answers to protests provide valuable information relevant to its decision making

Yadkin respectfully requests that, for good cause shown, the Commission consider the following answer in its consideration of the Application.

### III. ANSWER

#### A. Transfer of the License to Cube Yadkin Meets the Commission's Standard for Approval of a License Transfer

APGI and Cube Yadkin have demonstrated that Cube Yadkin meets the Commission's standard for transfer of the license. In a license transfer proceeding, the Commission has established that "the only relevant inquiry" is whether the transferee has the "ability to comply with the terms of the project license . . . ." <sup>6</sup> Accordingly, the license transfer proceeding concerns "the fitness of the transferee to be licensee" and considers whether the transferee has "the financial, technical, and legal qualifications . . . to hold the license for the project." <sup>7</sup> Other issues, such as requests to revisit a project's impacts and mitigation measures under the license, are beyond the scope of a transfer proceeding, as discussed below.

Contrary to the Commission's requirements and precedent, several comments attempt to oppose the transfer of the license claiming it is not in the "public interest," based on some other standard invented by commenters that would appear to apply to the initial issuance of a license, rather than a license transfer. <sup>8</sup> These comments attempt to

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process." *Guardian Pipeline, L.L.C.*, 91 FERC ¶ 61,285 at p. 61,961 (2000), *order on reh'g*, 94 FERC ¶ 61,269 (2001).

<sup>6</sup> *Confederated Salish and Kootenai Tribes*, 152 FERC ¶ 62,140 at P 11 (2015).

<sup>7</sup> *Eugene Water & Electric Board*, 155 FERC ¶ 62,242 at PP 16-17 (2016).

<sup>8</sup> *See, e.g.*, NECP Comments at 8 (contending that "the public interest standard set forth in Sections 10(a) and 15(a) of the FPA requires the Commission to conduct a broad examination of any legacy issues arising from the applicant's use of the original licensee [*sic*] and the implementation of the prior 'comprehensive plan,' and then examine whether and how the new purposes proposed for the hydroelectric facilities address those legacy issues"); State of North Carolina Comments at 6 (asserting that the Commission must conduct a "rigorous and comprehensive public interest analysis of Alcoa's and Cube's Application or of their plan for the future use of the Yadkin River, as is required by Section 10(a) of the

improperly and incorrectly use the standard for the issuance of a license as the standard for review of a license transfer application, arguing incorrectly that the Commission must conduct a new and comprehensive evaluation of the public interest factors set forth in Section 10(a) of the Federal Power Act (FPA)—for the issuing of a license—in evaluating a license transfer. That is simply not the applicable legal standard for a license transfer proceeding, and directly contradicts long-standing and well-established Commission precedent.

The Commission reviews license transfer applications under a general public interest standard.<sup>9</sup> When a license is transferred, the new licensee steps into the shoes of the old licensee, and the new licensee is subject to all requirements to which the old licensee was subject under the license.<sup>10</sup> Accordingly, the Commission has made clear that its review in a license transfer proceeding is a limited inquiry of the ability of the transferee to carry out its responsibilities under the license, “and whether the transfer is *in that sense* in the public interest.”<sup>11</sup> The Commission has further explained that, given its narrow inquiry in evaluating a license transfer application under Section 8 of the FPA, it is not required to and will not “revisit the whole penumbra of comprehensive

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[FPA]”); Riverkeeper Comments at 1-2 (requesting the Commission to deny the transfer because it has not been shown that the transfer is in the public interest per Section 10(a) of the FPA).

<sup>9</sup> See *Niagara Mohawk Power Corp. and Erie Blvd. Hydropower, L.P.*, 90 FERC ¶ 61,148 at p. 61,480 (2000).

<sup>10</sup> 16 U.S.C. § 801; *Menominee Co.*, 74 FERC ¶ 61,023, at p. 61,067 (1996), affirmed by *State of Wisconsin v. FERC*, 104 F.3d 462 (D.C. Cir. 1997) (“When a license is transferred, the new licensee steps into the shoes of the old licensee, and is subject to any and all requirements to which the old licensee was subject under the license and the Commission’s orders thereunder.”).

<sup>11</sup> *New England Power Co. and US Gen New England, Inc.*, 83 FERC ¶ 61,272, at p. 62,134 (1998) (emphasis added); see also *Great Northern Paper, Inc.*, 91 FERC ¶ 62,123, at p. 64,230 (2000) (“the Commission scrutinizes transfers to determine whether a transferee may be financially or economically incapable of fulfilling the requirements of the license to be transferred”); *HDI Associates V and Sprague Hydro LLC*, 134 FERC ¶ 62,180 at P 3 (2011); *AER NY-Gen, LLC*, 133 FERC ¶ 62,143 at P 20 (2010).

development matters that [it] must consider under Section 10(a)(1) before determining whether to license the project itself.”<sup>12</sup>

As demonstrated in the Application, Cube Yadkin meets the Commission’s standard for approval of the license transfer. Cube Yadkin is legally, technically, and financially qualified to hold the Project license. None of the commenters presented any evidence that called into question Cube Yadkin’s ability to step into the shoes of APGI and carry out its responsibilities under the license. Cube Yadkin’s affiliates own and operate a number of well-established Commission-licensed hydroelectric projects, and Cube Yadkin will employ many of the operators and employees that currently operate the Project. Cube Yadkin is part of a well-funded and financially stable organization. And Cube Yadkin and APGI have entered into definitive agreements that provide the legal rights necessary for Cube Yadkin to own and operate the Project upon Commission approval.

As to the State of North Carolina’s claim that Cube Yadkin will have insufficient property interests to hold the license (which is a challenge to the existing license, not the license transfer), Cube Yadkin will step into the shoes of the licensee, which together with its predecessors has held the property interests necessary to operate the Project for more than 50 years.<sup>13</sup> Although the State of North Carolina contested those rights for the

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<sup>12</sup> *New England Power Co. and US Gen New England, Inc.*, 83 FERC ¶ 61,272, at p. 62,134. *See also*, e.g., *Snoqualmie River Hydro, Inc.*, 126 FERC ¶ 61,024 at P 27 (2009) (environmental impacts of project not relevant to transfer); 18 C.F.R. § 380.4(8) (2016) (license transfers categorically excluded from environmental analyses); and *Enerco Corp.*, 49 FERC ¶ 62,267 (1989) (pending state court challenge to water quality certification and pending rehearing of license amendment not relevant to transfer).

<sup>13</sup> APGI most recently certified its ownership of all the lands and riparian rights necessary to operate and maintain the Project in its 2006 license application.

first time in 2013, the U.S. District Court for the Eastern District of North Carolina entered a final judgment in favor of APGI in 2015.<sup>14</sup>

In the unlikely event that the U.S. Court of Appeals for the Fourth Circuit overturns the district court's finding and determines that the licensee must obtain additional ownership of lands necessary for Project purposes, the licensee will acquire them as required by Standard Article 5 of the license<sup>15</sup> and as authorized by Section 21 of the FPA.<sup>16</sup> However, such issues are outside the scope of the Commission's inquiry in this license transfer proceeding,<sup>17</sup> and should be rejected consistent with Commission precedent.<sup>18</sup>

#### **B. There is No Prohibition on Transfer of an Annual License**

Since the original license expired on April 30, 2008, the Project has been operating under annual licenses, as provided for by FPA Section 15(a)(1).<sup>19</sup> Issuance of an annual license is a non-discretionary and ministerial act, the purpose of which is to prevent a possible hiatus in the operation of a project and preserve the *status quo* at the expiration of the license term until a new license can be issued.<sup>20</sup> The Commission's

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<sup>14</sup> Order, *State of North Carolina v. APGI*, Case No. 5:13-cv-00633-BO (E.D.N.C. Sept. 28, 2015) ECF No. 212.

<sup>15</sup> See *Carolina Aluminum Co.*, 19 F.P.C. 704, 728 (1958) (including an earlier version of Standard Article 5, which appears as Standard Article 17).

<sup>16</sup> 16 U.S.C. § 814.

<sup>17</sup> Even in the licensing context, the Commission has held that disputes as to property interest are not matters for the Commission but must be resolved through the courts. See, e.g., *Andrew Peklo III*, 149 FERC ¶ 61,037 at P 53 (2014).

<sup>18</sup> See *Potosi Generating Station, Inc. and Willow Creek Hydro, LLC*, 100 FERC ¶ 61,115 at P 15 (2002) (rejecting a request to await a judicial ruling on disputed property rights prior to authorizing a transfer, because "whatever may be the ruling on its current rights . . . the [new] licensee [will] be obligated to obtain those property rights necessary to operate and maintain the project.").

<sup>19</sup> 16 U.S.C. § 808(a)(1).

<sup>20</sup> See *S. Cal. Edison Co.*, 94 FERC ¶ 61,326 at pp. 62,215-16 (2001), *aff'd*, *Cal. Trout, Inc. v. FERC*, 313 F.3d 1131 (9th Cir. 2003).

well-established practice under the FPA is to give public notice of the issuance of an annual license, including a statement that the notice automatically renews annually without further order of the Commission. The Commission did so here.<sup>21</sup>

NECP, citing FPA Section 15(a)(1)'s text stating that annual licenses are to be issued on license expiration to "the then licensee,"<sup>22</sup> and the FPA's definition of "licensee" in Section 3(5),<sup>23</sup> incorrectly claims that the Commission lacks the authority to transfer a license during the period annual licenses are in effect.<sup>24</sup> That is simply incorrect. NECP claims that because a licensee is defined as an entity licensed pursuant to FPA Section 4<sup>25</sup> and annual licenses are issued pursuant to Section 15(a)(1), annual licenses are somehow a different form of authorization from licenses issued under Section 4, and therefore cannot be transferred.<sup>26</sup> NECP's assertion is wrong.

The Commission has previously rejected the same claim that NECP makes here.<sup>27</sup> In *Niagara Mohawk*, just like NECP, a commenter contended that the transfer of an annual license is "not permitted" under the FPA.<sup>28</sup> The Commission firmly rejected that argument. The Commission instead concluded:

However, that Section 15(a)(1) requires the yearly issuance of an annual license to the "then licensee" doesn't mean that annual licenses can't be

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<sup>21</sup> Notice of Authorization for Continued Project Operation, Project No. 2197-000 (issued May 2, 2008).

<sup>22</sup> 16 U.S.C. § 808(a)(1).

<sup>23</sup> *Id.* § 796(5).

<sup>24</sup> NECP Comments at 11-12.

<sup>25</sup> 16 U.S.C. § 797.

<sup>26</sup> NECP Comments at 11-12.

<sup>27</sup> See *Niagara Mohawk Power Corp.*, 88 FERC ¶ 62,082 at p. 64,153 (1999), *reh'g den.*, 90 FERC ¶ 61,148 (2000) (citing *Edwards Manufacturing Co., Inc., et al.*, 84 FERC ¶ 61,228 (1998)).

<sup>28</sup> *Niagara Mohawk*, 88 FERC ¶ 62,082 at p. 64,153.

transferred, as the [commenter] argues. Section 15(a)(1) does not mention transfers of annual licenses, much less bar them.<sup>29</sup>

Consistent with that finding, the Commission routinely approves license transfers during such periods.<sup>30</sup>

### **C. This License Transfer Proceeding Does Not Reopen the License**

Several of the comments assert that the Commission should use this license transfer proceeding as a forum to reopen the relicensing process, making claims that the Commission should use this license transfer proceeding to: reopen the license application to competition;<sup>31</sup> reject the established RSA;<sup>32</sup> and revisit the adequacy of the Commission's environmental review process and documents.<sup>33</sup> Given the Commission's established standard and focused inquiry in a license transfer proceeding as discussed above, these claims and requests are simply outside the scope of this license transfer proceeding.<sup>34</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> *See, e.g., Niagara Mohawk Power Corp.*, 88 FERC ¶ 62,082; *Central Vermont Public Service Corp. and Green Mountain Power Corp.*, 140 FERC ¶ 62,191 (2012); *Bangor Hydro-Elec. Co. and Penobscot Hydro, LLC*, 87 FERC ¶ 62,001 (1999); *Georgia-Pacific Corp. and Simpson Paper (Vermont) Co.*, 59 FERC ¶ 62,350 (1992) (orders approving license transfers for projects operating under annual license). Moreover, FPA Section 3(5) makes no distinction between a license issued pursuant to Section 4 and an annual license, and nothing in Section 8, Section 15, or the Commission's regulations pertaining to transfer of licenses prohibits the transfer of a license during the period of annual licenses. In addition, FPA Section 3(5) explicitly contemplates license transfers by defining "licensee" to include "any assignee or successor in interest thereof." 16 U.S.C. § 796(5). This is unsurprising since annual licenses simply extend the existing license issued under FPA Section 4 on the same terms and conditions. NECP also inexplicably ignores the text of FPA Section 8, which authorizes the Commission to approve the transfer of "any license" subject to the same license terms and conditions as though it was the existing licensee. *Id.* § 801.

<sup>31</sup> *See, e.g.,* NECP Comments at 5-8; State of North Carolina Comments at 7-9; Riverkeeper Comments at 2-3; Central Park NC Comments at 2.

<sup>32</sup> *See, e.g.,* Riverkeeper Comments at 10-14.

<sup>33</sup> *See, e.g.,* Riverkeeper Comments at 8-10, 14-18.

<sup>34</sup> Cube Yadkin also notes that most of these issues have been previously raised, considered, and rejected in the relicensing proceeding. *See, e.g., Alcoa Power Generating, Inc.*, Notice Denying Motion to Intervene, Project No. 2197-073 (2013); *Alcoa Power Generating, Inc.*, 144 FERC ¶ 61,218 (2013); *Alcoa Power Generating, Inc.*, Notice Rejecting Motion to Reopen Record, Project No. 2197-073 (2015); *Alcoa Power Generating, Inc.*, 152 FERC ¶ 61,040 (2015). These rulings are the subject of ongoing litigation in

The Commission has clearly established that requests to seek conditions for mitigation or enhancement measures in a license are outside the scope of a license transfer proceeding, and the Commission will reject such comments and protests. As the Commission has explained, “the mere transfer of a license changes only the identity of the licensee; it does not change the environmental impact of the project.”<sup>35</sup> The Commission therefore has determined that:

transfer proceedings focus on the qualifications of the transferee to become the licensee, not on whether additional mitigation measures should be included in the license. This is not the proper forum to reexamine the mitigation requirements of [a hydropower license].<sup>36</sup>

Likewise, just recently in *Eugene Water* the Commission again rejected such comments, stating:

Moreover, the mere transfer of a license does not alter a project’s environmental impacts, or the determination of what mitigation measures are warranted. It is consequently unnecessary, and indeed inappropriate, to bring into transfer proceedings issues of project impacts and proposed mitigation measures for such impacts.<sup>37</sup>

The Commission must similarly reject the comments in this license transfer proceeding that seek to reopen the relicensing process. As the Commission has made clear in the Project relicensing proceeding, the statutory deadline for competing applications has long since passed.<sup>38</sup> Substitution of the applicant through a license transfer does not reopen the relicensing proceeding to competition. As NECP itself

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*New Energy Capital Partners, LLC v. FERC*, D.C. Circuit Case No. 15-1307.

<sup>35</sup> *AER NY-Gen, LLC*, 133 FERC ¶ 62,143 at P 20 (2010) (citing *New England Power Co.*, 83 FERC ¶ 61,272 (1998)).

<sup>36</sup> *Id.*

<sup>37</sup> *Eugene Water & Electric Board*, 155 FERC ¶ 62,242 at P 20 (2016) (citing *Menominee Company*, 74 FERC ¶ 61,023 and *AER NY-Gen, LLC*, 133 FERC ¶ 62,143 (2010)).

<sup>38</sup> *See, e.g., Alcoa Power Generating Inc.*, 152 FERC ¶ 61,040 at P 19 (2015) (rejecting NECP’s motion to reopen the relicensing record as an “untimely, statutorily-barred attempt to compete for the project.”).

acknowledges, the Commission's regulations providing such reopening when there is a change in the original applicant do not apply on relicensing.<sup>39</sup>

Not only have the deadlines for comments on the Commission's scoping process and NEPA documents, the license application, and the RSA long since passed, it is unnecessary, inappropriate, and contrary to Commission precedent to use a license transfer proceeding as a reopening mechanism. Consistent with its regulations and long-standing precedent, the Commission must therefore reject the comments filed by NECP, the State of North Carolina, the Riverkeeper, and Central Park NC contending that the Commission should use this license transfer proceeding to address their various concerns about project impacts, mitigation measures, and the relicensing process in this transfer proceeding.

With respect to comments questioning Cube Yadkin's intentions regarding the license application and RSA, as transferee, Cube Yadkin inherits the license proceeding as it stands, as required by Section 8 of the FPA. In the Application, Cube Yadkin expressly requested substitution as applicant in the pending relicensing. APGI and Cube Yadkin have further notified the parties to the RSA, as required by that agreement, of their intentions for Cube Yadkin to succeed APGI with respect to the RSA.<sup>40</sup>

**D. The Commission Should Deny Motions to Intervene Filed by NECP and the State of North Carolina**

Cube Yadkin opposes the motions to intervene filed by NECP and the State of North Carolina. These entities have no right to participate in the license transfer

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<sup>39</sup> 18 C.F.R. § 16.9(b)(3); NECP Comments at 7.

<sup>40</sup> To the extent that the Riverkeeper is concerned with provisions of the RSA that are not intended to become provisions of the new license, Riverkeeper Comments at 3, such issues are not FERC-jurisdictional and are not considered in FERC's evaluation and issuance of the new license. *Settlements in Hydropower Licensing Proceedings Under Part I of the Federal Power Act*, 116 FERC ¶ 61,270 at P 14 (2006); *N.Y. Power Auth.*, 118 FERC ¶ 61,206 at P 19 (2007).

proceeding that is expressly conferred by statute or by Commission rule or order.<sup>41</sup>

Therefore, the Commission's rules require them to provide facts in sufficient detail to demonstrate that: (1) they have or represent an interest that may be directly affected by the outcome of the proceeding; or (2) their participation is in the public interest.<sup>42</sup> As discussed below, neither NECP nor the State of North Carolina meets the Commission's standards for intervention in a license transfer proceeding. Therefore, their interventions should be denied.

1. The Commission Should Deny the Motion to Intervene Filed by NECP

NECP fails to demonstrate an interest directly affected by the license transfer. As discussed above, a license transfer proceeding concerns the identity of the licensee and its qualifications to become the licensee, and not the environmental impact of the project or operational requirements.<sup>43</sup> Therefore, any intervenor in a license transfer proceeding must demonstrate a direct interest in this limited purpose of the proceeding; it is insufficient merely to claim a general interest in the outcome of the relicensing proceeding.<sup>44</sup> NECP claims an interest in the proceeding "as a 'competitor' for any final license issued for the Yadkin Project if and when the Commission provides a renewed opportunity to do so."<sup>45</sup> However, NECP is a private equity firm based in Hanover, New Hampshire that neither owns nor operates any hydroelectric facilities. To date, it appears

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<sup>41</sup> 18 C.F.R. § 385.214(b)(2)(i).

<sup>42</sup> *Id.* § 385.214(b)(2).

<sup>43</sup> *See AER NY-Gen, LLC*, 139 FERC ¶ 62,132 at P 22 (2012) (citing *New England Power Co.*, 83 FERC ¶ 61,272 (1998)).

<sup>44</sup> *See, e.g., PPL Holtwood, LLC*, 140 FERC ¶ 61,038 at P 7 (2012) (denying intervention in a license transfer proceeding where the intervenor only expressed a general interest in Commission-licensed projects).

<sup>45</sup> NECP Comments at 12.

to have never invested in a hydroelectric facility.<sup>46</sup> It did not participate in the pending relicensing proceeding, except to file a late motion to intervene and petition to reopen the license, which the Commission denied, finding that NECP “has not shown that it has any cognizable interest in Alcoa Power’s sale of project power.”<sup>47</sup>

NECP’s interest as a purported competitor for the Project is unpersuasive. The Commission has made clear that Section 15 of the FPA<sup>48</sup> requires that any entity—whether an existing licensee or a competitor—seeking to file an application to relicense a project must do so no later than two years from when the current license will expire.<sup>49</sup> Under this precedent, the Commission has found that NECP “is barred by statute from competing for the Yadkin Project license at this late date.”<sup>50</sup> The transfer will change nothing in that regard, and NECP is statutorily barred from competing for the license and therefore is not a “competitor” as it incorrectly claims. In sum, NECP has failed to demonstrate any cognizable interest in this license transfer proceeding.

Nor will NECP’s participation in this proceeding advance the public interest. While the public interest standard is “broad and not easily defined,” the Commission has made clear that it requires more than just a timely motion to intervene.<sup>51</sup> NECP argues that its participation in this and previous proceedings is “aimed at shifting hydropower

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<sup>46</sup> The Commission has previously noted that NECP’s website lists its renewable energy investments, none of which are related to hydropower. *Alcoa Power Generating Inc.*, 144 FERC ¶ 61,218 at P 15 and n.16 (2013).

<sup>47</sup> *Alcoa Power Generating Inc.*, 144 FERC ¶ 61,218 at P 15.

<sup>48</sup> 16 U.S.C. § 808.

<sup>49</sup> *Alcoa Power Generating Inc.*, 152 FERC ¶ 61,040 at P 21 (2015) (citing *Green Island Power Auth.*, 110 FERC ¶ 61,034 at PP 13-14, *reh’g denied*, 110 FERC ¶ 61,331 (2005)).

<sup>50</sup> *Alcoa Power Generating Inc.*, 152 FERC ¶ 61,040 at P 21. The Commission has a longstanding policy of strictly enforcing competition deadlines in hydropower licensing. *See, e.g., Marseilles Hydro Power, LLC*, 99 FERC ¶ 61,011 at p. 61,038 (2002).

<sup>51</sup> *Alabama Power Co.*, 140 FERC ¶ 61,037 at P 10 (2012).

benefits away from any private licensee for the Yadkin Project, and to the North Carolina public.”<sup>52</sup> However, NECP, a New Hampshire private equity firm, does not explain how the North Carolina WRC and the North Carolina DEQ, as uncontested state agency intervenors in this proceeding, could not adequately represent this interest on behalf of the citizens of the state. Nor has NECP demonstrated that it has been authorized to represent “the North Carolina public.” NECP simply has no grounds to participate in this limited proceeding to transfer the Project license from one licensee to another. Accordingly, NECP’s motion to intervene should be denied.

2. The Commission Should Deny the Motion to Intervene Filed by the State of North Carolina

The State of North Carolina also has failed to demonstrate a direct interest in this license transfer proceeding or how its intervention is in the public interest. Although it purports to represent the citizens of North Carolina in opposing the transfer, the intervention does not indicate which instrumentality of the State it represents. Nor does it explain or even acknowledge that both the North Carolina WRC and North Carolina DEQ—which do represent the interests of the citizens of the State of North Carolina—also filed motions to intervene without opposing the license transfer. The State of North Carolina does not explain why the North Carolina WRC and North Carolina DEQ cannot adequately represent the citizens of the state in this license transfer proceeding. Moreover, as an intervenor in the ongoing relicensing proceeding, the State of North Carolina has previously articulated all of the concerns expressed in its protest in the relicensing, which is outside the scope of this proceeding. This license transfer proceeding is not the appropriate forum to reiterate these concerns. The State has failed

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<sup>52</sup> NECP Comments at 12.

to demonstrate that it meets the public interest standard that would afford it party status in this license transfer proceeding. Accordingly, the State of North Carolina's motion to intervene should be denied.

#### **IV. CONCLUSION**

WHEREFORE, for the foregoing reasons, Cube Yadkin requests that the Commission accept this answer regarding the Application, and Cube Yadkin reiterates its request that the Commission issue an order approving the Application by September 30, 2016.

Respectfully submitted,



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*Counsel for Cube Yadkin Generation LLC*

DATED: September 9, 2016

**CERTIFICATE OF SERVICE**

Pursuant to Rule 2010 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 9th day of September, 2016.



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