

Kari Dziejic
State Senator

Senate District 60
Minneapolis



Bobby Joe Champion
State Senator

Senate District 59
Minneapolis

August 21, 2019

Via U.S. Mail

Honorable Neil Chatterjee, Chairman
Honorable Richard Glick
Honorable Cheryl A. LaFleur
Honorable Bernard L. McNamee
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Attn: Honorable Kimberly D. Bose, Secretary
Mr. Terry Turpin, Director of Office of Energy Projects

RE: Crown Hydro, LCC, Docket No. P-11175-025

Dear Chairman Chatterjee and Commissioners:

We represent the areas in Minneapolis, MN around the Mississippi Riverfront and the St. Anthony Falls Historic District in Minnesota. This is where Crown Hydro is proposing the above-referenced unconstructed hydroelectric project. We have met with and heard from constituents who raised issues about the project; reviewed some of the many documents filed with the Federal Energy Regulatory Commission ("FERC") and state proceedings related to this project; and Senator Dziejic met with representatives of Crown Hydro to learn more about the project.

Based on the information we obtained, we are writing to respectfully request that the Federal Energy Regulatory Commission and its Office of Energy Projects terminate the license amendment proceeding and order Crown Hydro to show cause why its license and the proposed amendment should not be terminated consistent with the *Motion of the Friends of the Lock and Dam for an Order to Show Cause* filed in this docket on January 10, 2019.

Crown Hydro FERC Background and Deadlines:
Record/History of Obfuscation, Delay, and Failure to Gain Site Control

Crown Hydro applied for a FERC Preliminary Permit Application in 1991, filed its application for an original major license on January 3, 1995, and FERC issued the Order granting the license in March 1999.

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The 1999 Order states the license is subject to the terms and conditions of the Federal Power Act (“FPA”), which is incorporated by reference as part of the license. It also states that the license is subject to the articles set forth in Form L-6 (October 1975) and additional articles listed and described in the license, including Article 310.

Article 5 of Form L-6 states that the Licensee shall acquire title in fee or the right to use all lands necessary or appropriate for the construction, maintenance, and operation of the project within five years from the date of issuance of the license. Article 310 on page 17 of the 1999 Order states: “the Licensee shall commence construction of the project works within two years from the issuance date of the license and shall complete construction of the project within five years from the issuance date of the license.”

In June 2001, Crown Hydro received an extension of the commencement of construction deadline listed in Article 310 of the 1999 Order. The commencement date was extended to March 19, 2003. In a letter dated June 19, 2003, FERC informed Crown Hydro that construction had commenced by March 19, 2003, based on an order for partial fabrication of the draft tube liners for the project. The letter specifically lists the purchase and manufacturing of generating equipment, the start of fabrication of the turbine components, and a signed purchase order.

The FPA allows manufacturing of equipment to be used as the commencement of construction when the actual time for the manufacturing of the new turbines and generator units is equal to or greater than the period of physical construction of the site. We are assuming the equipment manufacturing has been completed. Sixteen years later, the physical construction of the project site has not started. Crown Hydro has never had site control.

Lawsuits and liens have been filed regarding the equipment used as the basis to determine commencement of construction. We do not know the impact of the lawsuits and liens on Crown Hydro’s control over that equipment or if that equipment is being properly stored and maintained, so it is safe for use at some time in the future if Crown Hydro gets site control. We do not know the impact the lawsuits and liens have on the financial viability of Crown Hydro or the project.

Fourteen years have passed since March 19, 2005, the construction completion deadline set in the June 2001 Order granting extension of time. A footnote in the June 1, 2005, FERC Order Denying Rehearing and Request for Abeyance states that the deadline has expired for Crown to obtain appropriate rights to operate and maintain the project as licensed.

How much time should a licensee be given to gain site control and complete construction of a project? The time delay has created additional obstacles for the project, the area, and the community. When is the tipping point that causes diminished efficiency, viability, and financial feasibility of the project?

We believe that 20 years after the granting of the license and 14 years after the completion deadline extension, Crown Hydro has reached that tipping point. Crown Hydro, despite being

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given ample time and numerous opportunities to successfully complete its work, has failed to meet deadlines and fulfill its obligations under the license. Is it fair to taxpayers and consumers for this amendment process and license to continue?

**Continued Non-Compliance should result in termination of
Crown Hydro Proposed Amendment Application**

FERC sent a letter to Crown Hydro on May 25, 2011, stating that a review of the filings and the records show no progress towards obtaining a lease agreement to construct the project since 2009 and that several activities, plans, and filings required by the 1999 license in Article 301, Article 303, Article 402, and Article 406 were long overdue. Crown Hydro filed a response on June 23, 2011, stating its intent to file an amendment application to proceed with a different site.

On June 14, 2012, FERC issued a Notice of Initiation of Proceeding to Terminate License by Implied Surrender and Soliciting Comments and Motions to Intervene. The filing states that Crown Hydro has performed no on-site construction or ground-disturbing activities and has failed to complete construction of the project as licensed.

In Crown Hydro July 2012 response to the termination notice, they acknowledged that an extraordinarily long time period has ensued since the issuance of the 1999 license. Crown Hydro also states its inability to obtain property rights has impeded its ability to comply with several license requirements. They admit they are not in compliance. That continued non-compliance should result in termination of the amendment proceeding and the license.

FERC staff advised Crown Hydro in an April 2013 letter that it believed an amendment of the license was not the appropriate vehicle for Crown Hydro's current proposal and that a new license application was a better choice since it was essentially a different project than the one analyzed in the 1990s. The proposed site is a different location than licensed requiring different engineering. We agree that Crown Hydro should be required to apply for a new license – not an amendment to the current license.

Crown Hydro filed an application to amend its FERC License to relocate the project to the US Army Corp of Engineers ("USACE") Upper St. Anthony Falls Lock site on April 30, 2015 – almost four years after it told FERC in 2011 it would be filing an amendment.

It is now four years after the amendment application was filed in 2015. We have passed the completion date they suggested in that 2015 application. We are 14 years past the license construction deadline as amended and 20 years past the original grant of the license.

We applaud the goal of FERC to provide alternative forms of energy and the desire to give licensees leeway and enough time to successfully start operating the project, but licensees also need to be held accountable for their responsibilities and obligations in the license. We believe Crown Hydro has had plenty of time. Their continued non-compliance should result in a

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termination of the amendment proceeding and the license. We don't know if Crown Hydro will be able to meet those obligations, and we also have serious concerns that allowing this project to continue will cause irreversible harm to the area.

The Crown Hydro Project Area of Potential Effect
The St. Anthony Falls Historic District and The James J. Hill Stone Arch Bridge

The St. Anthony Falls area, where this project is proposed, is the birthplace of Minneapolis. It was listed in the National Register of Historic Places in 1971.

The Mississippi Riverfront that includes the St. Anthony Falls Historic District has changed significantly since the original Crown Hydro Federal Energy Regulatory Commission Preliminary Permit Application was filed in 1991 and the License granted in 1999.

Over \$300 Million of taxpayer money has been invested in the riverfront area in the last 20 to 25 years, and that has leveraged billions of dollars of private cultural and residential reinvestment. Mill Ruins Park opened in 2001, the Mill City Museum opened in 2003, and the Guthrie Theater opened in 2006. Additional parks are planned and under construction in the area. Several housing developments were built in the area with more currently under construction. Over 2 million people – area residents and visitors – cross the James J. Hill Stone Arch Bridge every year. Those visitors enjoy the view of the Minneapolis Skyline and the St. Anthony Falls, the only major waterfall on the Mississippi River.

The original 1999 FERC license concluded that the original Crown Mill project did not conflict with any planned or authorized development and is best adapted to comprehensive development of the Mississippi River for beneficial public use. Twenty years later that is no longer true. The proposed Crown Hydro site at the USACE Lock facility conflicts with planned development in the area, and construction could cause irreversible damage to historic features in the area and the millions of dollars of improvements paid for by taxpayers.

Stone Arch Bridge Integrity Protection Law
prohibits issuance of permit for Crown Hydro Project

There are many historic properties in the Historic District, including the iconic James J. Hill Stone Arch Bridge ("Bridge"). The Stone Arch Bridge was built between 1881 and 1883 and is designated a National Historic Engineering Landmark. It reopened to pedestrian traffic in 1994 and is the jewel of a brilliantly redeveloped Minneapolis Riverfront. The Bridge is a major connector path on the riverfront, and the pedestrian traffic continues to spur local development in the area.

The Minnesota Department of Transportation ("MnDOT") owns the Bridge and has determined that the Bridge needs structural repairs. Some funding for the Bridge has been set aside, but the repairs may not be completed before 2022 and additional funding may be required.

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We are concerned about the precarious condition of this important, historic Bridge, and the possible harm that could occur during construction of this project. While some of Crown Hydro's filings mention the potential risk to Stone Arch Bridge during construction, they also appear to negate or misunderstand the critical nature of that potential risk and downplay the requirements of the Stone Arch Bridge Integrity Protection language signed into law in 2018. That law applies to all state agencies and political subdivisions – not just MnDOT.

The Stone Arch Bridge Integrity Protection Law states:

No state agency or political subdivision shall grant permission to or enter into any agreement with any person, corporation, or entity to allow or facilitate construction of any type under, near, or adjacent to the James J. Hill Stone Arch Bridge over the Mississippi River that may disturb the foundations or piers or that may adversely affect the structural integrity of the Stone Arch Bridge. This section is effective the day after final enactment and expires after completion of repair to the Stone Arch Bridge, as described in the capital budget request submitted by the commissioner of transportation, published by the commissioner of management and budget in January 2018. (See MN Laws 2018, Chapter 214, Article 2, Section 48.)

Two of the Crown Hydro documents admit possible impacts to the Bridge. Those documents are the Area of Potential Effects document dated April 16, 2018, and the Assessment of Effects of Crown Hydro Project dated December 17, 2018. The first document states that there is potential for construction related damage. The second document states that excavation and boring for the tailrace tunnel and movement of heavy equipment during construction risk damage to the Stone Arch Bridge.

The December 17, 2018 communication from Crown Hydro to FERC also states: *“Several years ago, the engineers from Crown Hydro and engineers at MnDOT, together with MnDOT legal staff, reviewed the proposed project preliminary drawings/design and concluded that the project did not pose a threat to ‘the structural integrity of the Stone Arch Bridge.’ The conclusion was there was more than ample clearance to safely pass under the bridge. While that was a preliminary review, we are confident that engineers reviewing the design and plans for the project will continue to conclude that our proposed construction project will not, in the words of the legislation, ‘disturb the foundations or piers or...adversely affect the structural integrity of the Stone Arch Bridge.’ Thus, we do not anticipate that the legislation will have an effect on the amendment or the construction schedule. We will continue to work closely with the MnDOT Bridge Office to assure the integrity of the bridge structure and assuage everyone’s concerns.”*

That December 17, 2018, letter misinterprets the requirements of the law by saying the project “will not” disturb the foundations or piers of the Bridge. The law prohibits a state agency or local government from granting a permit or entering into an agreement if the construction “may” disturb the piers or foundation of the Bridge.

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MnDOT has testified that the condition of the Stone Arch Bridge piers below the water level substantially and rapidly deteriorated before 2018. A discussion “several years ago” does not assuage our concerns. With all due respect to MnDOT and Crown Hydro consulting engineers, accidents happen. We experienced the impact of the I-35W Bridge unexpectedly collapsing in 2007 just south of the Stone Arch Bridge and will demand every precaution to ensure that does not happen to another bridge. The Stone Arch Bridge is an irreplaceable iconic bridge. We are serious about the preservation of this bridge and the law designed to protect its integrity.

Since Crown Hydro filings acknowledge there is potential for construction related damage to the Stone Arch Bridge, we believe the 2018 law applies and do not believe any permits should be issued until repairs are complete.

The Crown Hydro Project is not in consumers’ best interests.

FERC’s mission is to assist consumers in obtaining economically efficient, safe, reliable, and secure energy at a reasonable cost through appropriate regulatory and market means and collaborative efforts. The Crown Hydro project does not appear to support that mission.

We question if the Crown Hydro project, as licensed but unconstructed and not operational after 20 years, and as proposed in the amendment, is economically efficient. We do not know if the equipment is being stored and maintained properly so it is safe to use if the project moves forward. Crown has not always been collaborative or reliable meeting requirement deadlines in a timely manner.

As legislators, we understand the need to balance many competing interests. Minnesota is on track to reach some ambitious energy goals. We support the Clean Power Plan and the development of renewable energy that is reasonable, prudent, and provides beneficial public uses. Our communities value renewable energy and the historic and cultural resources in the area. They want transparency in area projects and development that impact the livability of their neighborhoods.

We need to balance our goals for renewable energy with the needs of our communities. FERC needs to balance the goals for renewable energy with the realistic expectations of the project’s outcomes.

We have reservations about Crown Hydro’s financial viability and its ability to complete this project. In October 2018, the Minnesota Public Utilities Commission determined that the project was no longer in the public’s interest and required Xcel Energy to terminate the \$5.1M Renewable Development Grant awarded Crown Hydro in 2003. Xcel Energy also terminated the Power Purchase Agreement with Crown Hydro. The public has the right to know if Crown Hydro has the capacity to develop and operate the hydroelectric plant in a way that benefits consumers. Many of our constituents do not have faith in this project and believe it will cause harm to consumers.

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We do not want taxpayers to be on the hook for damaged historical assets or a misconstrued abandoned semi-constructed project.

We do not think this unconstructed Crown Hydro project, that has been given ample time and opportunity to succeed but does not have site control after 20 years, is in the best interest of taxpayers and the community. We do not think it can be completed in a way that benefits consumers. The area has dramatically changed since 1999. The project will not protect and enhance wildlife resources, water quality, recreation, and cultural resources. It conflicts and complicates planned and authorized development in the area. The potential to damage significant historic assets and cut off access to the waterfront and cultural resources overwhelmingly outweighs the possible benefits that may be delivered to the consumers.

For the reasons and concerns stated above, we respectfully repeat our request that FERC terminate the license amendment proceeding and order Crown Hydro, LLC to show cause why its license and the proposed amendment should not be terminated consistent with the *Motion of the Friends of the Lock and Dam for an Order to Show Cause* filed in this docket on January 10, 2019.

Please feel free to contact us if you have any questions. We can be reached at 651-296-7809. Thank you for your time and consideration of this request.

Sincerely,



Senator Kari Dziedzic
MN State Senate District 60



Senator Bobby Joe Champion
MN State Senate District 59

CC: (Via Email)
Senator Amy Klobuchar
Senator Tina Smith
Representative Ilhan Omar
Governor Tim Walz
Attorney General Keith Ellison
Steven Hocking, Chief Environmental and Project Review Branch Division of Hydropower
Administration and Compliance
John Fowler, Executive Director, Advisory Council on Historic Preservation
John Eddins, Program Analyst for FERC