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February 18, 2025

Debbie-Anne A. Reese  
Secretary  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426

**Re: Thompson Falls Hydroelectric Project, FERC Project No. P-1869-066;  
Third Monthly Settlement Progress Report and Requests to Designate Separated  
Staff and Grant Further Extension of Time to Facilitate Ongoing Settlement  
Negotiations**

Dear Secretary Reese:

With this letter, NorthWestern Energy (NorthWestern), licensee and owner of the Thompson Falls Hydroelectric Project No. 1869 (Project), provides the Federal Energy Regulatory Commission (Commission or FERC) the third monthly status report in the ongoing settlement negotiations related to the relicensing of the Project.<sup>1</sup> To help facilitate ongoing settlement negotiations in this relicensing proceeding, this letter also respectfully requests the Commission to: (1) designate separated staff, to be a resource as the parties seek to resolve challenging regulatory and other legal issues associated with this Project; and (2) grant a further extension of time, until December 31, 2025, for NorthWestern to respond to Questions 4 and 5 of the Commission's additional information request (AIR) issued on February 26, 2024, which concern the very issues involved in ongoing settlement discussions, i.e., NorthWestern's proposed new license measures related to fish and aquatic resources.<sup>2</sup>

As detailed below, while NorthWestern, U.S. Fish and Wildlife Service, U.S. Forest Service, Montana Fish, Wildlife and Parks, and the Confederated Salish and Kootenai Tribes (collectively, Settlement Parties) are making meaningful and steady progress in reaching settlement, granting these requests will help expedite resolution, provide needed time for the Settlement Parties to memorialize that resolution, and place the Project in the best possible position to prepare and file an Offer of Settlement that will allow the relicensing to proceed without opposition or controversy, saving the Commission both time and resources through the remaining steps of the relicensing process.

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<sup>1</sup> Commission staff has requested that NorthWestern file monthly updates on its settlement negotiations. See Letter re: Extension of Time to File Additional Information, Project No. 1869-066, Accession No. [20241121-3052](#) (issued Nov. 21, 2024).

<sup>2</sup> Request for Additional Information, Project No. 1869-066, Accession No. [20240226-3033](#) (issued Feb. 26, 2024).

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### Third Monthly Progress Report

During the past month, the Settlement Parties continued to make meaningful progress towards a relicensing settlement on fish and aquatic resources. The Settlement Parties held full-group settlement negotiations on a bi-weekly basis, with regular engagement between those meetings to address specific technical, legal, or other issues. The Settlement Parties are in the process of preparing a *Fisheries and Aquatic Resources Protection, Mitigation, and Enhancement Plan (PM&E Plan)*, which they anticipate will establish an adaptive management framework over the new license term. The *PM&E Plan* is intended to be the foundation for the relicensing settlement agreed to by the Settlement Parties. To date, the Settlement Parties have drafted the scientific and technical information sections of the *PM&E Plan*, necessary to guide adaptive management decisions over the license term. In addition, the Settlement Parties have nearly completed their work in establishing the governance of the Technical Advisory Committee (TAC), which will develop adaptive management priorities on a quinquennial basis throughout the new license term through revolving 5-Year Plans, and which will approve adaptive management measures on an annual basis (or more frequently, as needed). The Settlement Parties are also in the process of finalizing the dispute resolution protocols for the *PM&E Plan*, in the event the TAC is unable to reach consensus in its review and approval of adaptive management measures.

To help expedite resolution of the *PM&E Plan* and the initial 5-Year Plan that will establish priorities over the first five years of the new license term, the Settlement Parties—beyond their regular bi-weekly meeting cadence—have scheduled an in-person, two-day settlement workshop, which is scheduled to be held in Missoula, Montana, the first week of March 2025. During that workshop, the Settlement Parties will also review a draft settlement agreement that NorthWestern has prepared. As with all full-group settlement meetings, the two-day workshop will be facilitated by Camas, LLC.

### Request for Designation of Non-Decisional, Separated Staff

The Settlement Parties have been engaged in settlement negotiations for a considerable period of time, in an effort to develop a *PM&E Plan* to adaptively manage the Project over the new license term to address ongoing effects of the Project on aquatic resources, and particularly bull trout (*Salvelinus confluentus*), listed as threatened under the Endangered Species Act (ESA). During this engagement, complex regulatory and other legal issues have arisen among the Settlement Parties, particularly with respect to:

- Developing standards for identifying Project-related effects over the course of a long new license term;
- Addressing fish passage issues in light of the presence of FERC-licensed projects immediately downstream of the Project;
- Accommodating differing priorities of federal and state regulators for the management of aquatic resources in the Clark Fork River watershed;
- Establishing the level of specificity needed for the Commission to complete its review under the Federal Power Act (FPA) and National Environmental Policy Act, with respect to measures that will be identified over time through adaptive management;

- Recognizing the presence of a relatively new fish passage facility and challenges associated with identifying additional protection, mitigation, and enhancement measures in light of this existing environmental baseline; and
- Identifying strategies for fostering consensus-based decision making while simultaneously respecting agencies' mandatory conditioning authorities under the FPA and ESA.

These complex questions, together with the recognition that resource agencies in Montana do not frequently engage in hydropower licensing before the Commission, create a need for additional assistance from the Commission through the designation of non-decisional, separated staff. Understanding the views of separated staff on these and other important issues will help the Settlement Parties craft a settlement agreement that is consistent with Commission policy and precedent, positioning the settlement for expeditious review and approval by the Commission once the Offer of Settlement is filed.

For these reasons, NorthWestern respectfully requests that the Commission designate non-decisional staff from the Office of General Counsel to assist in ongoing settlement negotiations.

### **Request for Further Extension of Time**

As explained in the monthly progress report above, NorthWestern and the other Settlement Parties are making steady progress towards settlement. All Settlement Parties have demonstrated a strong commitment to reaching settlement through the devotion of time and staff resources, but it is apparent that more time is needed, beyond the current May 18, 2025, deadline for NorthWestern to submit its response to Questions 4 and 5 of the AIR, to reach settlement. For this reason, NorthWestern respectfully requests a further extension until December 31, 2025 to submit its response.

In submitting this request, NorthWestern is mindful and supportive of emerging priorities of the new Administration to remove impediments and delays in the authorization of energy resources—including hydropower. NorthWestern believes that the Commission's priorities for limiting delays and expediting hydropower relicensing are wholly consistent with this request to extend the deadline for responding to Questions 4 and 5 of staff's AIR until December 31, 2025. NorthWestern recognizes that granting this further extension of time would necessarily extend the Commission's issuance of public notice that NorthWestern's relicensing application is ready for environmental analysis (REA Notice). But NorthWestern is confident that this short-term delay in the relicensing process would be more than offset by a settlement agreement that would result in the relicensing process moving forward on an uncontested basis—allowing the Commission to complete its environmental review, ESA consultation, and relicensing order expeditiously, with far fewer delays and with a significantly lower risk of further delays and burdens of administrative and/or appellate litigation—which are highly likely to occur in the absence of settlement.

NorthWestern acknowledges that the Commission has granted two prior requests for an extension of time to facilitate settlement in this proceeding.<sup>3</sup> NorthWestern appreciates the Commission's patience and for the opportunity to work with Settlement Parties to find a durable, mutually agreeable solution to the complex issues related to this Project. While the extended period to date has led to meaningful progress as documented in the progress report above, additional time is needed to resolve several issues that have proven to be far more complex than originally anticipated.

These complexities concern ESA-listed bull trout—such as how to identify Project effects to this rare species and other native aquatic resources in light of the presence of passage barriers downstream, as well as the reality that NorthWestern recently constructed the existing fish passage infrastructure at this Project. Our settlement negotiations, moreover, involve resource agencies and Native American Tribes that are less experienced in hydropower relicensing than their counterparts in other regions of the country, requiring more time and careful deliberations to ensure mutual understanding of nuanced legal principles applicable to hydropower licenses. And finally, NorthWestern and other Settlement Parties are wrestling with the recognition that their long-standing and proven approach to adaptive management, including their implementation of arrangements under the existing license for the Missouri-Madison Project No. 2188, may not be fully consistent with the Commission's newer settlement policies governing relicensing,<sup>4</sup> and that changes to these prior, proven strategies are likely needed to garner Commission support for the adaptive management plan currently under development by the Settlement Parties.

For these reasons, NorthWestern submits that this request for a further extension of time is warranted and supported by good cause, as required by Rule 2008(a) of the Commission's Rules of Practice and Procedure.<sup>5</sup> In furtherance of the Commission's strong policies of expediting relicensing proceedings, NorthWestern will continue to demonstrate progress through the submittal of monthly progress reports for the extended time period. And if Settlement Parties reach an impasse in their negotiations, NorthWestern will immediately submit its response to Questions 4 and 5 of the AIR, to allow for the Commission to move forward with the relicensing process without further delay by issuing the REA Notice.

NorthWestern appreciates this opportunity to report on its settlement progress and the Commission's consideration of the requests for designation of non-decisional separated staff and further extension of time. Should you have any questions or require further information, please contact the undersigned.

Sincerely,



Charles R. Sensiba  
*Counsel to NorthWestern Energy*

<sup>3</sup> See Letter re: Extension of Time to File Additional Information, Project No. 1869-066, Accession No. [20240531-3013](#) (issued May 31, 2024); Letter re: Extension of Time to File Additional Information, Project No. 1869-066, Accession No. [20241121-3052](#) (issued Nov. 21, 2024).

<sup>4</sup> *Policy Statement on Hydropower Licensing Settlements*, 116 FERC ¶ 61,270 (2006).

<sup>5</sup> 18 C.F.R. § 385.2008(a).