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May 30, 2023

**VIA ELECTRONIC FILING**

Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NW  
Washington, DC 20426

**Re: Pensacola Hydroelectric Project, FERC Project No. 1494-438**  
**Submission of Final License Application and Request for Privileged**  
**Treatment of Non-Public Information**

Dear Secretary Bose:

In accordance with section 15(c)(1) of the Federal Power Act (FPA), 16 U.S.C. § 808(c)(1), and section 5.17(a) of the regulations of the Federal Energy Regulatory Commission (Commission or FERC), 18 C.F.R. § 5.17(a), the Grand River Dam Authority (GRDA) is pleased to file the enclosed *Final Application for License for Major Project – Existing Dam* (License Application or FLA) for the Pensacola Hydroelectric Project, FERC Project No. 1494 (Project).

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We are dedicated to [ECONOMIC DEVELOPMENT](#), providing resources and supporting economic growth.

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<sup>1</sup> *Grand River Dam Auth.*, 59 FERC ¶ 62,073 (1992).

<sup>2</sup> *Grand River Dam Auth.*, 168 FERC ¶ 62,145 (2019), *on reh'g*, 170 FERC ¶ 61,027 (2020).

<sup>3</sup> In addition to qualifying for a 50-year license term based on “significant measures expected to be required under the new license,” *Policy Statement on Establishing License Terms for Hydroelectric Projects*, 161 FERC ¶ 61,078, at P 16 (2017), GRDA plans to submit a request for the Commission to consider early action development implemented by GRDA under the existing license, pursuant to FPA section 36, 16 U.S.C. § 823g.

For purposes of the Commission's regulation of the Project under the FPA, the primary purposes of the Project are hydropower generation, water supply and public recreation—all of which are vital to meeting GRDA's statutory mandates under Oklahoma law, and all of which are addressed comprehensively in the enclosed License Application. Under the Commission-issued license, moreover, the Project also provides significant measures for fish, wildlife, and other natural resources.

### ***Hydropower Operations***

GRDA is an agency of the state of Oklahoma, created by the Oklahoma Legislature in 1935 to be a “conservation and reclamation district for the waters of the Grand River.” In meeting this mandate, GRDA utilizes a diverse portfolio of assets to generate, transmit and sell electricity to Oklahoma municipalities, electric cooperatives, and industrial customers, as well as off-system customers across a four-state region. The Project is instrumental in meeting GRDA's obligations to its electric customers—particularly with the emergence and significant penetration of variable and non-dispatchable wind and solar resources to the grid. With the current priority on decarbonizing the electric grid, GRDA must be able to operate the Project with flexibility—meeting load requirements by quickly ramping up or ramping down, depending on the availability of variable resources.

Because the expansion of variable resources is expected to continue—and even increase—in the future, elimination of the current rule curve under Article 401 of the existing license has been a high priority for GRDA. Because the Article 401 rule curve requires GRDA to target a certain elevational level at Grand Lake O' the Cherokees over the course of the year, GRDA's ability to help integrate renewables and stabilize the grid has been significantly compromised by the rule curve requirements.

To address this issue, Congress in 2019 enacted section 7612 of the National Defense Authorization Act for 2020 (NDAA 2020), which among other things prohibits the Commission and other resource agencies from “including in any license for the project any condition or other requirement relating to—(i) surface elevations of the conservation pool; or (ii) the flood pool (except to the extent it references flood control requirements prescribed by the Secretary [of the Army]).”<sup>4</sup> While section 7612 of NDAA 2020 provides that the Project “shall remain subject to the Commission's rules and regulations for project safety and protection of human health,”<sup>5</sup> this special act of Congress ensures that GRDA can continue to meet the changing needs of the electric grid—untethered to a rule curve or other similar restrictions on Grand Lake's elevational levels—by immediately responding, in real time, through increased (or decreased) generation to support the stability of the grid at all times. And although GRDA's License Application technically need not include the elimination of the rule curve as part of the proposed federal action in this relicensing proceeding—as Congress has already mandated this result under NDAA 2020 section

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<sup>4</sup> Pub. L. No. 116-92, § 7612(b)(2)(A), 133 Stat. 1198, 2312 (2019).

<sup>5</sup> *Id.* § 7612(b)(2)(B), 133 Stat. at 2312.

7612, thereby leaving no discretion to the Commission to regulate Grand Lake elevational levels under the new license<sup>6</sup>—all of the relicensing studies conducted in this proceeding demonstrate that eliminating the rule curve in favor of a more dynamic operation of Grand Lake’s conservation pool will not adversely affect fish and wildlife resources, public recreational opportunities, flood control operations of the U.S. Army Corps of Engineers (Corps),<sup>7</sup> or other Project purposes.

### ***Public Recreation***

Grand Lake is a significant economic driver in Northeast Oklahoma, contributing hundreds of millions of dollars generated in the region each year by tourism and recreation at Grand Lake. It is a premiere recreation destination in the Midwest and the crown jewel of a chain of lakes in northeastern Oklahoma. Its 45,000 surface acres of water are ideal for boating, skiing, fishing, swimming and even sailing. Grand Lake, in fact, lies in a southwest to northeast direction, providing ideal conditions for sailboat enthusiasts wishing to take advantage of prevailing winds. Grand Lake also offers a world-class bass fishery that attracts anglers from across the U.S. and internationally.

Overall, Grand Lake hosts over a million visitors each year—all to take advantage of the immense public and private recreational opportunities provided by this geographically unique and significant resource.

In the enclosed License Application, GRDA proposes to continue its strong tradition of operating, managing, and enhancing public recreational opportunities at Grand Lake. Under its relicensing proposal, GRDA will continue to operate and maintain the Wolf Creek Public Access site, Monkey Island Public Boat Ramp, Seaplane Base Public Access site, Big Hollow Public Access site, and Duck Creek Bridge Public Access site. In addition, GRDA’s relicensing proposal includes a revised Recreation Management Plan for these Project-sponsored recreational amenities, as well as an updated Shoreline Management Plan (SMP) for the effective management of the thousands of docks, slips, marinas, seawalls, and other private recreational infrastructure for which Grand Lake is famous.

### ***Natural Resources***

Finally, GRDA recognizes its responsibility, as the Commission’s licensee for the Project, to appropriately protect, mitigate damages to, and enhance fish and wildlife resources at Grand Lake. The enclosed License Application includes numerous proposed measures benefiting natural resources at the Project, including measures to protect species that are listed or proposed to be listed under the Endangered Species Act (ESA). GRDA is also proposing to continue its ongoing vegetation management program under the SMP, as well as its existing Dissolved Oxygen

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<sup>6</sup> See 40 C.F.R. § 1508.1(q).

<sup>7</sup> Congress has granted the Corps exclusive jurisdiction over flood control at the Project. See 33 U.S.C. § 709; Pub. L. No. 116-92, § 7612(c), 133 Stat. at 2313.

Mitigation Plan. The updated SMP also includes measures for enhanced wetlands protection. For cultural resources, GRDA is proposing a Historic Properties Management Plan, which has been developed in consultation with the Oklahoma State Historic Preservation Office, Oklahoma Archeological Society, and many Native American tribes that have been intensively engaged in this aspect of the relicensing effort for many years.

### ***Culmination of the Integrated Licensing Process***

Today's filing of the FLA is the culmination of a comprehensive, collaborative, and multiyear effort by GRDA in consultation with numerous federal and state resource agencies, Native American tribes, local governments, and many stakeholders, all of whom have worked under the Integrated Licensing Process (ILP) regulations over many years since the Pre-Application Document was filed in 2017.<sup>8</sup> All studies conducted in accordance with Commission staff's initial Study Plan Determination<sup>9</sup> and its subsequent Determinations on Requests for Study Plan Modifications and New Studies<sup>10</sup> have been intensively peer reviewed and scrutinized by relicensing participants, refined where needed, completed in accordance with Commission staff direction, and analyzed in the License Application—and particularly in the Exhibit E Environmental Exhibit.<sup>11</sup>

GRDA submits that the information contained in this License Application, together with additional information that has been requested by Commission staff,<sup>12</sup> will fully inform the Commission in meeting its environmental review obligations under the National Environmental Policy Act, its consultation requirements under ESA section 7 and section 106 of the National Historic Preservation Act,<sup>13</sup> as well as its obligations under the FPA in this proceeding. At this significant milestone in the relicensing process, GRDA sincerely thanks Commission staff, federal and state resource agencies, Native American Tribes, and all other relicensing participants for their diligent efforts over the last 6 years to participate in this process and help shape the studies

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<sup>8</sup> Notice of Intent to File License Application and Pre-Application Document, Project No. 1494-438, Accession Nos. 20170201-5083 & 20170201-5084 (filed Feb. 1, 2017).

<sup>9</sup> Study Plan Determination for the Pensacola Hydroelectric Project, Project No. 1494-438, Accession No. 20181108-3052 (issued Nov. 8, 2018).

<sup>10</sup> Determination on Requests for Study Modifications and New Studies for the Pensacola Hydroelectric Project, Project No. 1494-438, Accession No. 20220224-3074 (issued Feb. 24, 2022); Determination on Requests for Study Modifications and New Studies for the Pensacola Hydroelectric Project, Project No. 1494-438, Accession No. 20230314-3035 (issued Mar. 14, 2023) [hereinafter, USR Determination].

<sup>11</sup> In its March 14, 2023 Determination on Requests for Study Modifications and New Studies, Commission staff requested additional information from GRDA before deciding whether to require a contaminated sediment transport study. See USR Determination at C-3. GRDA will be filing this additional information with the Commission by July 24, 2023. See Letter from Vincent Yearick, FERC, to Darrell Townsend II, GRDA, Project No. 1494-438, Accession No. 20230329-3039 (issued Mar. 29, 2023).

<sup>12</sup> See *supra* note 11.

<sup>13</sup> 16 U.S.C. § 1536; 54 U.S.C. § 306108.

and reviews that are now submitted to the Commission for consideration as it moves forward with meeting its statutory obligations in this relicensing proceeding.

Most recently, GRDA received extensive comments from Commission staff and numerous relicensing participants on its Draft License Application, distributed on December 30, 2022. GRDA's comprehensive response to the legal and factual issues raised in these comments appears in Appendices X-1 and X-2 of the FLA.

As a result of the frequent and substantive engagement with Commission staff and relicensing participants required under the ILP, the enclosed FLA presents a more sophisticated and complete analysis of the Project and its environs due to the significant efforts of all relicensing participants over many years.

### ***FLA Organization and Contents***

The enclosed FLA was prepared in conformance with the Commission's ILP regulations, specifically the application content requirements set forth in sections 4.51 and 5.18 of the Commission's regulations,<sup>14</sup> as applicable, and consists of the exhibits listed below. In addition, recognizing that the FLA is quite voluminous and contains numerous attachments to the various license exhibits, several key appendices to the exhibits are listed below, for ease of reference.

#### **Initial Statement**

#### **Exhibit A – Project Description**

- Appendix A-5: GRDA's analysis of federal lands at the Project, including lands held by the United States in trust for Native American tribes

#### **Exhibit B – Project Operation and Resource Utilization**

#### **Exhibit C – Construction History / Proposed Construction**

#### **Exhibit D – Statement of Costs and Financing**

#### **Exhibit E – Environmental Exhibit**

- Appendix E-10: *A History of Flooding, Flood Control, and Hydropower on the Neosho (Grand) River* (2023), a Ph.D.-level historical report of flooding in the Neosho (Grand) watershed
- Appendix E-26: A draft biological assessment of the Project's effects on ESA-listed species
- Appendix E-28: Revised Shoreline Management Plan
- Appendix E-32: Draft Recreation Management Plan
- Appendix E-34: Revised draft Historic Properties Management Plan (HPMP), including a record of consultation for the development of the HPMP and GRDA's response to all comments received on the HPMP

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<sup>14</sup> 18 C.F.R. §§ 4.51, 5.18.

- Appendix E-34: GRDA's responses to all comments received on the Draft License Application (DLA) from participants in the Cultural Resources Working Group, except with respect to comments on the HPMP

Exhibit F – General Design Drawings and Supporting Information

Exhibit G – Project Boundary Maps

Exhibit H – Information Required Under 18 C.F.R. § 5.18(c)

Appendix X – Record of Consultation

- Appendix X-1: GRDA's response to all comments received on the DLA, except for comments from CRWG participants on cultural resources

### ***Public Notice of License Application and Availability for Review***

As required by the Commission's regulations, the public portions of the enclosed FLA, together with other relevant information, are being made publicly available for review and inspection in every county in which the Project is located.<sup>15</sup> Additional details will be provided in the published newspaper notices of the FLA's filing, as required by Commission regulation.<sup>16</sup>

In addition, the FLA is available on the Commission's eLibrary system, <https://elibrary.ferc.gov/elibrary>, under FERC Docket No. P-1494-438, or at GRDA's Project relicensing website at <https://grda.com/pensacola-hydroelectric-project-relicensing/>.

### ***Privileged and Confidential Information and Critical Energy Infrastructure Information***

Lastly, GRDA notes that portions of the enclosed FLA contain sensitive information related to the location and character of cultural resources, which are not to be disclosed to the public,<sup>17</sup> as well as information that constitutes Critical Energy Infrastructure Information (CEII), as defined by section 215A of the FPA,<sup>18</sup> as follows:

#### **Privileged and Confidential Information**

Appendix E-27: Terrestrial Species of Concern Report (Privileged Version)

Appendix E-34: Cultural Resource Information

Appendix X-2: Response to Comments on Cultural Resources

#### **Critical Energy Infrastructure Information**

Exhibit F: General Design Drawings and Supporting Information

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<sup>15</sup> *Id.* § 5.2(b).

<sup>16</sup> *Id.* § 5.17(d)(2).

<sup>17</sup> See *id.* § 5.6(d)(3)(x)(C); 36 C.F.R. § 800.11(c).

<sup>18</sup> See 16 U.S.C. § 824o-1.

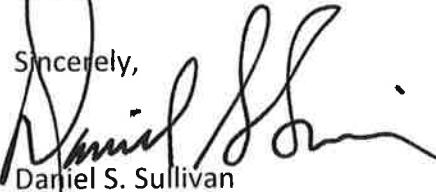
All this information is exempt from the public disclosure requirements of the Freedom of Information Act.<sup>19</sup> Due to the sensitivity of this information, moreover, GRDA, pursuant to Commission regulation,<sup>20</sup> seeks confidential treatment of these documents and requests that the Commission place all CEII and privileged and confidential information in its non-public file. As required by Commission regulation and guidance, these non-public materials have been placed in separate attachments, designated as CUI//PRIV or CUI//CEII, as appropriate, and marked "DO NOT RELEASE."

***Conclusion***

With the filing of the FLA now complete, GRDA requests that the Commission, pursuant to section 5.19(a) of its regulations,<sup>21</sup> issue a public notice by June 14, 2023, that notices GRDA's tendering of the FLA for filing and provides a preliminary schedule for its processing of the License Application.

GRDA looks forward to continuing to work with Commission staff and all relicensing participants to ensure timely issuance of a new license for the Project that is supported by the scientific record developed over many years, as well as the special provisions mandated by Congress under NDAA 2020 section 7612.

Should you have any questions regarding the enclosed FLA, please do not hesitate to contact Jacklyn Smittle, at 918-981-8473, or by email at [jacklyn.smittle@grda.com](mailto:jacklyn.smittle@grda.com).

Sincerely,  
  
Daniel S. Sullivan

Chief Executive Officer  
Grand River Dam Authority

Enclosure

cc: Attached Distribution List

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<sup>19</sup> 5 U.S.C. § 552.

<sup>20</sup> 18 C.F.R. §§ 388.112, 388.113.

<sup>21</sup> *Id.* § 5.19(a).

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