



**APPLICATION FOR LICENSE FOR
MAJOR PROJECT – EXISTING DAM**

**LAKE LIVINGSTON
HYDROELECTRIC PROJECT**

EXHIBITS A, B, C, D, F, AND G

**FEDERAL ENERGY REGULATORY
COMMISSION
FERC PROJECT NO. 12632**

VOLUME 1 OF 2

PREPARED FOR:

EAST TEXAS ELECTRICAL COOPERATIVE, INC.



PAUL C. RIZZO ASSOCIATES, INC.
EXPO MART, SUITE 270-E
105 MALL BOULEVARD
MONROEVILLE, PENNSYLVANIA USA 15146

**PROJECT No. 06-3645
MARCH 2009**

Engineering & Construction Management
Hydro-Nuclear-Fossil
Geotechnical Engineering
Seismic and Structural Engineering
Hydrological & Hydraulic Engineering
Tunnel Engineering
Environmental Engineering & Permitting

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

EAST TEXAS ELECTRIC COOPERATIVE, INC. Project No. 12632-_____

**Application for License for Major Project
Existing Dam**

Lake Livingston Hydroelectric Project – Texas

(1) East Texas Electric Cooperative, Inc. (Cooperative or Applicant) applies to the Federal Energy Regulatory Commission for an original license for the Lake Livingston Hydroelectric Project (Project), as described in the attached exhibits. The Cooperative currently holds a preliminary permit for the Project issued April 13, 2006, under Project No. 12632-000 (115 FERC ¶ 62,070).

(2) The location of the Project is:

State: Texas

Counties: Polk, San Jacinto, Trinity, and Walker

Township or Nearby Town: Livingston

Stream or Other Body of Water: Trinity River and Lake Livingston

(3) The exact name and business address of the applicant are:

East Texas Electric Cooperative, Inc.

2905 Westward Drive

P.O. Box 631623

Nacogdoches, Texas 75963

The exact name and business address of each person authorized to act as agent for the applicant in this application are:

1. Edd Hargett, Manager
East Texas Electric Cooperative, Inc.
2905 Westward Drive
P.O. Box 631623
Nacogdoches, Texas 75963
Phone: 936-560-9532
Fax: 936-560-9215
eddh@gtpower.com
2. Brian Lawson, Project Manager
GDS Associates, Inc.
1850 Parkway Place, Suite 800
Marietta, GA 30067
Phone: 770-425-8100
Fax: 770-426-0303
Brian.Lawson@GDSassociates.com
3. Michael N. McCarty, Esq.
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson St. NW
Eighth Floor, West Tower
Washington, DC 20007
Phone: 202-342-0800
Fax: 202-342-0807
Michael.McCarty@bbrslaw.com

- (4) The Applicant is cooperative corporation organized and operating under the laws of the State of Texas, and is not claiming preference under section 7(a) of the Federal Power Act, 16 U.S.C. § 796(a).
- (5) (i) The statutory or regulatory requirements of the state in which the project would be located that affect the project as proposed, with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes, and with respect to the right to engage in the business of developing, transmitting, and distributing power and in any other business necessary to accomplish the purposes of the license under the Federal Power Act, are:

Water Rights Permits – Chapter 11, Subchapter D of the Texas Water Code provides that, with certain exceptions, “no person may appropriate any state water or begin construction of any work designed for the storage, taking, or diversion of water without first obtaining a permit from the [Texas Commission on Environmental Quality (Texas CEQ)] to make the

appropriation.” (Tex. Water Code § 11.121.) The Code further provides that any holder of an existing water right permit or certificate of adjudication that wishes to alter the water right “shall obtain from the commission authority to change the place of use, purpose of use, point of diversion, rate of diversion, acreage to be irrigated, or otherwise alter a water right.” (Tex. Water Code § 11.122(a).)

Right to engage in the business of developing, transmitting, and distributing power – The Texas Electric Cooperative Corporations Act (Title 161, Texas Utilities Code), under which the Applicant is organized, gives electric cooperatives broad authority to “acquire, own, hold, maintain, exchange, or use property or an interest in property, including plants, buildings, works, machinery, supplies, equipment, apparatus, and transmission and distribution lines or systems that are necessary, convenient, or useful.” (Tex. Utilities Code § 161.121(3).) The term “acquire” is defined to include “construct.” (*Id.* § 161.002(1).) The Texas Legislature further provided that said Act “shall be liberally construed. The enumeration of a purpose, power, method, or thing does not exclude similar purposes, powers, methods, or things.” (*Id.* § 161.003.)

Section 37.051 of the Texas Utilities Code generally requires an electric utility, including an electric cooperative, to obtain a certificate of convenience and necessity (CCN) from the Public Utilities Commission of Texas (PUCT) before installing, operating or extending facilities to serve the public. An electric cooperative is not required, however, to obtain a CCN for the construction, installation, operation, or extension of any generating facilities or necessary interconnection facilities. (Tex. Utilities Code § 37.051(c).)

(ii) The steps which the applicant has taken or plans to take to comply with each of the laws cited above are:

Water Rights Permits – The Trinity River Authority of Texas (TRA) and the City of Houston, Texas (Houston) have filed applications with Texas CEQ to amend their respective certificates of adjudication for the storage and diversion of water at Lake Livingston. The purpose of the requested amendments is to add hydroelectric power generation as an additional authorized non-consumptive use of the water to which TRA and Houston already own adjudicated rights. TRA, which owns and operates Lake Livingston Dam and reservoir, has rights to approximately 30% of the reservoir’s useful storage. Houston has rights to approximately 70% of the reservoir’s useful storage. A more detailed description of TRA’s and Houston’s existing water rights is contained in Section 3.3.2.1.1 of the draft

Applicant Prepared Environmental Assessment (APEA) submitted with this application.

On April 18, 2008, TRA filed an application with Texas CEQ to amend its Certificate of Adjudication No. 08-4248 to add hydropower as an additional use. On February 12, 2009, Houston filed an application to amend its Certificate of Adjudication No. 08-4261 to add hydropower as an additional use. Both applications were filed pursuant to § 11.122 of the Texas Water Code. Texas CEQ representatives have informed the Cooperative that the amendments sought by TRA and Houston, when granted, will be the only water rights necessary to authorize the Cooperative's diversion of water for hydropower production under State water law.

Right to engage in the business of developing, transmitting, and distributing power – On March 6, 2009, the Cooperative filed with the PUCT an application to amend the Cooperative's existing CCN (Certificate No. 30190) to authorize the construction and operation of a 138-kilovolt (kV), single-circuit transmission line connecting the proposed Lake Livingston hydroelectric generating station with the Rich substation owned by the Sam Houston Electric Cooperative near Goodrich, Texas. The preferred route for the Project's primary transmission line is approximately 2.8 miles in length, and includes a 100-foot wide right-of-way.

Concurrently with the filing of its CCN amendment application, the Cooperative submitted to the PUCT a Petition for Declaratory Order, seeking a declaration that a CCN amendment is not required for the Project's transmission line. The Cooperative asserts that it is exempt from obtaining a CCN amendment because (1) the Project's transmission line is a "necessary interconnection facility" as described in § 37.051(c) of the Texas Utilities Code, and thus exempt from the CCN requirement; and (2) the Project's primary transmission line is part of the "project works" subject to the FERC's licensing jurisdiction under Part I of the Federal Power Act (FPA), and therefore, the FPA licensing process preempts the State certification requirement.

The Cooperative's application for CCN amendment and its Petition for Declaratory Order were both pending at the PUCT at the time this application was submitted to the FERC. If the PUCT grants the petition, ETEC will withdraw its application for a CCN amendment.

- (6) The name and address of the owner of existing facilities that are part of the proposed Project is:

Trinity River Authority of Texas
5300 South Collins
PO Box 60
Arlington, Texas 76004

Information Required by § 4.32 of the Commission's Regulations

- (1) Every person, citizen, association of citizens, domestic corporation, municipality, or state that has or intends to obtain and will maintain any proprietary right necessary to construct, operate, or maintain the project:

East Texas Electric Cooperative, Inc. intends to acquire by easement or other valid instrument any proprietary rights necessary to construct, operate, or maintain the project.

- (2) (i) Every county in which any part of the project and any Federal facilities that would be used by the project would be located:

Polk County
c/o County Clerk
Polk County Court House
101 West Church Street
P.O. Drawer 2119
Livingston, Texas 77351

San Jacinto County
c/o County Clerk
San Jacinto County Courthouse
Byrd St. & Church St.
P.O. Box 669
Coldspring, TX 77331

Trinity County
c/o County Clerk
Trinity County Courthouse
Hwy. 287 & Hwy. 94
P.O. Box 456
Groveton, TX 75845

Walker County
c/o County Clerk
Walker County Courthouse
1100 University Ave., Room 208
Huntsville, TX 77340

(ii) Every city, town, or similar local political subdivision: (A) in which any part of the project, and any Federal facilities that would be used by the project, would be located; or (B) that has a population of 5,000 or more people and is located within 15 miles of the project dam:

To the best of the applicant's information and belief, no part of the proposed project would be located within the boundaries of any incorporated city, town, or other local political subdivision (other than the above listed counties).

No Federal lands or facilities would be used by the project or included in the proposed project boundary.

The following municipality is located within 15 miles of the existing dam:

City of Livingston
c/o City Manager
200 West Church Street
Livingston, Texas 77351
(936) 327-4311

(iii) Every irrigation district, drainage district, or similar special purpose political subdivision: (A) in which any part of the project, and any Federal facilities that would be used by the project, would be located; or (B) that owns, operates, maintains, or uses any project facilities or any Federal facilities that would be used by the project:

Trinity River Authority of Texas
5300 South Collins
PO Box 60
Arlington, Texas 76004

(iv) Every other political subdivision in the general area of the project that there is reason to believe would likely be interested in, or affected by, the application:

City of Houston
Department of Public Works and Engineering
611 Walker, 21st Floor
Houston, TX 77002
(713) 641-9153

Coastal Water Authority
1200 Smith St., Suite 2260
Houston, TX 77002
(713) 658-9020

City of Huntsville
City Hall
1212 Avenue M
Huntsville, Texas 77340
(936) 291-5403

City of Trinity
101 W. Madison
P.O. Drawer 431
Trinity, TX 75862
(936) 594-2507

City of Coldspring
P.O. Box 247
Coldspring, TX 77331

City of Onalaska
P.O. Box 880
Onalaska, TX 77360

City of Point Blank
P.O. Box 474
Point Blank, TX 77364

(v) All Indian tribes that may be affected by the project:

Alabama and Coushatta Tribes
Route 3, Box 640
Livingston, TX 77351

Caddo Nation of Oklahoma
P.O. Box 487
Binger, OK 73009

Kickapoo Traditional Tribe of Texas
HC 1, Box 9700
Eagle Pass, TX 78852

- (3) The Applicant, on or before the date of filing this application, has made a good faith effort to give notice of the filing of the application by certified mail to: (A) each owner of record having any interest in the property within the proposed project boundary; and (B) each of the entities listed in paragraphs (2)(i) through (2)(v) above, as well as other federal, state and local agencies and political subdivisions that would likely have an interest in the proposed Project. The notification includes the name, business address, and telephone number of the Applicant, as well as a copy of Exhibit G of the application (in reduced format), and states that the application is being filed with the Commission.

VERIFICATION

This application is executed in the:


State of TEXAS

County of NACOGDOCHES

by: Edd Hargett, Manager

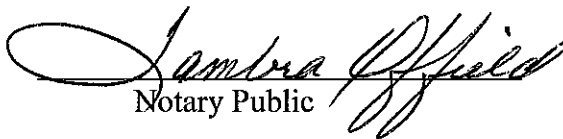
East Texas Electric Cooperative, Inc.
2905 Westward Drive
Nacogdoches, TX 75961

who, being duly sworn, deposes and says that the contents of this application are true to the best of his knowledge or belief. The undersigned applicant has signed the application this 19th day of March, 2009.

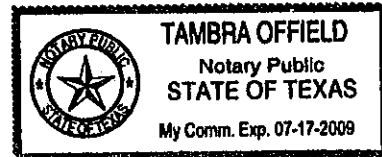


Edd Hargett, Manager

Subscribed and sworn to before me, a Notary Public of the State of Texas this 19th day of March, 2009.



Notary Public



/SEAL/