

136 FERC ¶ 62,146
 UNITED STATES OF AMERICA
 FEDERAL ENERGY REGULATORY COMMISSION

Upper Peninsula Power Company	Project No.	2506-193
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ORDER AMENDING LICENSE

(Issued August 16, 2011)

1. On May 31, 2011, Upper Peninsula Power Company, licensee for the Escanaba Hydroelectric Project, filed a request to amend its license with respect to the self reporting requirements for flow release or reservoir elevation deviations under Articles 401 and 402 and in its approved plan to monitor reservoir elevation and stream flow. The project is located on the Escanaba River, in Delta and Marquette Counties, Michigan.

Background

2. On January 11, 2011, a meeting was held between Commission staff and the licensee to discuss the licensee's compliance and maintenance programs, including self-reported deviation filings and any proposed changes to resolve the deviations issues.

License requirements

3. Article 401 requires the licensee to operate each of the project's developments in a run-of-river mode for the protection of aquatic resources in the Escanaba River. The licensee shall at all times act to minimize the fluctuations of reservoir surface elevations by maintaining a discharge from each development of the project so that, at any point in time, flows, as measured immediately downstream of each project tailrace, approximate the sum of inflows to each project reservoir. Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the licensee, or for short periods of time upon mutual agreement between the licensee, the Michigan Department of Natural Resources and the U.S. Fish and Wildlife Service. If the flow is so modified, the licensee shall notify the Commission and the Michigan Department of Natural Resources as soon as possible, but no later than 10 days after each such incident.

4. Article 402 requires the licensee to maintain the following target reservoir surface elevations: (1) 603.08 ± 0.34 ft. U.S. Geological Survey datum at the Dam No. 1 development; (2) 665.08 ± 0.34 ft. U.S. Geological Survey datum at the Dam No. 3 development; and (3) 901.50 ± 0.50 ft. U.S. Geological Survey datum at the Dam No. 4

development, which was temporarily agreed upon between the licensee and the MDNR on November 6, 2008. These target reservoir surface elevations may be temporarily modified if required by operating emergencies beyond the control of the licensee, for short periods upon mutual agreement between the licensee and the Michigan Department of Natural Resources, to implement the Flow Augmentation Plan as required by article 408 of this license, or to satisfy the requirements of the National Pollution Discharge Elimination System permit for Mead Publishing Paper Division's paper mill discharge located in the Dam No. 2 impoundment. If the reservoir water surface elevation is so modified, the licensee shall notify the Commission and the Michigan Department of Natural Resources as soon as possible, but no later than 10 days after each such incident.

5. The approved Run-of River Monitoring Plan dated April 24, 1996, states:

If flows through any one of the developments, as measured by the approved gaging system, deviate from the run-of-river requirements under article 401, or the reservoir elevation requirements under Article 402, the licensee shall file a report with the Commission, the U.S. Fish Wildlife Service and the Michigan Department of Natural Resources within 30 days of the incident. The report shall, to the extent possible, identify the cause, severity, and duration of the incident, and any observed or reported adverse environmental impacts resulting from the incident. The report shall also include: 1) operational data necessary to determine compliance with articles 401 and 402; 2) a description of any corrective measures implemented at the time of occurrence and the measures implemented or proposed to ensure that similar incidents do not recur; and 3) comments or correspondence, if any, received from the resource agencies regarding the incident. Based on the report and the Commission's evaluation of the incident, the Commission reserves the right to require modifications to project facilities and operations to ensure future compliance.

Proposed Amendments

6. The licensee indicated that it files numerous reports with the Commission due to very brief and small deviations from flow-based requirements and that to obtain administrative relief, the licensee proposes that the Commission amend Articles 401 and 402 and the approved monitoring plan, and include the following flow release or reservoir elevation deviations self-reporting requirement:

If flow releases or reservoir elevations are modified outside of the license requirements for a time period less than 60 minutes and the modification does not result in the observation or reporting of any negative environmental effects, notifications/reports to the Commission and the interested agencies/stakeholders will take place on an annual basis. The report with explanations for each flow release and reservoir elevation deviation, and corrective measures implemented during the calendar year, shall be provided to the Michigan Department of

Natural Resources and the U.S. Fish and Wildlife Service by January 31st in the subsequent calendar year. The licensee shall file the final annual flow release and reservoir elevation deviation report with the Commission by February 28, along with any resource agency comments and the licensee's response to the comment(s.)

Consultation

7. The licensee consulted with the Michigan Department of Natural Resources (Michigan DNR) and the U.S. Fish and Wildlife Service on the requested amendments. The agencies supported the amendment proposal. However, the Michigan DNR requested that the licensee continue to internally develop the reports within 10 days of each incident to preserve the information for use in the annual report. The licensee concurred.

Review

8. The licensee states that a good number of the self-reported deviations are the result of natural events or malfunction of monitoring equipment. The licensee stated that a less rigorous reporting requirement would reduce the paperwork burden for both the licensee and the Commission.

9. A review of the record, from August 2010 to August 2011, indicates that a total of 16 deviations were reported. The causes of these deviations include transmission line trips, Tainter gate operation problems, reduced reservoir storage in anticipating floods, and unit trips due to equipment malfunctions. The exceedance of elevation ranged from 0.57 foot below the lower limit to 0.77 foot above the upper limit. The flow deviation duration lasted from nine minutes to eight hours and 25 minutes.

10. The proposed amendment as modified in ordering paragraphs (B) and (C) of this order will eliminate the requirement for the licensee to report minor, short-term deviations that result in no negative environmental effects as they occur; however, these deviations will be included in the annual report. The annual report should identify the cause, severity, and duration of the incident. The report should also include:

1) operational data necessary to determine compliance with the operating range requirement; 2) a description of any corrective measures implemented at the time of the occurrence and the measures implemented or proposed to ensure that similar incidents do not recur; and 3) comments or correspondence, if any, received at the time of occurrence from the resource agencies or other interested parties regarding the incident. Additionally, ordering paragraph (D) reserves the Commission's authority to make modifications to the reporting requirement to ensure future compliance.

11. All deviations that last longer than one hour or result in environmental impacts must be reported to the Commission within 30 days of the date that the data become

available. The report should include the information described above along with an account of the environmental impacts associated with the deviation.

12. In January 2011, Commission staff met with the licensee to discuss the numerous self reported deviations from the license conditions. The licensee demonstrated that it has developed an excellent compliance program. Further, the licensee has diligently self reported all deviations that have occurred. Accordingly, the licensee's proposed amendment, as modified, should be approved.

The Director orders:

(A) Upper Peninsula Power Company's (licensee) request to amend the reporting language of license Articles 401 and 402 and the approved Run-of-River Monitoring Plan, filed on May 31, 2011, as modified in ordering paragraphs (B) and (C) of this order, is approved.

(B) The reporting requirements under license Articles 401 and 402 and the approved Run-of-River Monitoring Plan are revised to read:

If instream flows and reservoir elevations deviate from the license requirements of Articles 401 and 402 and the approved monitoring plan for a time period less than 60 minutes, and the deviation does not result in the observation or reporting of any negative environmental effects, notifications/reports to the Commission and the interested agencies/stakeholders shall take place on an annual basis. The report shall, to the extent possible, identify the cause, severity, and duration of the incident, and any observed or reported adverse environmental impacts resulting from the incident. The report shall also include: 1) operational data necessary to determine compliance with the operating range requirement; 2) a description of any corrective measures implemented at the time of the occurrence and the measures implemented or proposed to ensure that similar incidents do not recur; and 3) comments or correspondence, if any, received from the resource agencies or other interested parties regarding the incident. The report shall be provided to the Michigan Department of Natural Resources and the U.S. Fish and Wildlife Service by January 31st in the subsequent calendar year of any recorded deviation. The licensee shall file its annual instream flow and reservoir elevation deviations report with the Commission by February 28, along with any resource agency comments and the licensee's response to the comment(s.) Based on the report and the Commission's evaluation of the data, the Commission reserves the right to require modifications to project facilities and operations to ensure future compliance. All deviations that last longer than one hour or result in environmental impacts must be reported to the Commission within 30 days of the date that the data become available. The report shall include the information described above along with an account of the environmental impacts associated with the deviation.

(C) Based on the reports and the Commission's evaluation of the data in the reports, the Commission reserves the right to: 1) determine that any incident (that was not reported at the time of occurrence) in the report is a license violation; or 2) require modifications to the license reporting requirements, project facilities and operations to ensure future compliance.

(D) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2006), and the Commission's regulations at 18 C.F.R. § 385.713 (2011). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

William Guey-Lee
Chief, Engineering Resources Branch
Division of Hydropower Administration
and Compliance

Document Content(s)

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