

140 FERC ¶ 62,147
 UNITED STATES OF AMERICA
 FEDERAL ENERGY REGULATORY COMMISSION

Upper Peninsula Power Company	Project No.	2506-220
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ORDER AMENDING LICENSE

(Issued August 27, 2012)

1. On May 7, 2012, and supplemented July 30, 2012, Upper Peninsula Power Company, licensee for the Escanaba Hydroelectric Project, filed a request to amend its license with respect to the reporting requirements for flow augmentation releases or reservoir elevation deviations under Articles 401, 402, and 408 of the license, and in its approved plan to monitor reservoir elevation and stream flow, for such periods when the licensee is required to provide diversion and augmentation flows to comply with the National Pollution Discharge Elimination System (NPDES) permit and water quality standards downstream.

License requirements

2. 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 (FWS). If the flow is so modified, the licensee shall notify the Commission and the Michigan Department of Natural Resources (MDNR) as soon as possible, but no later than 10 days after each such incident.

3. 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 MDNR, 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.

4. Article 408 requires the licensee to file a final flow augmentation plan for approval. The purpose of the flow augmentation is to enhance the thermal regime of the Escanaba River downstream of Dam No. 4 (Boney Falls Development).

5. Under Article 402 of the license and the approved Run-of-River Monitoring Plan dated April 24, 1996, the licensee is permitted to deviate from the reservoir elevation requirement at Dam #1, to divert water over the spillway to comply with the National Pollution Discharge Elimination System (NPDES) permit of the upstream paper mill. This diversion of water over the spillway requires the licensee to report to the Commission and MDNR within 10 days because it causes the upper headwater elevation to exceed the license requirements.

6. Under Article 408 of the Order Issuing License dated July 13, 1995 and the Order Approving Flow Augmentation Plan dated January 15, 1997, at Dam #4 (Boney Falls Development), the licensee is required to augment downstream flows during the summer, if certain conditions are met. This augmentation action requires reporting to the Commission and MDNR within 10 days.

Proposed Amendment

7. The licensee proposes to amend Articles 401 and 402, the Order Modifying and Approving Run-of-River Monitoring Plan, and the Order Approving Flow Augmentation Plan to report all diversion and augmentation of flow events under Articles 402 and 408, provided there are no observable adverse environmental impacts, annually beginning in 2013. The licensee proposes to include them in the same annual report that contains deviations less than 60 minutes in duration.¹

¹ See Order Amending License Articles 401 and 402 and the Approved Run-of-River Monitoring Plan dated August 16, 2011.

Consultation

8. The licensee consulted with the FWS and MDNR on the proposed amendment. The FWS did not respond with comments in the initial consultation, and later responded with no comment for the proposed amendment. The MDNR requested that the licensee continue to provide electronic notification for the 2012 season. The licensee agrees to provide a 10-day electronic notification during the 2012 season and will consult with the MDNR in January 2013 to eliminate the need for the 10-day notification.

Review

9. The licensee states that the diversion and augmentation flow events at the Escanaba Project have become common and routine occurrences each year. For example, in 2011, the licensee conducted five diversion events from July 27, 2011, through September 29, 2011, and filed two separate reports with the Commission, MDNR, and FWS. Also in 2011, thirty-three augmentation events were conducted, and eight separate deviation reports were filed with the Commission and MDNR. Therefore, a less rigorous reporting requirement would reduce the paperwork burden for both the licensee and the Commission.

10. The proposed amendment will eliminate the requirement for the licensee to report as they occur, the deviations that result in no negative environmental effects, and caused by diversion and augmentation flow events under Article 408; 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. Accordingly, the licensee's proposed amendment, as modified by ordering paragraphs (B) and (C), should be approved. Additionally, ordering paragraph (C) reserves the Commission's authority to make modifications to the reporting requirement to ensure future compliance.

11. All deviations caused by diversion and augmentation flow events that 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 deviations.

The Director orders:

(A) Upper Peninsula Power Company's (licensee) request, filed on May 7, 2012, to amend the reporting requirements of Articles 401 and 402 and the approved Run-of-River Monitoring Plan, and the Final Flow Augmentation Plan, for times when the licensee is required to provide diversion and augmentation flows to comply with the National Pollution Discharge Elimination System permit and water quality standards, 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.

Further, the licensee may include in the report, on an annual basis, deviations caused by the licensee's deliberate water diversions to comply with its National Pollution Discharge Elimination System permit under Article 402, and flow augmentation events under Article 408 to enhance the downstream thermal regime.

(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. § 825 *l* (2006), and the Commission's regulations at 18 C.F.R. § 385.713 (2012). 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
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Document Content(s)

P-2506-220.DOC.....1-5