

101 FERC ¶ 61,338
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell

Wisconsin Power and Light Company

Project No. 11162-005

ORDER DENYING REHEARING

(Issued December 20, 2002)

1. Wisconsin Power and Light Company (Wisconsin Power) has timely requested rehearing of our October 11, 2002 order amending its license for the Prairie du Sac Hydroelectric Project to add a fishway prescription submitted by the Secretary of the Interior.¹ Because the prescription is mandatory, we deny rehearing.

DISCUSSION

2. The June 2002 order issuing a license for the Prairie du Sac Project concluded, based on the Environmental Assessment of the project, (1) that there is no technically feasible means to provide upstream passage at the project; (2) that there is no evidence that fish entrainment and turbine mortality at the project are adversely affecting fish populations; and (3) that downstream protection devices would be unduly costly. Pursuant to the Interior Secretary's request, the license also reserved the Commission's authority to impose on the license "such fishways as may be prescribed by" the Secretary pursuant to Section 18 of the Federal Power Act.²

3. On rehearing of the license order, Interior invoked its reserved authority to impose a fishway prescription, which our October 11 order placed in the license.

¹101 FERC ¶ 61,055. The project, located on the Wisconsin River in Sauk and Columbia Counties, Wisconsin, was issued an original license on June 27, 2002. 99 FERC ¶ 62,225 (2002).

²16 U.S.C. § 811.

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4. Wisconsin Power's November 12 request for rehearing argues that the Commission did not justify its reversal on the fishway issue and did not provide substantial evidence for the prescription. The company does not refer to Section 18 or to Interior's invocation of its prescription authority. The Commission has no authority to amend or reject a Section 18 prescription that is timely filed before issuance of a license or, as here, that is filed after license issuance pursuant to reserved authority.³ Consequently, Wisconsin Power's only recourse is before a U.S. District Court of Appeals.⁴

The Commission orders:

The request for rehearing filed by Wisconsin Power and Light Company on November 12, 2002, is denied.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.
Deputy Secretary

³See *American Rivers v. FERC*, 187 F.3d 1007 (9th Cir. 199), *reh'g denied*, 201 F.3d 1186 (9th Cir. 2001).

⁴See Section 313 of the Federal Power Act, 16 U.S.C. § 8251.