

113 FERC ¶ 61,267
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

PPL Holtwood, LLC

Project No. 487-041

ORDER ON REHEARING AND CLARIFICATION

(Issued December 15, 2005)

1. On July 8, 2005, the Director, Office of Energy Projects, issued an order approving in part an offer of settlement and issuing a new license, pursuant to sections 4(e) and 15 of the Federal Power Act,¹ to PPL Holtwood, LLC (PPL) to continue operation and maintenance of the 44-megawatt Wallenpaupack Hydroelectric Project No. 487.² The Wallenpaupack Project is located on Wallenpaupack Creek and Lackawaxen River within the Delaware River Basin in Pike and Wayne Counties, Pennsylvania. The July 8 Order included as conditions of the license a number of provisions of a Settlement Agreement among various federal and state agencies, and local entities.
2. On August 8, 2005, PPL filed a request for clarification or, in the alternative, rehearing of numerous conditions of the new license. For the reasons discussed below, the Commission grants in part the requested clarifications,³ and denies rehearing as to:

¹ 16 U.S.C. §§ 797(e) and 808, respectively.

² *PPL Holtwood, LLC*, 112 FERC ¶ 62,012 (2005).

³ This order clarifies the following license articles: Articles 401 (total dissolved gasses study plan), 402 (comprehensive water quality and flow monitoring plan), 404 (hydrogen sulfide odors), 405 (compliance with target lake levels), 406 (spring trout fishing enhancement), 409 (shoreline management plan), 410 (recreation plan), 411 (boating releases), and 415 (use and occupancy). In addition, we are making several
(continued)

- (1) the deadline for filing Exhibit G (project boundary) drawings (Article 301);
- (2) Commission approval of hydrogen sulfide odor control measures (Article 404); and
- (3) preparation of an annual report on recreation facilities (Article 410).

Discussion

A. Article 301 (Exhibit G Maps of Project Boundary)

3. Article 301 requires PPL to file, within 90 days of license issuance, Exhibit G (project boundary) maps. Article 410 requires PPL to submit for Commission approval, within one year of the license issuance, a recreation plan that provides for, among other things, construction of an interpretive trail leading to the wetlands area below the dam. PPL states that it likely will need to revise the Exhibit G maps once it designs the interpretive trail. To avoid a second filing of Exhibit G drawings, PPL asks the Commission to revise Article 301 to delay the submittal of Exhibit G maps until after the recreation plan is approved.

4. We will not extend the deadline for filing the Exhibit G maps as PPL requests. While the establishment of a project boundary does not change property rights, boundaries make it easier for the Commission, the licensee, and other interested entities to understand the geographic scope of the project. PPL filed three Exhibit G maps with its application. The majority of the costs will be incurred when PPL conforms these Exhibit G maps to our requirements.⁴ Only one of the maps may need to be revised to include the trail, and any revision should be minimal. PPL's request is accordingly denied. We will however extend the Exhibit G deadline to 30 days from issuance of this order.

B. Article 401 (Total Dissolved Gasses Study Plan)

5. Article 401 requires PPL to file for Commission approval a plan to comply with section 3.6 of the Settlement. That section requires PPL to operate the project's turbine aeration system, and to study the effects of that operation on total dissolved gasses and aquatic life.

other revisions to the license, as explained in this order, including attaching pertinent provisions of the Settlement for ease of administering the license.

⁴ The maps that PPL filed are not stamped by a registered land surveyor and do not show longitude and latitude with three non-linear points, consistent with Article 301 and Commission regulations, 18 CFR §§ 4.39 and 4.41 (2005).

6. PPL asks the Commission to clarify that the plan required by Article 401 is not for operating the aeration system, but rather is for studying the effects of that operation. PPL's reading of Article 401 is correct, and we will revise Article 401 accordingly.

C. Article 402 (Comprehensive Water Quality and Flow Monitoring Plan)

7. Article 402 requires PPL to develop a plan for implementing the water quality, flow monitoring, and reporting requirements required by Condition No. 2 of the project's water quality certification. PPL may not implement the plan until the Commission approves it.⁵

8. PPL explains that, pursuant to its National Pollutant Discharge Elimination System permit, effective on October 1, 2004, PPL is already monitoring effluents (as required by Condition No. 2). PPL therefore asks the Commission to clarify that it need not stop this monitoring pending approval of the Article 402 Plan. PPL is correct, and we will so modify Article 402.

D. Article 404 (Hydrogen Sulfide Odor Experimental Measures)

9. Article 404 requires PPL to file a report describing the measures PPL has implemented to address hydrogen sulfide odors along the Lackawaxen River below the powerplant release, and the effectiveness of those measures.

10. PPL installed an experimental hypolimnetic aeration system in the project forebay in October 2004 and began monitoring air quality at that time. On February 14, 2005 (prior to issuance of the new license), PPL filed a report with the Commission describing the system and the results of field studies performed in 2004. PPL asks the Commission to clarify that it will consider this report as the required Article 404 filing. We will do so, and Commission staff will evaluate the report under the requirements of that article.

11. Within 90 days of completion of experimental measures and studies, Article 404 also requires PPL to file a plan that contains a supplemental status report summarizing any studies and measures recommended for implementation as a result of consultation with the Pennsylvania Department of Environmental Protection and other entities. PPL states that it intends to continue to monitor the effectiveness of its aeration system

⁵ PPL asks the Commission to clarify that the scope of the water quality monitoring required by the July 8 Order is not broader than the monitoring required in the water quality certification and the Settlement (section 3.19). We so clarify.

during the summer and fall of 2005 and will discuss with relevant agencies the need for any further experimental studies and measures following completion of the additional performance testing in 2005.

12. If the agencies and the licensee determine that no additional measures are needed, PPL seeks clarification that it can leave in place, without further Commission approval, the currently effective hypolimnetic aeration system. We decline to grant this clarification. The licensee's report will summarize the 2005 testing results and can contain a recommendation for no further measures, but it is for the Commission to adopt such a recommendation or to require additional measures.⁶

E. Article 405 (Lake Elevation Targets)

13. Article 405 adopts the provisions of the Settlement (section 3.2 and Settlement Attachment A) requiring PPL to manage the project's reservoir through monthly lake elevation targets. PPL asks the Commission to clarify that the target lake elevations for the November 16 to June 1 time period are non-binding operational goals and that PPL's failure to meet these targets will not constitute a violation of its license. We grant the requested clarification.

F. Article 406 (Spring Trout Fishing Enhancement) and Article 411 (Boating Releases)

14. Article 406 requires PPL, within six months of license issuance, to file a plan to implement the measures in Settlement section 3.4 to restrict power generation during the spring trout season. PPL explains that the requirements of that section are complete and specific enough that additional elaboration in the form of a plan is not necessary. We agree and will modify Article 406 accordingly.

15. In addition, PPL notes that it has been implementing the Article 406 requirements, as well as the boating flow releases required by Article 411, on a voluntary basis for several years and asks that we therefore make these license conditions effective immediately. We will revise Articles 406 and 411 to require immediate compliance.

⁶ For the same reasons, the licensee cannot discontinue the Temperature Regulation Program for Trout Enhancement (approved in Ordering paragraph (F) of the relicensing order and required by Article 403, 112 FERC at 64,027 and 029) without prior Commission approval. We will amend Ordering paragraph (F) to make this clear.

G. Article 409 (Shoreline Management Plan)

16. Article 409 requires PPL to file a shoreline management plan for Lake Wallenpaupack that includes a permitting program for boat docks, shoreline improvements, and maintenance activities of adjacent land owners. The plan cannot be implemented without prior Commission approval.

17. PPL states that it has been operating under the current shoreline permitting program since 1994,⁷ and asks that we clarify that it should continue to rely on that plan until PPL files, and the Commission approves, the new plan. PPL's understanding is correct. In situations like the one PPL describes, licensees, unless otherwise directed by the Commission, should continue to comply with the conditions of the prior license until the conditions or approved plans of the relicense become effective.

H. Article 410 (Recreation Plan)

18. Article 410 requires PPL to file final design drawings for the project recreation facilities listed in Settlement sections 3.10-3.17 and an annual report on any new recreation facilities or other recreation enhancements provided by the Pennsylvania Fish and Boat Commission (Boat Commission) within the project boundary or along the Lackawaxen River below the project implemented under Settlement section 3.11.⁸

19. PPL states that the Boat Commission, not PPL, will provide new recreational fishing and boating enhancements within the project boundary, and therefore asks the Commission to confirm that PPL may rely on the accuracy of whatever information it receives from the Boat Commission to prepare its annual report. PPL is incorrect. Given that PPL will be responsible for complying with this reporting requirement, PPL must bear the responsibility that any information it files with the Commission is accurate.

20. PPL also asks the Commission to confirm its understanding that it need only file design drawings of project recreation facilities, such as campgrounds, fishing piers, parking lots, and trails, and not of things such as marking navigation hazards, brush

⁷ The program is referenced in PPL's revised Exhibit R filing of September 10, 1993. *See Pennsylvania Power and Light Co.*, 66 FERC ¶ 62,075 (1994) (order approving revised Exhibit R and noting existence of permitting program).

⁸ Funding of these facilities and enhancements will come from annual payments of \$11,000 PPL will make to the Boat Commission. *See Settlement section 3.11.*

clearing, or dock installation by the Boat Commission. We confirm PPL's understanding.⁹

I. Article 415 (Use and Occupancy)

21. Article 415 authorizes PPL to convey interests in, and to permit the use and occupancy of, project lands and waters without prior Commission approval, subject to certain conditions. PPL asks the Commission to clarify that subsection (c) of that article authorizes PPL to convey, without prior Commission approval but subject to an annual reporting requirement, interests in project lands for the purposes described therein. We so clarify.

The Commission orders:

(A) PPL Holtwood, LLC's request for clarification or rehearing, filed August 8, 2005, in this proceeding is granted to the extent set forth in this order and denied in all other respects.

(B) The deadline in Article 301 for filing Exhibit G drawings is extended to 30 days from issuance of this order.

(C) The July 8, 2005 Order on offer of settlement and issuing new license, 112 FERC ¶ 62,012, is revised as follows:

(1) Ordering paragraph (F) is revised to read: "The Water Temperature Regulation Program, Section 3.3 and Attachment B of the Settlement, is approved and made part of this license, with the exception of paragraph B.8 of Attachment B."

(2) The first paragraph of Article 401 is revised to read:

Article 401. Total Dissolved Gasses Study Plan. Within three months of license issuance, the licensee shall file, for Commission approval, a plan to study the effects of turbine aeration system operation on total dissolved gasses. The plan shall be prepared in accordance with the Settlement section 3.6 and shall

⁹ In addition, we will revise Article 410 to require the licensee to include, and file design drawings for, all existing project recreational facilities (in addition to Settlement-related measures).

include a schedule for completing the study and filing the results with the Commission within 90 days of the study's completion.

(3) The second sentence of the last paragraph of Article 402 is revised to read: "The plan shall not be implemented until the licensee is notified by the Commission that the plan is approved, except that the licensee shall continue monitoring effluents pursuant to the National Pollutant Discharge Elimination system permit (effective on October 1, 2004) prior to Commission approval of the plan."

(4) Article 404 is modified in the first sentence of the second paragraph by changing "other concerned parties" to "signatories of the Settlement."

(5) Article 406 is revised to read:

Article 406. *Spring Trout Fishing Enhancement.* The licensee shall, upon issuance of this order, implement section 3.4 of the Settlement, which requires restricted generation during spring trout season.

(6) The first sentence of Article 410 is modified to read: "Within one year of license issuance, the licensee shall file, for Commission approval, a plan for operating and maintaining all existing project recreation facilities and for implementing the recreation-related measures described in sections 3.10 through 3.17 of the Settlement." In addition, the second paragraph is amended by changing phrases (a) and (d) to read: "(a) final design drawings of all project recreation facilities, including those listed in sections 3.13 through 3.16 of the Settlement; ... (d) a schedule for filing an annual report on any new facilities or other enhancements implemented under section 3.11 of the Settlement;"

(7) The first sentence of Article 411 is modified to read: "The licensee shall, upon issuance of this order, implement the boating flow release program shown below and specified in section 3.5 of the Settlement."

(D) The license for the Wallenpaupack Project No. 487 is amended to attach, for clarity and information, the document attached to this Order titled "Appendix B." This document includes the following portions of the Settlement Agreement filed with the Commission on June 30, 2004: Section 1.1 (Definitions); pertinent portions of section

Project No. 487-041

9

3.0 (Specific Terms of Agreement); Settlement Attachment A (Monthly Lake Target Schedules); Settlement Attachment B (Temperature Regulation Program); and Settlement Attachment D (Water Quality Monitoring).

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.