

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Seneca Falls Power Corporation	Project No. 2438
Tomahawk Power and Pulp Company	Project No. 2239
Cameron Gas & Electric Company, d/b/a Grand River Power Company	Project No. 11150
Commonwealth Power Company (Not consolidated)	Project Nos. 11120, 11300, and 11516

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued November 9, 2005)

1. With this order the Commission approves a Stipulation and Consent Agreement (Agreement) between the Enforcement Division of the Office of Market Oversight and Investigation (Enforcement) and American Energy, Inc. (American Energy), for itself and by and on behalf of its wholly owned subsidiaries. The Agreement resolves all issues arising from a non-public, preliminary investigation conducted by Enforcement and staff from the Division of Hydroelectric Administration and Compliance (DHAC), Office of Energy Projects, pursuant to Part 1b of the Commission's Regulations.¹ American Energy and the Licensees admit to numerous violations of our safety regulations and conditions of their Licenses. The Agreement includes a compliance plan and schedule for American Energy to remedy all outstanding compliance deficiencies, and imposes a total penalty of \$300,000, a portion of which we will conditionally remit if American Energy comes into, and maintains, full compliance.

A. Background

2. American Energy is a holding company which owns Seneca Falls Power Corporation (Seneca Falls), Licensee for the Seneca Falls Project, No. 2438;² Tomahawk

¹ 18 C.F.R. Part 1b (2005).

² *Seneca Falls Power Corporation*, 78 FERC ¶ 62,113 (1997).

Power and Pulp Company (Tomahawk), Licensee for the Kings Dam Project, No. 2239;³ Cameron Gas & Electric Company (Cameron), d/b/a Grand River Power Company, Licensee for the Smithville & Mix Project, No. 11150;⁴ and Commonwealth Power Company (Commonwealth), Licensee for the Middleville Project, No. 11120,⁵ the LaBarge Project, No. 11300,⁶ and the Irving Project, No. 11516.⁷

3. Subsidiaries of American Energy assumed ownership of, and responsibility for complying with statutes and regulations applicable to, the six projects on or about: November 22, 1999, at Tomahawk; May 10, 2000, at Cameron; September 25, 2000, at Seneca Falls; and March 27, 2002, at Commonwealth.

4. The License for each of the projects requires the Licensee to operate the project safely. In addition, each License contains numerous conditions and requirements for the Licensees to consult with the United States Fish & Wildlife Service, the relevant state departments of natural resources, other resource agencies, and local governments, prior to submitting reports or plans to the Commission with respect to various matters. The matters relate to project operations, recreational facilities, water quality monitoring, erosion control, and spill containment, among others.

B. Violations

5. Seneca Falls, Tomahawk, Cameron, and Commonwealth each failed to comply timely with notices of safety violations that the Commission's Regional Engineers in New York and Chicago, and DHAC, have issued under section 31 of the Federal Power Act (FPA).⁸ In addition, the Licensees violated numerous conditions of their licenses for the six projects.

6. With respect to Seneca Falls, between September 25, 2000, and June 11, 2002, the Licensee failed to comply with many license conditions and safety-related directives from the Regional Engineer, leading to issuance of a Compliance Order on June 11,

³ *Tomahawk Power and Pulp Company*, 76 FERC ¶ 61,055 (1996).

⁴ *Cameron Gas & Electric Company*, 96 FERC ¶ 62,182 (2001).

⁵ *Commonwealth Power Company*, 98 FERC ¶ 62,211 (2002).

⁶ *Commonwealth Power Company*, 98 FERC ¶ 62,212 (2002).

⁷ *Commonwealth Power Company*, 98 FERC ¶ 62,210 (2002).

⁸ 16 U.S.C. § 823b (2000).

2002.⁹ Subsequently, the same failure to comply with both license conditions and safety-related directives, including the failure to report four near-overtopping incidents, led the Commission to issue a second compliance order on October 13, 2004.¹⁰

7. With respect to Tomahawk, between November 22, 1999, and February 13, 2003, the Licensee failed to comply with many license conditions and safety-related directives from the Regional Engineer, leading to issuance of a Compliance Order on February 13, 2003.¹¹ Subsequently, the same failure to comply with both license conditions and safety-related directives led the Commission to issue a second compliance order on April 11, 2005.¹²

8. With respect to Cameron, between May 10, 2000 and March 30, 2005, the Licensee failed to comply with many license conditions and numerous safety-related directives from the Regional Engineer. In addition, during January 2005, gates at the two developments froze open resulting in de-watering and environmental damage. The Commission issued a Compliance Order on March 30, 2005.¹³ During May 2005 the project de-watered a second time.

9. With respect to Commonwealth, between March 27, 2002, and March 30, 2005, the Licensee failed to comply with many license conditions and numerous safety-related directives from the Regional Engineer regarding all three projects. At LaBarge, during February 2005 the Project de-watered resulting in possible fish mortality. The Commission issued a Compliance Order on March 30, 2005.¹⁴

10. American Energy's and the Licensees' failures to comply with safety-related directives from the Regional Engineers as detailed in the Agreement resulted in violations of Part 12 of the Commission's Regulations.¹⁵ American Energy's and the Licensees'

⁹ *Seneca Falls Power Corporation*, 99 FERC ¶ 62,171 (2002).

¹⁰ *Seneca Falls Power Corporation*, 109 FERC ¶ 62,030 (2004).

¹¹ *Tomahawk Power and Pulp Company*, 102 FERC ¶ 62,103 (2003).

¹² *Tomahawk Power and Pulp Company*, 111 FERC ¶ 62,038 (2005).

¹³ *Cameron Gas & Electric Company*, 110 FERC ¶ 62,341 (2005).

¹⁴ *Commonwealth Power Company*, 110 FERC ¶ 62,336 (2005).

¹⁵ 18 C.F.R. Part 12 (2005).

failures to submit various schedules, plans, and drawings required by conditions of the Licenses resulted in 37 separate License Articles violations, also as detailed in the Agreement.

11. American Energy's and the Licensees' violations of license conditions and safety requirements at the six projects, and their failures to make timely submission of schedules, plans, and drawings required by Regional Engineers' directives and our Compliance Orders, constitute a violation of section 31(c) of the FPA,¹⁶ and make the Licensees liable for civil penalties.

C. Stipulation and Agreement

12. American Energy and the Licensees have entered into the attached Agreement to resolve their outstanding violations. As part of the Agreement, American Energy and the Licensees have agreed to a compliance plan set forth in the Regulatory Appendix to the Agreement, which specifies actions to be taken by American Energy and the Licensees and sets out dates by which compliance actions are to be completed.

13. In addition, American Energy and the Licensees have agreed to a total penalty of \$300,000 to be paid according to the terms and provisions of the Agreement. Of this total, \$140,000 will be paid as a civil penalty to the United States Treasury, and \$50,000 will be paid into a designated account maintained by the Michigan Department of Natural Resources (MDNR). This latter amount will be used by the MDNR for fish passage and habitat improvements that have a direct impact on American Energy's Michigan projects.

14. The Agreement provides for a conditional remittance of \$110,000 of the penalty, subject to forfeiture if American Energy and the Licensees fail to come into, and maintain, compliance. Failure to comply with all actions and dates in the Regulatory Appendix, or failure to comply with future compliance directives, will make American Energy and the Licensees liable for all or a portion of the conditional remittance as described in Paragraph 26 of the Agreement.

D. Determination of the appropriate remedy

15. We have considered the factors to be weighed in determining the appropriateness of the remedy American Energy has agreed to. These factors are set forth in Rule 1505 of our regulations.¹⁷ American Energy admits knowledge of the violations and derived benefit by delaying expenditure of resources to meet its License obligations. American Energy delayed and avoided remedial steps for a period of time, causing the Commission

¹⁶ 16 U. S.C. § 823b(c) (2005).

¹⁷ 18 C.F.R. § 385.1505 (2005).

to expend resources in repeated compliance directives. When adjusted for the nature, seriousness, and duration of the violations, the total penalty agreed to is commensurate with civil penalties assessed in past comparable cases.

16. We find that the Stipulation and Consent Agreement provides a fair and equitable resolution of this matter and is in the public interest. American Energy has agreed to a specific plan to come into compliance, with dates by which compliance action is required, and to pay a substantial penalty, a portion of which will be used to remediate environmental damage from the operation of Projects in Michigan. Finally, we will grant a conditional remittance of part of the penalty amount to provide an incentive for American Energy and the Licensees to achieve and maintain full compliance.

The Commission orders:

(A) The Commission approves the attached Stipulation and Consent Agreement in its entirety and without modification.

(B) The Commission's approval of the Stipulation and Consent Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.