138 FERC ¶ 61,190
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

New York State Electric and Gas Corporation Project No. 2738-081

ORDER DENYING REHEARING AND LATE MOTION TO INTERVENE

(Issued March 15, 2012)

1. American Whitewater has filed a request for rehearing of a Secretary's notice[1] rejecting the group's request for rehearing of a November 16, 2011 Commission staff order accepting a whitewater boating study report filed by New York State Electric and Gas Corporation (NYSEG), licensee for the Saranac Hydroelectric Project No. 2738. American Whitewater has also filed a late motion to intervene. For the reasons discussed below, we deny rehearing and the late motion to intervene.

Background

2. The 40.26-megawatt Saranac Project is located on the Saranac River in Clinton County, New York. On January 19, 2006, the Commission issued NYSEG a new, 40-year license for the project.[2] The license was, with the exception of its treatment of whitewater boating releases, consistent with the terms of a comprehensive settlement among NYSEG, the U.S. Fish and Wildlife Service (FWS), New York State Department of Environmental Conservation (New York DEC), Adirondack Council, Adirondack Park Agency, New York Rivers United, and New York State Council of Trout Unlimited.

3. The order noted that, based on a determination that the 1.2-mile-long bypassed reach at the project's High Falls Development contained at least seven whitewater stretches that could be boatable by expert paddlers, the environmental assessment prepared by Commission staff had recommended a plan to evaluate, for a three-year

[1] *New York State Electric and Gas*, 138 FERC ¶ 61,015 (2012).

[2] *New York State Electric & Gas Corporation*, 114 FERC ¶ 62,039 (2006).

period, the effects of, and demand for, whitewater boating in the area. The plan, recommended by American Whitewater, was to include releasing whitewater flows on three separate days each year and monitoring their biological effects.[3]

4. NYSEG opposed the plan, arguing that the releases and the resultant increased water temperatures would have adverse effects on aquatic habitat, that the study releases would be inconsistent with flow releases required by the water quality certification issued by New York DEC pursuant to the Clean Water Act, and that boating in the area would be unduly hazardous. The U.S. Department of the Interior (Interior) contended that whitewater releases would be inconsistent with the settlement's intent that macroinvertebrate and fish populations have the opportunity to become established in the bypassed reach. New York DEC and Trout Unlimited made similar arguments.[4] For its part, American Whitewater asserted that a limited number of whitewater releases would not have significant environmental impacts and that any potential negative impacts could be mitigated.[5]

5. After considering these arguments, the order concluded that biological monitoring following whitewater releases would provide valuable information, that the location and timing of the releases would minimize negative impacts, that there did not appear to be undue safety risks in permitting whitewater boating in the High Falls bypassed reach, and that requiring whitewater releases would provide higher minimum flows than those required by the water quality certification, and thus did not conflict with it.[6] In consequence, the license included Article 407, which required NYSEG to develop, in consultation with New York DEC, FWS, Trout Unlimited, American Whitewater, Adirondack Mountain Club and Adirondack Park Agency, a plan for releasing and evaluating the impacts of whitewater boating test flows.[7]

6. NYSEG, New York DEC, and Interior requested rehearing of the license order with respect to Article 407. New York DEC noted that the settlement had specifically stated that NYSEG would not be required to supply whitewater releases downstream of the project, and explained that the purpose of the minimum flows required by the water

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[3] *See New York State Electric & Gas Corporation*, 114 FERC ¶ 62,039 at P 42.

[4] *See id*. P 43-46.

[5] *See id*. P 47-49.

[6] *See id*. P 50-55.

[7] *Id*. at 64,154.

quality certification was to restore the aquatic ecosystem of the High Falls bypassed reach, creating habitat for a macroinvertebrate population that would attract and establish a salmonid fishery, and that requiring whitewater flows would interfere with this purpose.[8]

7. The Commission found New York DEC's argument regarding the requirements of the certification to be persuasive. The Commission noted that New York DEC had clarified in its rehearing request that "the prohibition on requiring flows for whitewater kayaking is not simply an accommodation it has reached with NYSEG (which we might have concluded was an undue interference with our Federal Power Act mandate to issue licenses that promote the comprehensive development of waterways), but rather relates directly to the designated uses of the Saranac River that New York DEC seeks to protect in its certification."[9]

8. The Commission therefore revised Article 407 to remove the test flow study. However, recognizing that circumstances could change after the bypassed reach had had time to adjust to the new minimum flows, the Commission required NYSEG to consult with New York DEC and others at that time and "file a report with the Commission regarding the feasibility and usefulness of a study of the effects of scheduled flow releases for whitewater boating on the aquatic resources of the High Falls bypassed reach and on the demand for whitewater kayaking in that reach."[10] No entity sought judicial review.

9. NYSEG filed the report on April 22, 2010.[11] NYSEG concluded that there was no demand for whitewater boating in the High Falls bypassed reach and that a study was not currently necessary. The report stated that FWS, New York DEC, Trout Unlimited, and the Adirondack Park Agency concurred with the licensee, while American Whitewater and Adirondack Mountain Club, filing jointly, took the opposite position.

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[8] *See New York State Electric & Gas Corporation*, 114 FERC ¶ 61,279, at P 8 (2006).

[9] *Id.* P 10.

[10] *See id*. PP 10-12 and 61,911.

[11] The report was originally due on January 31, 2010, but NYSEG timely requested, and was granted, an extension of that deadline.

10. On June 24, 2010, American Whitewater and Adirondack Mountain Club filed comments asking the Commission to reject the report as not meeting the requirements of Article 407.

11. On July 9, 2010, NYSEG filed an answer to the comments.

12. On November 16, 2011, Commission staff issued a letter order accepting the report. The order concluded, based on a review of the report and the filed comments, that there was apparently low demand for whitewater boating in the High Falls bypassed reach, and that there was accordingly no need to study the effects of scheduled flow releases on aquatic resources. The order also explained that the reach was currently open for recreational use, including whitewater boating, thus negating the need to study boating demand.[12]

13. On December 15, 2011, American Whitewater filed a request for rehearing, but did not file a motion to intervene.

14. On January 10, 2012, the Commission rejected the request for rehearing, via Secretary's notice, because American Whitewater had failed to intervene and thus was not a party to the proceeding, which is a prerequisite to seeking rehearing.

15. On January 30, 2012, American Whitewater filed a late motion to intervene and a request for rehearing of the rejection notice.

Discussion

A. Motion to Intervene

16. Under section 313(a) of the Federal Power Act,[13] a request for rehearing may only be filed by a party to a proceeding. In order to become a party, an entity must file a motion to intervene.[14] American Whitewater did not do so before, or with, the filing of its rehearing request. Accordingly, the January 10, 2012 notice properly rejected that pleading.

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[12] *See* letter from Robert J. Fletcher (Commission staff) to Cindy D. Witt (NYSEG Hydro License Coordinator).

[13] 16 U.S.C. § 825*l* (2006). *See also* Rule 713(b) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(b) (2011).

[14] *See* 18 C.F.R. § 385.214(a)(3) (2011).

17. Licensing proceedings involve a broad examination of all facets of a project and the development of a comprehensive, long-term license, and the Commission allows extensive public participation in these proceedings.[15] Intervention in a licensing proceeding does not carry over to post-licensing proceedings, because each post-licensing proceeding is a new, separate proceeding.[16]

18. After a license has been issued, opportunities for public participation in compliance matters are more limited. This is because many post-license proceedings simply involve a licensee implementing the requirements that have been established by the project license. It would be unnecessary and inefficient to permit entities to relitigate matters that were resolved in licensing proceedings. Instead, the Commission's longstanding policy and practice has been to provide public notice and allow an opportunity for intervention and rehearing with respect to only certain types of post-licensing compliance filings. Thus, the Commission has explained that it is required to give public notice, and entertain interventions in, post-license proceedings only where the licensee's filings entail material changes in the plan of project development or in the terms and conditions of the license, or could adversely affect the rights of property-holders in a manner not contemplated by the license.[17] In a proceeding in which the Commission has issued public notice, the deadline for filing motions to intervene will be specified in the notice.

19. In *Pacific Gas And Electric Company*,[18] the Commission clarified that, where a post-license proceeding is such that the Commission is not required to provide public notice and an opportunity to intervene, it nonetheless will entertain interventions (and requests for rehearing) by agencies and other entities regarding matters on which they are required to be consulted. In these types of proceedings, where the Commission did not

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[15] The Commission has a permissive standard for intervention in these matters and rarely, if ever, denies a timely motion to intervene.

[16] *See, e.g.*, *Merimil Limited Partnership*, 115 FERC ¶ 61,087 (2006); *Pacific Gas and Electric Company*, 115 FERC ¶ 61,070 (2006).

[17] *See Kings River Conservation District*, 36 FERC ¶ 61,365 (1986). *See also Appalachian Power Company*, 137 FERC ¶ 61,065, *reh'g denied*, 137 FERC ¶ 61,208 (2011); *City of Summersville, West Virginia*, 86 FERC ¶ 61,149 (1999).

[18] 40 FERC ¶ 61,035 (1987).

issue notice, a motion to intervene will be considered timely if the consulted entity files it within 30 days of the date of the order at issue.[19]

20. Article 407 specifies that American Whitewater is to be consulted with respect to NYSEG's report. Accordingly, a timely motion to intervene here by the group would have been appropriate.

21. With respect to late motions to intervene, the Commission has held that a movant must show good cause for not intervening timely. When an untimely motion to intervene is filed during later stages of proceedings, the Commission has held that an entity seeking to intervene after an order has been issued bears a higher burden to justify favorable action on its motion.[20] The Commission generally will deny late motions to intervene where the movant was on notice of the proceeding.[21]

22. American Whitewater objects that the November 16 letter order did not include in it a deadline for filing requests for rehearing or a statement that intervention was required.[22] Nothing in the statute or our regulations requires that such information be included in orders.[23] Rather, our regulations provide that staff actions are subject to requests for rehearing.[24] Both FPA section 313(a) and the Commission's Rule 713(b)

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[19] *See, e.g.*, *Appalachian Power Company*, 134 FERC ¶ 61,113, at P 17 (2011); *Homestead Mining Company*, 98 FERC ¶ 61,236, *reh'g denied*, 99 FERC ¶ 61,332 (2002) (explaining that where public notice not issued of proceeding on unlicensed projects, intervention timely within 30 days of initial order); *Alabama Power Company*, 80 FERC ¶ 61,231 (1997) (finding timely motion to intervene in post-license proceeding that was filed, along with request for rehearing, by agency required to be consulted).

[20] *See, e.g.*, *Duke Power*, 100 FERC ¶ 61,294 (2002) (denying motion for late intervention filed by American Whitewater after issuance of license order); *Alaska Power & Telephone Company*, 98 FERC ¶ 61,092 (2002) (denying motion for late intervention filed after issuance of initial order where good cause not shown).

[21] *See, e.g.*, *PPL Great Works, LLC and Penobscot River Restoration Trust*, 131 FERC ¶ 61,035 (2010).

[22] Request for Rehearing at 7.

[23] *See Appalachian Power Company*, 134 FERC ¶ 61,114, at PP 8-9 (2011).

[24] *See* 18 C.F.R. § 385.1902(a) (2011).

provide that requests for rehearing must be filed within 30 days of the order at issue and can only be filed by parties to the proceeding.[25]

23. In fact, given that American Whitewater filed a timely request for rehearing, it appears that the absence of language explaining that option did not adversely affect it. It is not clear why the group, which has appeared in dozens of proceedings before the Commission, and intervened in many of them, did not do so here.[26]

24. Moreover, American Whitewater clearly had actual notice of this proceeding. NYSEG provided a draft of the report to American Whitewater, which commented on it.[27] As required by its license,[28] when NYSEG filed the report with the Commission, it served a copy on American Whitewater. American Whitewater then filed comments with the Commission regarding the report.

25. American Rivers cites *City of Tacoma, Washington*[29] to support its assertion that it should now be granted intervention, and thus be allowed to have its request for rehearing considered. In that case, the Commission rejected a request for rehearing by a group that was not required to be consulted pursuant to the relevant license article, and that in

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[25] *See Flambeau Hydro, L.L.C.*, 113 FERC ¶ 61,236 (2005) (rejecting argument that there is no intervention deadline in proceedings where public notice is not issued, and explaining that in such cases, the deadline is 30 days from the issuance of order).

[26] Indeed, American Whitewater's filings in other proceedings have demonstrated its experience with the Commission's policy and precedent in this area. *See, e.g.*, American Whitewater's motion to intervene, filed July 15, 2008, in Project No. 10359; its request for rehearing of an order on recreational facility fees, filed September 20, 1999 (rejected by notice issued October 20, 1999, on grounds that, although an entity to be consulted, it did not file a motion to intervene with its rehearing request); its motion to intervene and request for rehearing of an order approving a final transmission line design plan, filed August 3, 1998, in Project No. 10813; and *Georgia-Pacific Corporation*, 36 FERC ¶ 61,391 (1986) (denying rehearing of notice rejecting American Whitewater's request for rehearing, and also denying motion to intervene in order to allow rehearing).

[27] *See* NYSEG April 22, 2010 report at Appendix I (March 2, 2010 letter from Kevin Colburn of American Whitewater to Dr. Margaret Murphy, NYSEG's consultant).

[28] *See* Ordering Paragraph (G) of NYSEG's license, *New York State Electric & Gas Corporation*, 114 FERC at 64,156.

[29] 109 FERC ¶ 61,318 (2004).

addition had not filed a motion to intervene. When the group then filed a motion to intervene and sought rehearing of the rejection of its earlier rehearing request, the Commission granted the motion and thereafter considered (and denied) the original request for rehearing.

26. There is a crucial distinction between that case and the one at hand, however. In *City of Tacoma*, the licensee was required to prepare a public information management plan to describe how it would disseminate information and solicit public comment prior to implementing provisions of the settlement agreement that were required by the license.[30] The requirement was included in the license in response to complaints made by the group in question that the licensee's proposal, by limiting consultation to agencies and only those entities that had signed the settlement agreement, did not provide for adequate public participation.[31] In preparing the public information plan, the licensee was to consult with a committee that consisted of agencies and entities that were signatories to the settlement, but (perhaps inadvertently) there was no requirement to also consult with the group. Moreover, Commission staff approved the plan without seeking public comment.[32] These circumstances are not present here. As discussed above, NYSEG consulted with American Whitewater during the development of the plan, as required by the license, and served the plan on the group, which submitted one set of comments regarding it to NYSEG, and filed another set with the Commission. While the Commission in *City of Tacoma* may have been willing to make an exception to its usual policy that the deadline for motions to intervene in non-noticed post-license proceedings is 30 days of the date of an order, because the group there had no previous knowledge of or involvement in the proceeding, the reverse is true here. American Whitewater has been involved in this proceeding from its inception and has presented no justification for not seeking to intervene in a timely manner. In fact, this case is more similar to *California Department of Water Resources and the City of Los Angeles*,[33] and *California Department of Water Resources and the City of Los Angeles*,[34] where the Commission

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[30] *See* Article 405 of the license for Project No. 2016, 98 FERC ¶ 61,274 at 62,110 (2002).

[31] *Id.* at 62,094.

[32] *City of Tacoma, Washington*, 109 FERC ¶ 61,318 at P 14.

[33] 122 FERC ¶ 61,150 (2008), aff'd, *California Trout v. FERC*, 572 F.3d 1003 (9th Cir. 2009).

[34] 120 FERC ¶ 61,057, *request for reh'g rejected*, 120 FERC ¶ 61,248 (2007), *aff'd*, *California Trout v. FERC*, 572 F.3d 1003 (9th Cir. 2009).

denied late motions to intervention by entities that had filed comments in a proceeding but did not timely intervene.

27. In addition, American Whitewater has failed to meet the requirements for a late motion to intervene. Our regulations require that an entity filing a late motion to intervene must show good cause why the deadline should be waived.[35] While American Rivers argues that the January 10, 2012 notice was in error, it does not make any showing of good cause to explain why it did not timely intervene.[36]

28. Based on the foregoing, we deny American Whitewaters' request for rehearing of the January 10, 2012 notice, as well as its untimely motion to intervene. While we therefore are not required to address the merits of the December 15, 2011 request for rehearing, we will do so in order to provide further clarity.

B. <u>The December 15 Request for Rehearing</u>

29. In its December 15, 2011 request for rehearing, American Whitewater contends that the November 16 order is not based on substantial evidence and lacks sufficient analysis and explanation of the issues at hand. In particular, American Whitewater contends that Commission staff's conclusion that, based on its "review of [NYSEG's] report, review of the consultation and input from stakeholders on the report, the [water quality certification] and [settlement agreement]. . . , the order on rehearing [in the licensing proceeding], and the apparent low demand for whitewater boating," further study of the effects of scheduled flows releases in the High Falls bypassed reach is unnecessary, represents staff's only analysis.

30. We do not agree. The section of the order that American Whitewater cites represents staff's explanation of the basis for its conclusion. However, prior to reaching that conclusion, staff analyzed NYSEG's report, stakeholder comments, and other

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[35] *See* 18 C.F.R. § 385.214(d) (2011). While our rules refer to deadlines established pursuant to a public notice in setting forth the showings that must be made to justify late intervention, the same standards apply to instances where the deadline is 30 days from the date of an order, as discussed above.

[36] American Whitewater does argue, as discussed above, that the notice did not set forth deadlines or procedures and that our regulations and precedent are not easy to determine. Given American Whitewater's extensive experience before the Commission, that it was active in the proceeding, including filing a request for rehearing, and that we must presume that entities practicing before us are aware of our rules and procedures, this does not amount to a showing of good cause. *See supra* note. 26.

relevant factors, such as the settlement agreement and the water quality certification. This detailed analysis provided the basis for staff's decision.

31. Much of American Whitewater's request for rehearing is taken up with critiques of the studies and other analysis in NYSEG's report regarding the impacts on aquatic resources of scheduled releases (sometimes referred to as pulse flows). The organization believes that studies done on other rivers do not provide a valid basis for reaching a conclusion that pulse flows would harm the aquatic environment and that information it provided was superior.

32. It is true that American Whitewater has criticized the studies presented by NYSEG, and that it has presented competing evidence. However, the NYSEG report, at 7-10, discusses a series of studies that tend to indicate that artificial flow regimes have a negative impact on aquatic habitat. While American Whitewater disagrees with the use of these studies and has presented some contrary information, we cannot conclude that staff erred in accepting the results of the report. Commission decisions need not be based on uncontradicted evidence or even on a majority of the evidence, but rather on substantial evidence. The information in NYSEG's report, which was accepted by FWS, NYSDEC, the Adirondack Park Agency, and Trout Unlimited, was substantial evidence on which staff reasonably relied in the November 16 Order.

33. More important, the debate about the merits of the studies is beside the point. As revised, Article 407 calls for a report on "the feasibility and usefulness of a study of the effects of scheduled flows releases for whitewater boating on the aquatic resources of the High Falls bypassed reach and on the demand for whitewater kayaking in that reach." While this article appears to conflate the feasibility and usefulness of the study with the examination of demand for whitewater boating, we construe the demand determination as a prerequisite for deciding whether to require a flow study. If there is little or no demand, there is no point in requiring NYSEG to conduct studies that at a minimum pose the risk of disturbing the aquatic habitat the restoration of which was a key goal of the settlement agreement, the water quality certification, and the license. In its initial comments prior to NYSEG's preparation of the report, FWS explained that "if use studies demonstrate that demand for whitewater boating releases is low, then there may be not be a need to conduct the biological baseline and impact studies."[37] Following review of NYSEG's draft report, FWS concluded that the outcome of the study "was that there is no current

[37] *See* December 7, 2009 Letter from David A. Stilwell (FWS Field Supervisor) to Margaret Murphy (NYSEG consultant) at 2 (included in Appendix 1 to NYSEG report).

demand for whitewater boating releases . . . [so] there would be no need for additional biological studies at this time."[38] We concur with these conclusions.

34. To analyze whitewater boating demand, NYSEG first determined, for the period 2007-2009, the frequency with which flows in the High Falls bypassed reach exceeded 250 cubic feet per second, the level that American Whitewater has determined would make the area suitable for whitewater use.[39] The report shows that such flows naturally occurred on eight occasions in 2007 and 2009, and on 30 occasions in 2008. While a few of these instances were of short duration (1-5 hours), 14 of them lasted one or more days, the longest period being 11 days.[40] This demonstrates that there were periods when whitewater boating could have taken place under natural flow conditions. NYSEG stated that its personnel visit the High Falls Project several times a week and have never witnessed whitewater boaters using the bypassed reach. NYSEG also sent letters to American Whitewater, Trout Unlimited, Adirondack Mountain Club, FWS, New York DEC, and the Adirondack Park Agency, none of which provided information demonstrating demand.[41] Tellingly, NYSEG's report includes a summary of a telephone conversation with American Whitewater's National Stewardship Director, in which the Director states that he had heard that the High Falls reach had been run "a couple of times in the past couple [of] years" and that he didn't envision there would be a large demand for whitewater boating in this stretch because is was both hard and short.[42] In its response to NYSEG's report, American Whitewater stated that "[r]ecreational demand for releases on the Saranac River's High Falls at this time is uncertain and we have always maintained that there may be no demand at this time."[43] In addition, NYSEG

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[38] *See* March 10, 2010 Letter from David A. Stilwell to Margaret Murphy (included in Appendix 1 to NYSEG report).

[39] *See* NYSEG Report at 1, 3.

[40] *Id*. at 3-4.

[41] *Id*. at 6.

[42] *See* record of telephone conversation between Margaret Murphy and Kevin Colburn (American Whitewater) (Appendix 1 to NYSEG report).

[43] Letter from Kevin Colburn to Kimberly D. Bose (Commission Secretary) at 2 (filed June 24, 2010).

determined that there were nine locations offering similar boating experiences within 50 miles of the High Falls bypassed reach.[44]

35. The uncontradicted evidence provided by NYSEG personnel and other stakeholders constitutes substantial evidence that currently there is no demand for whitewater boating releases in the High Falls bypassed reach. In light of this, there is no basis for requiring further studies of whitewater releases. This is consistent with conclusions we have reached in previous cases. For example, in *City of Tacoma, Washington*, the Commission accepted a report recommending that further whitewater releases not be required, noting, *inter alia*, that "there has not been extensive use of the whitewater boating opportunities at the . . . Project [and] there are comparable whitewater runs available in Washington State . . . ."[45]

36. As discussed in the order on rehearing of the licensing order, the water quality certification is also of significance here. We there accepted New York DEC's explanation that the water quality certification's incorporation of the settlement's bar on requiring whitewater releases was not simply an accommodation to NYSEG, but part of the agency's effort to protect its designated uses of the Saranac River.[46] In its comments on NYSEG's report, New York DEC stated that it does not support whitewater releases and that "such flow manipulations would be in direct conflict with the Department's § 401 Water Quality Certification . . . [and] would impact the best designated uses for the river reach and . . . not meet [ ] the water quality standard."[47] Without New York DEC's support for whitewater releases, and in the absence of a showing of significant demand,

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[44] *See* NYSEG Report at 5.

[45] 101 FERC ¶ 61,198, at P 18 (2002). The Commission stated that "only" 157 boaters had used the reach during 10 test days. *Id*. P 15.

[46] *See New York State Electric & Gas Corporation*, 114 FERC ¶ 61,279 at P 10.

[47] March 17, 2010 letter from Alice P.M. Richardson (New York DEC) to Margaret Murphy, Ph.D (Appendix 1 to NYSEC report). New York DEC commented further that naturally occurring flows already provide whitewater boating opportunities in the bypassed reach, and the licensee is required to provide recreation access to the reach and flow information on a public website. While it does not object to boating under natural flow conditions, New York DEC sees no need for providing pulsed flows at this time. However, if in the future pulsed flows are considered for whitewater boating, New York DEC states that it would require the biological studies contemplated by Article 407 prior to permitting such flows.

we see no point in requiring studies to determine the feasibility of flows that the state and other stakeholders consider inconsistent with the designated uses of the waterway.

37. American Whitewater does not dispute the facts that there is little or no current demand for whitewater boating in the High Falls bypassed reach, that there are other, comparable opportunities in the area, and that New York DEC continues to believe that whitewater releases would be inconsistent with its water quality certification, but rather stated in its comments on NYSEG's report that "our final requests were not even for releases, but merely the potential for demand-driven releases should demand ever exist."[48] Should demand increase in the future and the aquatic community become sufficiently stable, nothing in this order precludes future study of this matter.

The Commission orders:

The motion to intervene and request for rehearing filed by American Whitewater on January 20, 2012 are denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[48] Letter from Kevin Colburn to Kimberly D. Bose at 2 (filed June 24, 2010).