

139 FERC ¶ 61,046
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Duke Energy Carolinas, LLC

Project No. 2692-048

ORDER ON REHEARING AND CLARIFICATION

(Issued April 19, 2012)

1. On February 8, 2012, the Director, Office of Energy Projects (Director), issued a new license to Duke Energy Carolinas, LLC (Duke) to continue operation and maintenance of the 43.2-megawatt Nantahala Project No. 2692.¹ The project is located on the Nantahala River and two tributaries, Dicks Creek and White Oak Creek, in Macon and Clay Counties, North Carolina.
2. On March 9, 2012, Duke filed a request for rehearing and clarification of the Director's order. For the reasons discussed below, we grant in part Duke's request for rehearing and clarification.

Background

3. The Nantahala Project consists of the Nantahala development, the Dicks Creek development, and the White Oak Creek development. The Nantahala development includes the Nantahala dam, a 1,605-acre reservoir, and a 9.3-mile-long bypassed reach of the Nantahala River. The Dicks Creek development includes the Diamond Valley dam and a reservoir of negligible size and the Dicks Creek diversion dam and a 0.2-acre reservoir. The White Oak Creek development includes the White Oak Creek diversion dam, a 1.1-acre reservoir, and a 2.2-mile-long bypassed reach.
4. Duke seeks rehearing or clarification of requirements contained in several license articles.

¹ *Duke Energy Carolinas, LLC*, 138 FERC ¶ 62,093 (2012).

Discussion

A. Article 412 - Woody Debris and Trash Management Plan

5. To improve aquatic habitat in the Nantahala River, Article 412 requires Duke to develop for Commission approval a woody debris and trash management plan to pass downstream large woody debris collected at the Nantahala dam.

6. On rehearing, Duke asks that the Commission amend Article 412 to apply to the project's White Oak Creek diversion dam instead of the Nantahala dam. Duke explains that its relicense application proposed to implement a trash and debris management plan at the White Oak Creek diversion dam, and that it has no means of passing woody debris downstream at Nantahala dam.

7. Duke is correct. In the environmental assessment for the project, Commission staff evaluated, and recommended adoption of, Duke's proposal to continue moving woody debris through the White Oak trash gates.² We will therefore modify Article 412 to apply to the White Oak Creek diversion dam.

B. Article 406 - Recreation Flow Releases from Nantahala Dam

8. Article 406 requires that Duke make recreation flow releases from Nantahala dam into the 9-mile-long bypassed reach on a Saturday and a Sunday in April, on four afternoons between June and August, and on a Saturday and a Sunday in September.³ Duke must begin making the releases no later than one year after license issuance, i.e., by February 8, 2013. Practically speaking, to meet this deadline, Duke must begin the recreation releases no later than September 2012.

9. Duke asks that the Commission delay the recreation flow releases until the Forest Service completes a traffic management plan and parking improvements and the resource agencies complete preparations for fishery monitoring in the bypassed reach.

² See Final Environmental Assessment for the Nantahala West Projects - Nantahala Hydroelectric Project No. 2692-032, Franklin Hydroelectric Project No. 2603-012, and Mission Hydroelectric Project No. 2619-012, at 276-77 (issued July 12, 2006).

³ The actual release dates are to be determined after consultation with several agencies and non-governmental organizations.

10. We do not regard these measures as prerequisites to the provision of recreation flows. There are a number of informal access sites along the bypassed reach that can accommodate from two to eight cars.⁴ Although unimproved, these sites provide access to the bypassed reach for whitewater boaters. As a result, there is no need to postpone the flow releases until a traffic management plan and parking improvements are completed. With respect to monitoring, the EA examined the potential impacts of these flows and concluded that they would have little to no effect on the bypassed reach fishery.⁵ Because any effects are likely to be insignificant, the license does not require Duke to monitor the fishery. Thus, there is no need to postpone the flow releases while the agencies prepare to conduct their own monitoring.

11. The only prerequisite for the flows is that Duke must consult with the named entities to determine the actual dates the recreation flows would be released during spring, summer, and fall. The next reasonable date for Duke to release recreation flows would be one weekend between September 15 and September 30, 2012. The flows can and should begin by September 2012. We therefore deny Duke's request to delay the flow releases.⁶

C. Article 409 - Sediment Management Plan

12. Article 409 of the license requires Duke to file for Commission approval a sediment management plan. The plan is for controlling sediment at all four of the project reservoirs, but provides for removing and disposing sediment at only one of the reservoirs, the Nantahala reservoir created by Nantahala dam.

13. Duke asks for clarification that the sediment plan should address possible sediment removal and disposal at all four of the project reservoirs.⁷ Duke is correct, and we will modify Article 409 to make this clear.

⁴ EA at 164-65.

⁵ EA at 95, 98, 100.

⁶ If in the future the eight additional days per year of recreation flow releases result in public access or traffic congestion problems, the Commission can use its reserved authority in standard Article 17 of the license to order Duke to implement appropriate measures. *See Duke Energy Carolinas, LLC*, 138 FERC at 64,366.

⁷ In fact, Duke states that, given the size and depth of the Nantahala reservoir, sediment removal is likely to occur more frequently at one of the other impoundments than at Nantahala.

D. Article 411 - Operation Compliance Monitoring and Reporting

14. Article 411 of the license requires Duke to implement a compliance monitoring program, including the development of annual reports that document Duke's compliance with reservoir levels (Article 401), minimum flow releases (Article 404), and recreation flow releases (Articles 405 and 406). The article also requires that Duke file the annual reports with the Commission.

15. Duke asks that the Commission amend the article to require that Duke also send copies of the annual reports to the North Carolina Division of Water Resources (North Carolina DWR), the North Carolina Division of Water Quality, the North Carolina Wildlife Resources Commission (North Carolina WRC), the Forest Service, and the U.S. Fish and Wildlife Service (FWS). We believe it is appropriate for the resource agencies to receive copies of the required reports, and we will amend Article 411 as requested.

E. Crest Elevation of Dicks Creek Dam

16. Duke states that the actual crest elevation of Dicks Creek Dam is 3,027.16 feet mean sea level. We duly note this correction to the crest elevation cited in paragraph 12 of the order, and we will revise Ordering Paragraph (B) to reflect the correct crest elevation in the description of the Dicks Creek development.

F. Article 405 - Recreation Flows from Nantahala Powerhouse

17. Article 405 requires Duke to operate the project according to a generation schedule to provide specified recreation flows, "at or above the best efficiency flow (which is approximately 525 cubic feet per second)" at the Nantahala powerhouse.⁸ Article 405 also requires the licensee to operate the Nantahala powerhouse to provide up to 70 hours annually of additional flow releases to support whitewater boating races and other special events, after the requesting entity has consulted with the North Carolina WRC, the North Carolina DWR, the FWS, the Forest Service, and the Nantahala Gorge Association.

18. Duke points out that Article 405 does not specifically state that the additional recreation flow releases must be provided "at or above the best efficiency flow" and asks for clarification that this phrase at the beginning of the article is intended to apply to the entire article. We grant the requested clarification.

⁸ *Duke Energy Carolinas, LLC*, 138 FERC at 64,358.

19. In addition, Duke asks that we amend Article 405 to provide that the requesting entities must consult only with the Nantahala Gorge Association, and not with the North Carolina agencies, the FWS, and the Forest Service. In support of its request, Duke notes that its relicense application had proposed, with the agreement of the agencies, that the Nantahala Gorge Association would be the only entity to be consulted regarding the provision of additional recreation flows for special events.

20. We deny Duke's request. There is no certainty as to the timing of additional hours of flow releases from the Nantahala powerhouse for whitewater recreation. The named agencies have natural resource management and regulatory responsibilities and expertise relevant to recreation flow releases from the powerhouse. We therefore believe it is appropriate to require consultation with the named agencies.

The Commission orders:

(A) The request for rehearing and clarification, filed by Duke Energy Carolinas, LLC, on March 9, 2012, is granted to the extent discussed in this order and is denied in all other respects.

(B) The February 8, 2012 order issuing new license for the Nantahala Project No. 2692 is revised as set forth below.

(1) Ordering Paragraph (B) is revised in item (2) under "Dicks Creek Development" by changing "crest elevation at 3,027.6 feet msl" to "crest elevation at 3,027.16 feet msl."

(2) Article 409 is revised in the first sentence to replace "Nantahala Project reservoir" with "Nantahala Project reservoirs," and in the second paragraph to replace "Nantahala reservoir" with "Nantahala Project reservoirs."

(3) Article 411 is revised to add a third paragraph that reads:

The licensee shall provide a copy of the annual report to the North Carolina Division of Water Resources, the North Carolina Division of Water Quality, the North Carolina Wildlife Resources Commission, the U.S. Forest Service, and the U.S. Fish and Wildlife Service.

(4) Article 412 is revised in the first sentence to replace “Nantahala dam” with “White Oak Creek diversion dam.”

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.