

155 FERC ¶ 61,263  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

Alabama Power Company

Project No. 2146-195

ORDER GRANTING INTERVENTION AND DENYING REHEARING

(Issued June 16, 2016)

1. On April 5, 2016, the Coosa River Paddling Club (Paddling Club) filed a motion to intervene and request for rehearing of a March 9, 2016 Commission staff order (March 9 Order), which modified and approved Alabama Power Company's (Alabama Power) Recreation Flow Release Evaluation Report (Flow Release Report).<sup>1</sup> For the reasons discussed below, we grant the Paddling Club's motion to intervene and deny its request for rehearing.

**I. Background**

2. On June 20, 2013, the Commission issued a new license to Alabama Power for the continued operation and maintenance of seven developments on the Coosa River in Cherokee, Etowah, Calhoun, St. Clair, Talladega, Shelby, Coosa, Chilton, and Elmore Counties, Alabama, and Floyd County, Georgia (2013 relicense order).<sup>2</sup> As pertinent here, the Jordan Dam development (the most downstream development) consists of: (1) an approximately 0.35-mile-long dam with a powerhouse intake section and a concrete spillway; (2) an 18-mile-long, 5,880-acre lake; and (3) a powerhouse with four generating units with a total rated capacity of 100 megawatts.

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<sup>1</sup> *Alabama Power Co.*, 154 FERC ¶ 62,166 (2016).

<sup>2</sup> *Alabama Power Co.*, 143 FERC ¶ 61,249 (2013).

3. Article 405 of the license requires Alabama Power to provide, according to a schedule set forth in the article, minimum flow releases from the Jordan development to protect the federally listed tulothoma snail (*Tulotoma magnifica*) and maintain adequate flows for recreation downstream.<sup>3</sup> The article also requires that, within 60 days of completing a planned upgrade to the unit 4 turbine,<sup>4</sup> Alabama Power develop a plan to evaluate whether the upgrade could alleviate a hydraulic constraint so that unit 4 would be able to provide recreation flows between 4,000 cubic feet per second (cfs), which it provides currently, and 5,000 cfs, which the Paddling Club claimed would support safer and more satisfying boating downstream of Jordan Dam.

4. On June 26, 2015, Alabama Power submitted its Flow Release Evaluation Plan (Flow Release Plan). The plan states that the upgraded unit 4 turbine remains limited to operating at a maximum generator stator current of 1,600 amps, which it reaches at a flow rate of about 4,600 cfs under test-rated conditions. As a result, and after consulting with the Paddling Club, U.S. Fish and Wildlife Service (FWS), and Alabama Department of Conservation and Natural Resources (Alabama DCNR), Alabama Power proposed to conduct a controlled flow study at 4,000 and 4,300 cfs in order to maintain the integrity of the unit. The plan also stated that Alabama Power would file a report detailing the results of the controlled flow study (Flow Release Report).

5. On July 31, 2015, Commission staff issued an order modifying and approving the Flow Release Plan (July 2015 Order).<sup>5</sup> The order also directed Alabama Power to consider options to address the Paddling Club's concerns about a discrepancy between the discharge measured at a staff gage located at the put-in downstream of Jordan Dam and the discharge at the dam, as reported on the Alabama Power telephone hotline.

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<sup>3</sup> The 2013 relicense order requires continuous minimum flows of at least 2,000 cfs from July 1 through March 31 downstream of the Jordan Dam development. Between April 1 and June 30, license Article 405 requires enhanced flows for whitewater boating that vary between 4,000 and 8,000 cfs on weekends, and up to 10,000 cfs on holidays during the summer months. These recreation flows may be temporarily modified or terminated during periods of extreme drought, when Alabama Power's reservoirs on the Coosa River are one foot or more below the normal operating range, when necessary to maintain minimum dissolved oxygen levels, or for operating emergencies beyond the control of Alabama Power.

<sup>4</sup> The upgrade to unit 4 was authorized in May 2013. *Alabama Power Co.*, 143 FERC ¶ 62,097 (2013).

<sup>5</sup> *Alabama Power Co.*, 152 FERC ¶ 62,078 (2015).

6. On December 8, 2015, Alabama Power filed its Flow Release Report. The report explained that during October 2015, Alabama Power conducted a test release in preparation for the controlled flow study approved by Commission staff in the July 2015 Order. During the test release, as Alabama Power increased flows to 4,300 cfs, the automated aeration system at unit 4 activated, giving rise to a series of events, discussed more fully below, that culminated in activation of the generator stator amperage alarm.<sup>6</sup>

7. The report stated that following the October test release, Alabama Power cancelled its planned controlled flow study. It explained that the test release revealed operational issues that adversely affect the ability of unit 4 to release more than 4,000 cfs during the recreation release season when the aeration system is activated.<sup>7</sup> Alabama Power also explained that because the generators at Jordan Dam are air-cooled, their effectiveness is affected by ambient air temperature. Thus, during the warmer summer recreation season, the unit will reach the stator current limit of 1,600 amps sooner and at a lesser flow, increasing the risk of activating the amperage alarm and threatening harm to the unit's operation, integrity, and reliability. Since it determined the operational constraints at unit 4 continue to exist, Alabama Power states that it did not implement the approved plan and proposed no change to the minimum flow releases currently required under Article 405.

8. The report also described Alabama Power's proposal to remove the staff gage downstream of the dam and replace it with a sign directing boaters to its website and telephone hotline for flow information. Alabama Power states that the website and hotline, which monitor flows in real-time, are more accurate than the staff gage due to the time it takes for the recreation release, as measured at the dam, to reach the gage.

9. In filings made on January 6 and February 5, 2016, the Paddling Club commented that the current 4,000 cfs recreation flow is neither attractive nor safe for recreational boaters and requested that the Commission require the licensee to provide test flows of up to 5,000 cfs using two or more generators. The Paddling Club also expressed opposition to removal of the staff gage and instead recommended color-coding it to represent various flow releases, noting that phone reception and internet connectivity are not always reliable in the area downstream of the dam.

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<sup>6</sup> A generator storage amperage alarm is activated when the generator approaches its operational constraint, in this case 1,600 amps.

<sup>7</sup> Alabama Power's December 8, 2015 Recreation Flow Release Report at 2.

10. On March 9, 2016, Commission staff issued an order modifying and approving the Flow Release Report. The order concluded that the schedule of recreation flows set forth in Article 405 should remain in effect, and that the staff gage and associated warning sign should be maintained because of their usefulness to boaters.

11. On April 5, 2016, the Paddling Club filed a motion to intervene and request for rehearing of the March 9 Order.

## II. Discussion

### A. Motion to Intervene

12. Under section 313(a) of the FPA, only a party to the proceeding may file a request for rehearing.<sup>8</sup> Although the Paddling Club was a party to the relicensing proceeding, its party status terminated when that license was issued and became final.<sup>9</sup> Each post-licensing proceeding is a distinct matter requiring intervention, if allowed, by those who wish to participate.<sup>10</sup> The Commission only entertains such motions to intervene where the filing entails a material change in the plan of project development or in the terms and conditions of the license, or where the actions proposed in the filing could adversely affect the rights of a property holder in a manner not contemplated by the license.<sup>11</sup>

13. However, the Commission has clarified that, where a post-license proceeding is such that the Commission is not required to provide 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

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<sup>8</sup> 16 U.S.C. § 825l (2012).

<sup>9</sup> See, e.g., *Kings River Conservation District*, 36 FERC ¶ 61,365, at 61,881 (1986) (*Kings River*).

<sup>10</sup> See, e.g., *City of Tacoma, Washington*, 109 FERC ¶ 61,318 at P 9 (2004).

<sup>11</sup> See *id.* PP 6-7.

consulted.<sup>12</sup> In these types of proceedings, where the Commission did not 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.<sup>13</sup>

14. Article 405 specifies that Alabama Power is to consult with the Paddling Club with respect to the unit 4 upgrade and development of the Recreation Flow Release Evaluation Plan and Report. Accordingly, the Paddling Club's motion to intervene, which was filed within 30 days of the March 9 Order, is timely and granted automatically.<sup>14</sup>

## **B. Request for Rehearing**

### **1. Sufficiency of Evidence to Approve Recreation Flow Report**

15. On rehearing, the Paddling Club argues that staff's decision to approve Alabama Power's Flow Release Report, despite Alabama Power's failure to complete its planned controlled flow study, was arbitrary and capricious and made without sufficient evidence to support it.

16. We disagree and deny rehearing on this issue. As discussed above, license Article 405 requires Alabama Power to develop a plan to evaluate whether refurbishment of unit 4 alleviated a hydraulic constraint that would allow for recreation releases greater than 4,000 cfs from the unit. If flows from the unit in the 4,000 to 5,000 cfs range were found to be feasible, the licensee was required to consult with the Paddling Club, Alabama DCNR, and FWS to determine recreation flows that would provide safe and optimal boating opportunities. If flows in that range were not found to be feasible, Article 405 requires no further action.

17. In its Flow Release Report, Alabama Power explained that as it gradually increased flows from 4,000 to 4,300 cfs during the test release, dissolved oxygen levels in the tailrace decreased, causing the project's automated aeration system to activate. As a result, a portion of the water passing through the turbine was displaced by air, resulting in

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<sup>12</sup> *Id.*

<sup>13</sup> See, e.g., *Appalachian Power Co.*, 134 FERC ¶ 61,113, at P 17 (2011); *Alabama Power Co.*, 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).

<sup>14</sup> 18 C.F.R. § 385.214(c) (2015).

a drop in flow. When the operators opened the wicket gates to compensate, dissolved oxygen in the tailrace increased and the aeration system deactivated. Water filled the space previously occupied by air and flow quickly increased, causing the generator stator to approach the unit's limit of 1,600 amps and the amperage alarm to activate.<sup>15</sup>

18. In order to complete the test release, the operators blocked open the aeration system and set the wicket gates at or above an 80 percent opening, which Alabama Power states is close to the maximum opening at which the unit was tested to operate. As the unit approached 4,300 cfs, the amperage held just below the amperage alarm trigger. After considering the fact that conditions during the warmer recreation release season would place additional stress on the unit, as described above, Alabama Power determined that recreation flows greater than 4,000 cfs from the unit would not be feasible during the recreation release season without threatening the integrity of the unit.<sup>16</sup>

19. We find that Alabama Power fully satisfied the requirements of license Article 405. Since Alabama Power's operational test demonstrated that the upgrade did not alleviate the unit's operational constraint, Article 405 requires no further action from the company. Accordingly, we affirm staff's finding in the March 9 Order that Alabama Power provided sufficient evidence to support its decision to cancel the controlled flow study.

## 2. Equal Consideration to Public Safety and Recreation

20. The Paddling Club alleges that Commission staff failed to give equal consideration to public safety and the protection of recreational activities. We disagree. When balancing public interest factors under the Federal Power Act, the Commission must give equal consideration to power and non-power uses, including recreation.<sup>17</sup> However, equal consideration does not require equal treatment, and does not give non-power factors preemptive force.<sup>18</sup> In order to accommodate recreation downstream of the Jordan Dam, the June 2013 Order provides for increased flows during the summer recreation season. Indeed, on 27 out of the 40 weekend days between June 16 and October 31, the license order requires continuous flows of either 6,000 or 8,000 cfs

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<sup>15</sup> Alabama Power's December 8, 2015 Recreation Flow Release Report at 3 and 10.

<sup>16</sup> *Id.*

<sup>17</sup> *See, e.g., Niagara Mohawk Power Corp.*, 76 FERC ¶ 61,152, at 61,836 (1996).

<sup>18</sup> *See U.S. Dept. of the Interior v. FERC*, 952 F.2d 538, 545 (D.C. Cir. 1992).

between 11 a.m. and 5 p.m. and flows of up to 10,000 cfs during the Memorial Day, July 4<sup>th</sup>, and Labor Day holidays. We find that Alabama Power provided a reasoned explanation for the balancing of a number of factors, including dissolved oxygen levels, aquatic resources, and recreation.

21. The Paddling Club suggests that safer and more attractive whitewater flows would be feasible if we require the use of two or more generators to achieve them. It also requests that we require Alabama Power to conduct a study of flows of 5,000 cfs.

22. We decline to do so. The purpose of Article 405 was not to revisit the entire recreation flow schedule at the Jordan Dam, but to evaluate whether the upgrade to unit 4 allowed for increased recreation flows from that unit alone. Moreover, the Paddling Club's contention that Alabama Power should be required to study flows of 5,000 cfs is an improper collateral attack on the July 2015 Order. Alabama Power consulted with the Paddling Club throughout development of the Flow Release Plan, and the club was aware that the controlled flow study would only test flows of 4,000 and 4,300 cfs. To the extent that the Paddling Club disagreed with this determination, it had the opportunity to file a request for rehearing of Commission staff's July 2015 Order but did not do so.

23. The Paddling Club asserts that recreational boaters are more likely to suffer head and foot injuries at flows of 4,000 cfs than at higher flows. As discussed in the 2013 relicensing order, since implementing the current flow regime downstream from the Jordan Dam in 2001, there has been a beneficial effect on recreational opportunities, with weekend releases sufficient to provide for Class I through Class III whitewater boating.<sup>19</sup> However, we encourage paddlers to use Alabama Power's hotline (1-800-Lakes11), website (<https://apcshorelines.com>) and staff gage to monitor conditions downstream of the Jordan Dam. Nothing requires recreationists to use the reach below Jordan Dam when flows are not sufficient for them to do so safely.

24. Finally, the Paddling Club maintains that we should require Alabama Power to file an annual report of cfs log sheets for all recreation release days in the prior year; and to file minimum rule curves for all recreational flows. We disagree. The project's approved operation and flow monitoring plan provides sufficient information to monitor compliance with Article 405.<sup>20</sup>

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<sup>19</sup> *Alabama Power Co.*, 143 FERC ¶ 61,249, at P 134 (2013) (citing to December 31, 2009 Final Environmental Assessment for Relicensing the Coosa River Project No. 2146 at 228). The International Scale of River Difficulty defines six classes of whitewater: Class I - easy; Class II - novice; Class III - intermediate; Class IV - advanced; Class V - expert; and Class VI - extreme.

<sup>20</sup> *Alabama Power Co.*, 146 FERC ¶ 62,117 (2014).

25. The 2013 relicense order and the July 2015 Order, neither of which the Paddling Club timely challenged and neither of which may properly be attacked now, established an appropriate balance between developmental and recreational interests. The operational test was not designed to revise that balance, but rather to determine if additional recreational flows could be released from an upgraded unit 4 without an adverse impact on the project's generating facilities. Initial data showed that such releases were not possible, and there was thus no reason to pursue the matter further.

**C. Conclusion**

26. For the reasons discussed above, we grant the Paddling Club's motion to intervene and deny its request for rehearing of Commission staff's March 9 Order.

The Commission orders:

The request for rehearing filed April 5, 2016, by the Coosa River Paddling Club, is denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.