

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Erie Boulevard Hydropower, L.P.

Project No. 2330-066

ORDER ON REHEARING

(Issued February 14, 2007)

1. On January 4, 2007, the New York State Department of Environmental Conservation (NYSDEC) filed a request for rehearing of the December 5, 2006 Commission staff order amending license for the Lower Raquette River Project No. 2330, located on the Raquette River in St. Lawrence County, New York.¹ As discussed below, we grant rehearing and modify an amendment condition to be consistent with the requirements of the state water quality certification applicable to the amendment.

Discussion

2. The project consists of four developments, Norwood, East Norfolk, Norfolk, and Raymondville. On July 3, 2006, Erie filed an application to amend its license, proposing to: (1) increase the project's capacity from 12 to 18 megawatts by installing new turbines in the project's four powerhouses; (2) convert operations from the existing store-and-release mode to run of river; (3) accelerate implementation of fish protection and downstream passage measures at the Norwood development from 2010 to 2007; and (4) install upstream eel passage at all four developments. The application also proposed that Erie would revise its existing streamflow and water level monitoring plan to ensure run-of-river operations and identify operational bandwidths (expected to be within 0.5 feet of the top of the dams) for compliance purposes.

3. On October 13, 2006, NYSDEC issued water quality certification for the amendment pursuant to section 401(a)(1) of the Clean Water Act (CWA).² The

¹ 117 FERC ¶ 62,208 (2006).

² 33 U.S.C. § 1341(a)(1) (2000).

certification contains 23 conditions, including requirements to operate the project's reservoirs run of river (Condition 8) and to develop a revised monitoring plan with instrumentation to ensure run-of-river operations (Condition 9). Condition 9 further states, "Operational bandwidths as proposed in the Amendment Application ... have not yet been approved by [NYSDEC] for monitoring compliance with instantaneous run-of-river operation." CWA section 401(d)(3) provides that the certification shall become a condition of any license.³ Ordering paragraph (C) of the December 5 order requires compliance with the certification conditions.

4. Ordering Paragraph (I) of the December 5, 2006 order requires Erie to file for Commission approval a revised monitoring plan as required by the water quality certification, but states that the plan shall include "operational bandwidths for each impoundment as proposed in [Erie's] amendment application."

7. On rehearing, NYSDEC states that the provision of the ordering paragraph regarding operational bandwidths is inconsistent with the certification condition, and asks the Commission to revise the order accordingly.⁴ The inclusion of this provision in the December 5 order was inadvertent, and we will revise the ordering paragraph by deleting the sentence.

The Commission orders:

(A) The request for rehearing filed by the New York State Department of Environmental Conservation in this proceeding on January 4, 2007, is granted.

(B) Ordering Paragraph (I) of the December 5, 2006, order issued for this project is amended by deleting the third sentence.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

³ 33 U.S.C. § 1341(d)(3) (2000).

⁴ By letter filed January 8, 2007, Erie states it has no objection to revising the order as requested by NYSDEC.