

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Rhineland Paper Company

Project No. 2161-008

ORDER ON REHEARING

(Issued February 18, 2004)

1. Rhineland Paper Company (Rhineland) has requested rehearing of three aspects of an August 20, 2003 Order issuing it a new license to operate the Rhineland Hydroelectric Project No. 2161. 104 FERC ¶ 62,134 (2003). For the reasons discussed below, we grant rehearing as to the license term and deny rehearing as to the project boundary and the requirement to monitor invasive plant species.

**BACKGROUND**

2. The 2,120-kilowatt (kW) Rhineland Project is located on the upper Wisconsin River in Oneida County, Wisconsin. The Commission issued Rhineland an original license for the existing project in 1955, 14 FPC 653,<sup>1</sup> and a new license in 1981, with a term ending in 2000. 14 FERC ¶ 62,064.

3. On August 20, 2003, the Director, Office of Energy Projects (Director), issued Rhineland a new license for the project.<sup>2</sup> On September 22, 2003, Rhineland filed a timely request for rehearing of the relicense order, asserting that the Director erred in (1) denying its proposal to remove from the project boundary nearly 90 percent of the non-reservoir lands; (2) requiring it to monitor and control invasive plant species; and (3) giving the new license a term of 30, rather than 40, years.

---

<sup>1</sup> The original dam was built around 1882 for manufacturing and log-booming purposes. Beginning in 1916, hydroelectric generating equipment replaced hydromechanical works. 14 FPC at 653.

<sup>2</sup> The Rhineland Project has a 370-foot-wide dam, an 8.5-mile-long reservoir, a 965-foot-long power canal, and a powerhouse.

## DISCUSSION

### A. Project Boundary

4. The boundary of the Rhinelander Project encloses about 6,347 acres, of which 3,576 acres are under the reservoir and 2,771 acres are around the reservoir's 55-mile shoreline.<sup>3</sup> Rhinelander's June 26, 1998 relicense application proposed the removal from the project boundary of 2,478.5 acres around the reservoir. This would leave the project with 292.5 "dry" acres: 4.5 acres around the powerhouse, 146 acres on islands in the reservoir, and 142 acres of undeveloped parcels that the applicant proposes to protect from development.<sup>4</sup>

5. In support of its proposal to remove 2,478.5 acres from the project boundary, Rhinelander stated: "The project boundary under the current license encompasses a large number of parcels of privately held land which have been developed for residential housing. Since these lands are not in any way required for the operation of the project, Rhinelander believes that they should not be included in the project boundary for [the] new license."<sup>5</sup>

6. The Director disallowed the proposed land removal, finding that Rhinelander had not demonstrated that the lands are not needed for project purposes. 104 FERC at P 22. The Director also stated that Rhinelander had not sufficiently identified the location of the lands proposed for removal. *Id.* at P 19. The Director's ruling was without prejudice to Rhinelander subsequently filing an adequately supported application to remove the lands, once the Commission has approved the land management plan required by Article 410 of the new license. *Id.* at P 22.

---

<sup>3</sup> The reservoir is 3,576 acres at its normal water surface elevation of 1,555.45 feet above mean sea level (msl.). See the Final Environmental Assessment (EA) issued by Commission staff on March 20, 2003, for the Rhinelander Project No. 2161, and for Consolidated Water Power's nearby Stevens Point Project No. 2110 and Biron Project No. 2192, at p. 89. See also Rhinelander's March 27, 2003 Form 80 filing (Recreation Report) at 1.

<sup>4</sup> EA at p. 89.

<sup>5</sup> Relicense application at E-39 and E-40.

7. License Article 410 requires Rhinelander to file, after consultation with relevant resource agencies, a Land Management Plan that among other things establishes appropriate buffer zones around the reservoir and identifies in detail lands designated for residential use, undesignated lands, and areas of special concern, such as a forested wetland.

8. On rehearing, Rhinelander argues that it did indeed provide sufficient information in support of its land removal application, noting that, in response to a Commission staff request for additional information, it submitted a project map showing the current and proposed boundaries. The company cites Commission case law for the proposition that a project boundary must encompass lands and waters needed for project purposes, including generation, environmental protection, mitigation and enhancement and recreation, and asserts that the lands it seeks to remove are not necessary for any project purpose.<sup>6</sup> It adds that the recreational features of the project will remain accessible via public roads.

9. Section 10(a)(1) of the Federal Power Act (FPA) directs the Commission, when issuing a license for a hydroelectric project, to require the licensee to undertake appropriate measures on behalf of both developmental and non-developmental public interest uses of the waterway, including fish, wildlife, and recreation.<sup>7</sup> These requirements, as set forth in a license, constitute the "project purposes."

10. The Commission's regulations require that projects have a delineated project boundary encompassing all works, facilities, and interests in lands necessary to enable the licensee to carry out project purposes.<sup>8</sup> As a general matter, a project boundary should be drawn no more than 200 feet from the exterior margin of reservoirs, except where

---

<sup>6</sup> Rehearing request at 8.

<sup>7</sup> See FPA Section 10(a)(1), 16 U.S.C. § 803(a)(1).

<sup>8</sup> Effective October 23, 2003, the Commission's regulations require all license applications to include a project boundary. 18 C.F.R. §§ 4.41(h)(2), 4.51(h), 4.61(f). See Hydroelectric Licensing Under the Federal Power Act, Order No. 2002, 68 Fed. Reg. 51,069 (August 25, 2003), FERC Stats. & Regs. ¶ 31,150 (July 23, 2003). Before that, only projects with more than 1,500 kW of installed capacity and projects occupying federal land were required to have project boundaries.

additional lands are "necessary for project purposes, such as recreation, shoreline control, or protection of environmental resources."<sup>9</sup>

11. A licensee's interests in project lands can range from fee simple to perpetual or renewable leases, easements, and rights-of-way, so long as the licensee holds interests sufficient to carry out the licensed project purposes. Rhinelander owns in fee about 325 acres of project land above the normal reservoir elevation, and holds flowage rights on the remaining project lands around the reservoir.<sup>10</sup>

12. If a licensee wishes to remove lands from a project, it files an application to delete the lands from the license and from the project boundary. If the Commission finds that the licensee has demonstrated that the land is not needed for project purposes, the land will be deleted from the project license and boundary and thereby removed from the Commission's jurisdiction.<sup>11</sup>

13. The map furnished by Rhinelander<sup>12</sup> shows that the existing project boundary encompasses the entire reservoir and all of its shoreline, together with land extending back from the water's edge for varying distances all around the reservoir.

---

<sup>9</sup> 18 C.F.R. § 4.41(h)(2).

<sup>10</sup> See 14 FERC ¶ 62,064 at 63,096.

<sup>11</sup> See generally Wisconsin Public Service Corp., 104 FERC ¶ 61,295 at P 28 (2003).

<sup>12</sup> Rhinelander Project Boundary Worksheet, based on 1982 U.S. Geological Survey Map for Rhinelander and surrounding areas, submitted by the licensee on August 22, 2001.

14. According to Rhinelander, about 75 percent of the shoreline around the reservoir has been developed with over 250 homes and cottages.<sup>13</sup> Among these are a patchwork of undeveloped project lands, and small wetlands are scattered around the shoreline.<sup>14</sup> In the upper reaches of the reservoir is the Munninghoff Marsh, a significant wetland area that is known for its large growth of wild rice.<sup>15</sup>

15. The map also shows the land that Rhinelander proposes remain in the boundary: scattered, noncontiguous parcels containing only a tiny fraction of the shoreline above the reservoir's edge.

16. Rhinelander is correct that it is the Commission's long-standing, general policy to remove from project boundaries lands occupied by residential structures.<sup>16</sup> In this regard, its proposal to remove such lands is appropriate. However, a request for the removal of such lands implicates other Commission policies, involving protection of shoreline resources and public recreation, about which we must have adequate information to ensure that our policies are as much as possible harmonized. Specifically, the Commission seeks to include and retain within project boundaries a buffer zone around project reservoirs. These buffers serve to control the type and extent of private and

---

<sup>13</sup> License Application at E-1; rehearing request at 5. Rhinelander based its estimate of land in residential use on U.S. Department of Agriculture air photographs from the year 2000 and on U.S. Geological Survey mapping. Rhinelander filing of September 12, 2001, attached memorandum at 2. The reservoir is characterized as four interconnected water bodies: Thunder Lake, Boom Lake, Bass Lake, and the Rhinelander Flowage. License Application at E-1. About 25 percent of the reservoir shoreline is currently safely accessible by the public. See Rhinelander's March 27, 2003 Recreation Report (Form 80) at 1.

<sup>14</sup> Rhinelander filing of September 12, 2001, attached memorandum at 2.

<sup>15</sup> License Application at E-1.

<sup>16</sup> See, e.g., *Brazos River Authority*, 11 FERC ¶ 61,162 at 61,345-46 (1980); *Alabama Power Co.*, 14 FERC ¶ 61,206 (1981); *Public Utility District of Grant County, Wa.*, 88 FERC ¶ 61,012 at 61,032 (1999).

public use of reservoir shorelines, for the benefit of recreation,<sup>17</sup> wildlife resources, water quality, and aesthetics.<sup>18</sup>

17. There is sufficient evidence in the record for us to find that there is neither current nor foreseeable need to retain in the project boundary any of the lands at issue for purposes of public recreational facilities and access. The primary recreational activities at the project are fishing, hunting, and canoeing.<sup>19</sup> Within the project boundary are ten recreation sites that provide direct boat or canoe access to the reservoir, of which Rhinelander owns or maintains two.<sup>20</sup> Moreover, the region in which the project is located offers an abundance of these forms of recreation.<sup>21</sup> Neither a survey of local recreational users nor the licensee's latest Recreation Report indicates any foreseeable need for additional recreational opportunities at the project.<sup>22</sup>

---

<sup>17</sup> See the Commission's policy on recreation at licensed hydropower facilities, 18 C.F.R. § 2.7, promulgated in 1965. Section 2.7(a) of the policy states the Commission's expectation that its licensees will acquire and include within the project boundary enough land to provide optimum public recreational resources and access thereto. "To the extent consistent with the other objectives of the license, such lands to be acquired . . . for recreational purposes shall include the lands adjacent to the exterior margin of any project reservoir . . . ."

<sup>18</sup> See, e.g., Georgia Power Co., 76 FERC ¶ 61,281 at 62,438 (1996) (describing requirement that project boundary include licensee's proposed conservation buffer zone along project reservoir shoreline, "to ensure that Georgia Power and the Commission can fulfill their respective statutory obligations to protect project shoreline and aquatic resources and to provide appropriate public access to the project's impoundment for recreation purposes").

<sup>19</sup> License Application at E-24.

<sup>20</sup> Id. at E-19.

<sup>21</sup> Id. at E-23. The project facilities are located in an industrial area within the city limits of Rhinelander, population 7,400. The reservoir shoreline becomes more scenic along the reservoir's upper reaches, but does not offer any unusual scenery. Id. at E-1 and E-26.

<sup>22</sup> Id. at E-25; Recreation Report (Form 80), filed March 27, 2003.

18. On the other hand, we affirm the Director's conclusion (the EA's recommendation notwithstanding) that Rhinelander's proposal for land removal must await further information and analysis, forthcoming in the Land Management Plan required by license Article 410, for purposes of establishing an appropriate buffer zone around the reservoir, understanding exactly where residential development has occurred vis-à-vis the reservoir shoreline, and determining where to draw a new project boundary to best serve the public interest considerations described above.<sup>23</sup> We therefore deny rehearing on this issue.

---

<sup>23</sup> The Commission has been faced before with a conflict between removing residential property from the project boundary and protecting the project reservoir shoreline. In Brazos River Authority, 11 FERC ¶ 61,162, the Commission stated (at 61,345-46) (footnotes deleted):

We have announced our policy that:

as a general rule, project lands should include only those necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control (including protection of shoreline aesthetic values). Residential commercial and other structures should be included within the project boundary only to the extent that underlying lands are needed for those purposes.

We noted that the adequacy of provisions for present and future recreation [and] environmental considerations . . . among others, would be prime considerations in applying this rule on a case-by-case basis.

As a general matter, BRA's proposal to delete existing and future residential lease lands from the project comports with our policy. The Commission staff, however, . . . recommends, and we shall require, retention of a shoreline control strip at least 25 feet wide . . . for those cottage site lease areas already developed . . .

The one remaining question is whether to vary the width of the shoreline control strip to exclude those existing residential structures that are closer than 25 feet from the edge of the reservoir. In circumstances where an adequate shoreline control strip can still be maintained and efficient administration of the license is not affected, minimal variances of the normal buffer zone to remove a few encroaching structures from the project lands have been allowed. In the instant case, however, several hundred residences are located closer than 25 feet from the edge of the reservoir. Gerrymandering the project boundary to remove those structures poses a significant administrative problem. With the very irregular  
(continued...)

**B. Invasive Plant Species**

19. On June 3, 2000, the Department of the Interior timely filed recommendations for license conditions pursuant to FPA Section 10(j), 16 U.S.C. § 803(j). One of the recommendations was that Rhinelander be required to cooperate with the Wisconsin Department of Natural Resources (Wisconsin DNR) and other agencies to identify and control the spread of purple loosestrife, Eurasian watermilfoil, and other exotic and nuisance plant species. In its application, Rhinelander stated that it was not proposing programs to control nuisance plant species, because “the occurrence of this nuisance vegetation is not due to the operations of the Rhinelander project.”<sup>24</sup>

20. Article 406 of the new license requires Rhinelander to consult with Wisconsin DNR and the U.S. Fish and Wildlife Service (FWS) and file with the Commission a plan for monitoring invasive species at the project. Article 406 further provides that these agencies demonstrate that exotic plant species are significantly affecting fish and wildlife populations at the project, the Commission may require the licensee to “cooperate with the Wisconsin DNR and FWS to undertake reasonable measures to control or eliminate the invasive species in the project area.”

---

(continued...)

resulting boundary, users of the leased lands, the Licensee and its employees, and our staff would have great difficulty, in the day-to-day use and supervision of the leased lands, knowing just what land was inside the project and what was outside, and thus what activities on a particular piece of land were allowed or prohibited or subject to various controls or supervision under the license. More importantly, however, removal of those encroaching residential structures would leave an inadequate shoreline control strip. In many instances there would be little or no buffer zone remaining along the reservoir shoreline. The land remaining inside would not be sufficient to ensure that the Licensee in the first instance, and the Commission in its residual supervisory capacity, could adequately "protect the scenic, aesthetic, public recreational and other environmental values of the reservoir shoreline" from adjoining uses.

For these reasons, the 25-foot buffer zone in developed areas will not be varied to exclude existing structures. . . .

<sup>24</sup> License application at E-40.

21. Rhinelanders asks the Commission to remove Article 406 from the license, arguing that Interior's recommendation to monitor and control noxious weeds was not a "proper" Section 10(j) condition and should have been treated as a Section 10(a) recommendation and rejected as such. Rhinelanders claims that project operations have no effect on these species, which may be introduced into the area by factors beyond its control, such as wind, birds, or animals and by hitchhiking on equipment, boats, vehicles or shoes of visitors to the area. Rhinelanders states that there is no evidence that these species are now at the project site; that any plan to eradicate such weeds should be led by state and federal agencies, with the required cooperation of all landowners in the area, not just Rhinelanders; and that the cost of complying with Article 406 would far outweigh its benefits. In the alternative, Rhinelanders asks that this article be modified to make it clear that it is required to monitor and eradicate noxious weeds only as part of a coordinated, large-scale state or regional effort required of all landowners.

22. Section 10(j) requires the Commission to include in each hydroelectric license conditions "to adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat)," based on recommendations from federal and state resource agencies. In recommending the monitoring and control of nuisance plant species, Interior explained that purple loosestrife has little food value for wildlife, but can out-compete valuable native wetland plants, and that Eurasian watermilfoil can cause aquatic weed problems and alter fish communities by providing too much refuge for prey species.<sup>25</sup> Thus, nuisance plant recommendation is an appropriate fish and wildlife recommendation under Section 10(j). The EA (at 78-79) agreed with Interior's conclusions, and estimated (at Table 19) that the annual cost of purple loosestrife and Eurasian watermilfoil monitoring would only be \$9,270. We conclude that inclusion of Article 406 was proper and deny rehearing on this issue.

### **C. License Term**

23. Rhinelanders' relicensing application did not propose a license term. The Director concluded that the term should be 30 years, given that there was no new development at the project, nor were extensive environmental measures required. 104 FERC at P 45-46.

24. On rehearing, Rhinelanders argues that the mitigation and enhancement measures required by the new license do in fact constitute "moderate activity" warranting a 40-year

---

<sup>25</sup> January 4, 2000 comments and recommendations at 12-13.

license term. In the circumstances of this case we agree with Rhinelanders' characterization of the required measures, and grant rehearing on this issue.

The Commission orders:

(A) The request for rehearing filed by Rhinelanders Paper Company on September 22, 2003, is granted as set forth below and in all other respects is denied.

(B) The first sentence of ordering paragraph (A) of the new license issued on August 20, 2003, for Project No. 2161 is amended to read as follows:

This license is issued to Rhinelanders Paper Company (Licensee), effective the first day of the month in which this order is issued, for a period of 40 years, to continue to operate and maintain the Rhinelanders Hydroelectric Project.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.