

111 FERC ¶ 61,438
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Mosinee Paper Corporation

Project No. 2207-011

ORDER ON REHEARING

(Issued June 20, 2005)

1. Mosinee Paper Corporation (Mosinee) has requested rehearing of several requirements set forth in the April 7, 2005 Order issuing it a new license to operate the Mosinee Hydroelectric Project No. 2207.¹ For the reasons discussed below, we grant rehearing in part. This order is in the public interest because it clarifies the licensee's obligations under its license.
2. The 3.05-megawatt Mosinee Hydroelectric Project is a run-of-river project located on the Wisconsin River, in the town of Mosinee, Marathon County, Wisconsin.²
3. On April 7, 2005, the Director, Office of Energy Projects, issued Mosinee a new license for the project.³ On May 9, 2005, Mosinee timely filed a request for rehearing of the order, asserting that the Director erred in requiring Mosinee to file: 1) a new

¹ 111 FERC ¶ 62,033.

² The original license, issued on March 4, 1957 (effective January 1, 1938), expired on December 31, 1974. *See* 3 FPC 383. The project operated under successive annual licenses until the Commission issued Mosinee a new license on January 5, 1982, 18 FERC ¶ 62,004, with a term ending on December 31, 2004.

³ The Mosinee Hydroelectric Project includes: three dams spanning bedrock islands; a 1,377-acre reservoir at normal pool elevation of 1,137.75 mean sea level; an 850-foot-long power canal that diverts the Wisconsin River flows to two powerhouse with a total installed capacity of 3,050-kilowatts; two 2,000-foot-long, 5-kilovolt transmission lines; and appurtenant facilities.

stability analysis and revised spillway rating curves pursuant to Article 302; 2) a compliance monitoring plan pursuant to Article 403; 3) an invasive species plan pursuant to Article 408; 4) a reservoir drawdown plan pursuant to Article 404; and 5) a woody debris management plan pursuant to Article 406.

Discussion

A. Stability Analysis and Revised Spillway Rating Curves

4. In order to reduce the frequency of flashboard failures, Mosinee proposed, and is required under the new license, to replace the existing flashboards at the project with a strengthened flashboard system designed to fail at the four-year flood event.⁴ For dam safety and compliance reasons, Article 302 of the license requires Mosinee to file plans and specifications related to the design and construction of the flashboards; the plans and specifications are to include, among other things, a new stability analysis, and revised spillway rating curves with and without the flashboards.⁵

5. Mosinee asserts that a new stability analysis is not necessary because the new flashboards will be the same height as the existing flashboards, therefore the stability of the project structures will not change. Mosinee adds that no new spillway rating curves are required, because the new flashboards will be similar and of the same height as those in place now, therefore the overall discharge capacity of the new structure will not change.⁶ Accordingly, Mosinee asks that we delete from Article 302 the requirements to provide a new stability analysis and revised spillway rating curves.

6. While the new flashboards will be the same height as the existing flashboards, it is also the case that, to reduce the occurrence of tripping, they will be designed to fail at a higher reservoir elevation. This change in operation affects the hydraulic

⁴ 111 FERC ¶ 62,033 at P 26. The existing flashboards at the Mosinee dam typically fail one to two times per year, at flows ranging from 12,000 to 15,000 cubic feet per second (cfs). The new flashboards will be designed to fail at the 4-year flood event, or approximately 36,000 cfs. *See* October 28, 2004 Environmental Assessment (EA) at p. 34.

⁵ The revised spillway rating curve would represent the total flow in cfs for a given depth of flow over the spillway crest with flashboards in place prior to tripping, and with flashboards in the tripped position. This is typically shown as a graphical diagram of depth of water over the spillway crest (head) versus total discharge in cfs.

⁶ Rehearing request at 4.

characteristics of the spillway, and also creates a higher horizontal force on the dam. For these reasons, a spillway rating curve with and without the flashboards, as well as a stability analysis demonstrating that the dam meets engineering criteria, are required. Accordingly, we will deny rehearing on these issues.⁷

B. Compliance Monitoring Plan

7. On April 8, 2003, Wisconsin Department of Natural Resources (Wisconsin DNR) issued a water quality certification for the Mosinee Hydroelectric Project.⁸ Condition D of the certification requires Mosinee to minimize fluctuation of the reservoir surface elevation, and Condition E requires Mosinee to cooperate with the Wisconsin Valley Improvement Company (WVIC) to gather headwater and tailwater elevation data from automatic sensors that are owned and operated by WVIC.

8. Article 403 of the license in part requires Mosinee, in consultation with Wisconsin DNR and the U.S. Fish and Service (FWS), to file for Commission approval a plan to monitor reservoir surface elevations set forth in Condition C of the certification, and minimum flow release set forth in Article 402 of the license.⁹ The plan is to provide

the mechanisms and structures that would be used, including any periodic maintenance and calibration necessary for any installed devices or gages, to ensure that the devices work properly, and shall specify how often reservoir and minimum flows will be recorded and reported to the WDNR.

⁷ Mosinee also asks that Article 301, requiring cofferdam construction drawings (a cofferdam is a temporary structure enclosing all or part of a construction area so that construction can proceed in dry surroundings), be deleted because the only construction that will occur under the new license is installation of the flashboards, and that no cofferdam is required to perform this work. We will decline Mosinee's request, because Article 301 is applicable *only* if Mosinee determines that a cofferdam is needed. If Mosinee determines that one is not needed, then it may state so at the time the plans and specifications for the new flashboards are filed.

⁸ Section 401(d), 33 U.S.C. § 1341(d) of the Clean Water Act provides that state certification shall become a condition on any federal license or permit that is issued.

⁹ Condition C requires the licensee to maintain a reservoir elevation of 1137.75 National Geodetic Vertical Datum, and Article 402 in relevant part requires the licensee to provide a minimum instream flow of 140 cfs to the bypassed reach.

The plan is also to include provisions for filing with the Commission, WDNR and FWS annual reports summarizing the data.

9. On rehearing, Mosinee argues that Article 403 requires it to install and monitor “redundant gages and monitoring devices” that are unnecessary in light of its requirement under Condition E to cooperate with WVIC to gather headwater and tailwater elevation data from existing sensors owned and maintained by WVIC.¹⁰ Mosinee adds that it should not have to report data related to flow levels at set intervals; instead, Mosinee asserts, it should only have to provide the information to Wisconsin DNR and FWS “at either of their request.”¹¹

10. Article 403 does not require Mosinee to install additional gages and monitoring devices. Rather, it requires Mosinee to file a plan that establishes how the data from the *existing* automatic sensors are to be used, and the frequency of required maintenance or calibration of these sensors. We also reject Mosinee’s assertion that it should only have to report the data to Wisconsin DNR and FWS upon request: the Commission has an independent responsibility to ensure compliance with the license, and we have determined that the most effective means of achieving that end is to require Mosinee to file a compliance monitoring plan that includes reporting requirements. Given that Mosinee is required to file and report with us, requiring that the reports also be filed with Wisconsin DNR and FWS will add little, if any, added burden, and may provide those agencies with useful information. For these reasons, we will deny rehearing.

C. Invasive Species Plan

11. As noted in the April 7, 2005 order, purple loosestrife and Eurasian water milfoil, which are invasive species that displace native wetland vegetation and degrade wildlife habitat, occur within the project impoundment.¹² Accordingly,

¹⁰ Rehearing request at 4-5.

¹¹ Id.

¹² 111 FERC ¶ 62,033 at P 24.

Article 408 of the license requires Mosinee to develop and implement a plan to monitor and control invasive species in project waters.¹³

12. On rehearing, Mosinee asks that we delete Article 408 because invasive species are “neither a cause nor an effect of hydroelectric generation,” and invasive species monitoring and eradication is a matter to be addressed on a state-wide basis in coordination with all landowners.¹⁴

13. As we recently explained in *PCA Hydro, Inc.*, since hydroelectric projects may increase the spread of noxious weeds such as purple loosestrife, the Commission is within its authority to require a licensee to monitor the project site for the presence of

¹³ Article 408 states in relevant part:

The plan shall include, at a minimum: 1) the criteria used to determine and list which invasive plant species are at the project; 2) the results of baseline field surveys...to determine the presence/absence of invasive species; 3) follow-up methods of monitoring...and the frequency (e.g., annually) and schedule (e.g. July 1-30) for monitoring invasive species; 4) a description of the specific measures the license will implement (e.g., informational signs posted along property or brochures issued) to increase public awareness of invasive species; 5) a description of management practices the licensee will implement...to help prevent the spread of invasive species; 6) a description of the criteria that will be used to determine when control measures are needed and a description of the specific control measures that the licensee will implement to control/eliminate each nuisance species found at the site (i.e., manual pulling, chemical application, biological controls); 7) recommended procedures for obtaining technical assistance from the WDNR, FWS and others; and 8) a schedule for filing monitoring reports with the WDNR, FWS, and the Commission for review.

If at any time during the term of license, the agencies and the Commission deem it necessary to control/eliminate nuisance species, the licensee shall work with the resource agencies to successfully control the nuisance species.

¹⁴ Rehearing request at 7.

invasive species, deferring control measures unless and until the weeds become an actual problem.¹⁵ Accordingly, we will deny rehearing on this issue.

14. In the alternative, Mosinee asks that, if it is required to develop an invasive species plan, the Commission, consistent with its finding in *PCA Hydro, Inc.*, limit the plan to monitoring requirements, and clarify that Mosinee need implement reasonable control measures in the future only if the monitoring results show such measures are warranted.¹⁶

15. We agree that Article 408 was not intended to require Mosinee to implement control measures. It is consistent with the purpose of the article to require Mosinee to submit a plan to monitor invasive species, and defer control measures until they are warranted. We will grant Mosinee's request, and modify Article 408 accordingly.

D. Reservoir Drawdown Plan

16. License article 404 requires Mosinee to file for Commission approval a reservoir drawdown plan for emergency and planned drawdowns, which shall include, at a minimum, the timing, duration, and rate of drawdown and measures to minimize effects on water quality, recreation, and fish and wildlife resources.

17. Mosinee argues that it is not reasonable to prepare a "generic drawdown" plan because, in its 80-year history, the Mosinee reservoir has never required a drawdown for operation or maintenance, and there are so many factors that are at play in both planned and emergency drawdowns, including the level of the drawdown, the season, and duration of the drawdown, that it would be a waste of resources to develop such a plan. Mosinee proposes that, in the event of a drawdown, it will prepare and file a specific drawdown plan after appropriate consultation with agencies.¹⁷

¹⁵ See 111 FERC ¶ 61,191 at P 20, *citing Rhinelander Paper Company v. FERC*, No. 04-1133 (D.C. Cir., April 12, 2005). PCA Hydro is the licensee for the Grandmother Falls Project No. 2180, which is located on the Wisconsin River at river mile (RM) 324; the Mosinee Hydroelectric Project is located at RM 266. The two projects, along with the Alexander Hydroelectric Project No. 1979, were analyzed jointly in the October 28, 2004 EA.

¹⁶ Rehearing request at 7. As in *PCA Hydro, Inc.*, no resource agency recommended the imposition of invasive species monitoring or eradication for the Mosinee Hydroelectric Project.

¹⁷ Rehearing request at 9.

18. In *PCA Hydro, Inc.*, we rejected nearly identical arguments, noting that drawdowns may be needed for a number of reasons, and that such drawdowns can have adverse environmental impacts, and negatively impact recreational activities if conducted without proper planning.¹⁸ The purpose of a reservoir drawdown plan is to provide guidelines to consider during drawdown events to minimize such impacts, to the extent possible. That there have been no drawdowns at the Mosinee reservoir does not obviate the need for such a plan. Accordingly, we will deny rehearing on this issue.

E. Woody Debris Management Plan

19. Condition L of the certificate requires Mosinee to “pass all large woody debris downstream that may be done so in a reasonably safe manner.” Article 406 of the project license requires Mosinee to file a woody debris plan that would include the frequency and methods to be used to safely pass woody debris.

20. On rehearing, Mosinee asks that we remove Article 406 because it adds little to its substantive obligation under Condition L of the water quality certification to pass woody debris in a reasonably safe manner.¹⁹

21. We disagree. As we explained in *PCA Hydro, Inc.*, the Commission has an independent obligation to ensure compliance with a license.²⁰ While we have no reason to doubt that Mosinee intends to comply with the certificate, we conclude that it is in the public interest to require Mosinee to develop a plan, for our review, to ensure that woody debris is passed at the project in a safe, effective manner. For this reason, we will deny rehearing.

The Commission orders:

(A) The May 9, 2005 request for rehearing filed by Mosinee Paper Corporation is granted to the extent set forth in this order, and denied in all other respects.

¹⁸ See *PCA Hydro, Inc.*, 111 FERC ¶ 61,191, PP 11-14.

¹⁹ Rehearing request at 9.

²⁰ See *PCA Hydro, Inc.*, 111 FERC ¶ 61,191 at P. 17.

(B) Article 408 is revised to read as follows:

Article 408. *Invasive Plants*. Within six months of issuance of this order, the licensee shall file for Commission approval a plan to monitor invasive plant species, such as purple loosestrife (*Lythrum salicaria*) and Eurasian water-milfoil (*Myriophyllum spicatum*), at the project. The plan shall be prepared after consultation with the Wisconsin Department of Natural Resources (Wisconsin DNR) and the U.S. Fish and Wildlife Service (FWS). The plan shall include, but not be limited to, the following: (1) a description of the monitoring method; (2) frequency of monitoring; (3) a schedule for filing monitoring reports with Wisconsin DNR, FWS, and the Commission; and (4) a description of and implementation schedule for providing public information about the species.

The licensee shall include with the plan documentation of agency consultation, copies of comments and recommendations on the plan after it has been developed and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

If at any time during the term of the license, the Wisconsin DNR and FWS demonstrate invasive species are significantly affecting fish and wildlife populations at the project and that control measures are needed, and the Commission agrees with those determinations, the Commission reserves authority to require the licensee to cooperate with the Wisconsin DNR and FWS to undertake reasonable measures to control or eliminate the invasive species in project area.

By the Commission

(S E A L)

Linda Mitry,
Deputy Secretary.