

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.

PacifiCorp

Project No. 20-072

ORDER ON REHEARING AND CLARIFICATION

(Issued October 23, 2006)

1. On June 20, 2006, PacifiCorp filed a request for rehearing and clarification of an order issued in this proceeding on May 23, 2006.¹ The May 23 Order amended the license for PacifiCorp's Bear River Project No. 20, located on the Bear River in Caribou and Franklin Counties, Idaho, to permit PacifiCorp to: (1) remove the Cove development from the project; and (2) reduce the required minimum flow release in the bypassed reach of the project's Grace development.² The order did not adopt PacifiCorp's proposal related to the use of decommissioning funds that might be left over once the Cove development is removed.
2. On rehearing, PacifiCorp asks the Commission to adopt its proposal related to the use of excess decommissioning funds and make two clarifications of the order (concerning minimum flows during Cove Dam removal, and the disposal of the Cove development's buried steel penstock). The request for rehearing is granted, and the amendment order is modified and clarified as discussed below.

¹ 115 FERC ¶ 62,205 (2006).

² The project currently occupies 510.5 acres of federal lands managed by the U.S. Department of the Interior's Bureau of Land Management. However, no federal lands fall within the area potentially disturbed by the activities required by the May 23rd Order.

Background

3. On December 22, 2003, the Commission issued a new license for the Bear River Project, combining the Oneida development, Grace and Cove developments, and the Soda development into a single project governed by a single license.³ Article 403(f) of the new license required PacifiCorp to prepare a study plan evaluating the feasibility of improving fish passage at the Cove development, along with the alternative of decommissioning the development.

4. As a result of the study prepared pursuant to Article 403(f), PacifiCorp entered into a settlement agreement (agreement) providing for removal of the Cove facility from the project,⁴ and filed an application to amend the new license in accord with the terms of the agreement. Specifically, PacifiCorp proposed to: (1) adopt a project development removal plan included with the amendment application; (2) modify license Article 408 to (a) delete a requirement for minimum flows in the Cove bypassed reach, and (b) reduce the required minimum flow in the Grace bypassed reach from the lesser of 80 cfs or inflow to the lesser of 63 cfs or inflow; and (3) add an article stating that if decommissioning of the Cove development costs less than \$2.5 million at net present value (NPV) (in 2005 dollars), funds in an amount equal to the difference between the actual cost and the \$2.5 million will be provided to an environmental coordination committee (ECC), for its use.⁵

5. The May 23 Order adopted the removal plan and the modifications of Article 408,⁶ but did not adopt the PacifiCorp's proposed article concerning the use of excess decommissioning funds, if any.

³ 105 FERC ¶ 62,207 (2003). The Oneida, Grace/Cove, and Soda developments were originally licensed as Project Nos. 472, 2401 and 20, respectively.

⁴ Parties to the agreement include the U.S. Fish and Wildlife Service, the Bureau of Land Management, National Park Service, U.S. Forest Service, Shoshone-Bannock Tribes, Idaho Department of Environmental Quality, Idaho Department of Fish and Game, Idaho Department of Parks and Recreation, Idaho Council of Trout Unlimited, Idaho Rivers United, Greater Yellowstone Coalition, American Whitewater, and other intervenors who executed the agreement.

⁵ See proposed article 2, in Appendix A to the agreement filed in this proceeding on August 16, 2005.

⁶ See Ordering Paragraphs (B) and (L), respectively. 115 FERC at 64,899-900.

6. On rehearing, PacifiCorp challenges the Commission's determination concerning the funds, and requests clarification of the language adopting the removal plan and the Article 408 modifications.

Discussion

Excess Decommissioning Funds

7. PacifiCorp's proposed funding article provides that, within 120 days from completion of the removal of the Cove development, PacifiCorp will file with the Commission a report setting out the costs of the decommissioning. As noted above, the proposed article further provides that if decommissioning costs come to less than \$2.5 million NPV, an amount equal to the difference between what was actually spent and \$2.5 million will be provided as funds for use by the ECC. The ECC was established pursuant to Article 402 of the project license,⁷ and the license requires various actions to be based on consultation with the ECC.⁸

8. In the May 23 Order, Commission staff did not adopt the proposal to provide any excess funds to the ECC for its use, stating that it is preferable to require specific measures to resolve specific project impacts, particularly where, as is the case here, it is not clear to what extent the funds will be used for activities related to the project.

9. On rehearing, PacifiCorp proposes that when, pursuant to its proposed article, it files a report setting out the decommissioning costs, it can also identify, for Commission approval, specific enhancement measures related to the project, to be implemented through use of remaining decommissioning funds, if any. PacifiCorp suggests that this approach would ensure that it uses the funds to conduct mitigation or enhancement activities resolving specific project impacts associated with the Cove development removal.

10. PacifiCorp's proposal resolves our concern that any excess decommissioning funds be used for activities related to the project. Accordingly, we will amend the license to adopt PacifiCorp's proposed article, as modified to require submission of a plan setting out specific mitigation or enhancement measures related to the project for which remaining funds, if any, will be used.

⁷ Pursuant to article 402, the ECC is to be composed of one representative from PacifiCorp, the Tribes, and specified governmental entities and NGOs.

⁸ For examples, *see* articles 401, 403, 404, 406, 408-411, 416, 418, 420, 421, 424, 425, and 426. 105 FERC ¶ 62,207 at 64,472-83.

11. The article will also be modified to delete language stating that PacifiCorp will provide the funds “for use by the ECC.” PacifiCorp may consult with ECC in developing a plan for use of the funds and may designate ECC to undertake measures -- including dispersal of funds -- in keeping with the plan. However, it is PacifiCorp over whom the Commission has jurisdiction, and who must ultimately be responsible for the performance of all license requirements.⁹

Clarifications

12. As noted above, Ordering Paragraph (L) of the May 23 Order deleted from license Article 408 a required minimum flow for the Cove development’s bypassed reach, and reduced the required flow in the Grace bypassed reach to the lesser of 63 cfs, or inflow. On rehearing, PacifiCorp states that the project removal plan adopted by the Commission in Ordering Paragraph (B) of the amendment order provides for temporary reduction or suspension of required minimum flows in the Grace bypassed reach during the Cove development removal, but that Article 408(b) does not specifically state that PacifiCorp may do so. It asks that language be added to Article 408 to clarify that the minimum flows may be temporarily suspended or reduced as set forth in the removal plan.

13. The project removal plan outlines many steps that may require temporary reduction or suspension of the required minimum flows at the Grace bypassed reach during the Cove dam removal, and we will modify Article 408 to state clearly that such reduction or suspension is permitted.

14. Ordering Paragraph (C) of the amendment order states, “since the decommissioning proposal does not specifically address what is to be done with the project’s 550-foot-long, 12.5-foot-diameter, buried steel penstock, the licensee shall seal the upstream end of the penstock for safety measures.”¹⁰ On rehearing, PacifiCorp asks for clarification of whether the penstock measures it proposed in a plan filed June 2, 2006, satisfy the requirement of Ordering Paragraph (C).

15. The plan submitted by PacifiCorp on June 2, 2006, containing design drawings and technical specifications, as approved by Commission staff letter issued on July 27, 2006, satisfies the requirement of Ordering paragraph (C).

⁹ See 105 FERC at 64,460-61.

¹⁰ 115 FERC at 64,899.

The Commission orders:

(A) The request filed on June 6, 2006, by PacifiCorp, for rehearing of the order amending the license and revising annual charges for the Bear River Project No. 20, issued on May 23, 2006, in this proceeding, is granted.

(B) The following article is added to the license issued on December 22, 2003, for the Bear River Project No. 20:

Article 429. Within 120 days from the completion of Cove development removal, the licensee shall file with the Commission a report detailing decommissioning costs as that term is defined in the Cove development decommissioning settlement agreement filed on August 16, 2005. If decommissioning costs are less than 2.5 million dollars net present value (NPV) in 2005 dollars, the licensee shall provide, for mitigation and enhancement measures, funds in an amount equal to the difference between the calculated decommissioning costs and the 2.5 million dollars NPV(remaining funds). In the report detailing decommissioning costs, the licensee shall also identify, for Commission approval, specific enhancement measures related to the project that will be implemented through use of the remaining funds, if any.

(C) Article 408(b) of the license issued for the Bear River Project No. 20 on December 22, 2003, is modified to read as follows:

. . . (b) Grace bypassed reach: a year round minimum flow of 63 cfs or inflow, whichever is less, in addition to 2 cfs leakage below Grace dam; provided, however, that during the period of Cove dam removal and upon consultation with the Bear River Project's environmental coordination committee (ECC), this required continuous flow may be reduced or suspended for short periods of time as necessary to implement the project removal plan attached as Appendix B to the Cove settlement agreement filed on August 16, 2005.

(D) The plan submitted by PacifiCorp on June 2, 2006, and approved by Commission staff letter issued June 27, 2006, satisfies the requirement of Ordering Paragraph (C) of order issued in this proceeding on May 23, 2006.

(E) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2006).

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.