

138 FERC ¶ 61,178  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Appalachian Power Company

Project No. 739-026

ORDER GRANTING REHEARING

(Issued March 15, 2012)

1. On December 27, 2011, Commission staff issued a new license to the Appalachian Power Company (Appalachian) for the continued operation of the Claytor Hydroelectric Project No. 739, located on the New River in Pulaski County, Virginia.<sup>1</sup> On January 24, 2012, Appalachian filed a timely request for rehearing of the order, seeking revision of several license articles. For the reasons discussed below, we grant rehearing.

**Discussion**

**A. Article 401**

2. Article 401(a) of the license requires Appalachian to file, within 90 days of license issuance, a lake level and flow monitoring contingency plan for Commission approval. On rehearing, Appalachian asks the Commission to extend the deadline for filing the plan to 150 days from license issuance. Appalachian explains that the license requires it to first submit the plan to the Virginia Department of Environmental Quality (Virginia DEQ) within 60 days of license issuance. Appalachian states that the 30-day period between the time the plan is to be submitted to the Virginia DEQ and the time it must be filed with the Commission does not allow adequate time for Appalachian to address any issues raised by the Virginia DEQ prior to submitting the plan to the Commission. Hence, Appalachian requests an additional 60 days to submit the plan.

3. Appalachian's request to extend the deadline is reasonable. Thus, we grant it and modify Article 401 accordingly.

---

<sup>1</sup> *Appalachian Power Co.*, 137 FERC ¶ 62,258 (2011).

**B. Article 411**

4. Appalachian submitted a Recreation Management Plan (RMP) as part of its application for a new license. Within its RMP, Appalachian proposed to construct a boat ramp, courtesy pier, and trailer parking at its existing Appalachian Picnic Area adjacent to the Claytor dam. As proposed, when Appalachian's Recreation Use Survey (to be conducted every six years in conjunction with its filing of FERC Form 80) demonstrates that usage of any existing recreation facility has reached 80 percent of facility capacity, Appalachian will consult with a Technical Review Committee, prepare a report with a plan and schedule for constructing the facilities, and file the report for Commission approval when it submits its FERC Form 80.

5. Article 411 of the license modified and approved Appalachian's proposed RMP. Article 411(a) requires Appalachian to file "an updated schedule for providing a boat ramp, fishing pier, and trailer parking area at Appalachian's picnic area, which would serve as the upstream portion of any new portage facility . . . ."

6. On rehearing, Appalachian argues that its proposed schedule to construct the facilities was a reasonable need-based approach, and the license order, by requiring an updated schedule, appears to change its proposed schedule without explanation.

7. After further review, we agree that Appalachian's need-based approach is appropriate. Thus, we grant rehearing and delete Article 411(a).<sup>2</sup>

**C. Article 414**

8. Appalachian submitted a Shoreline Management Plan (SMP) as part of its application for a new license for the Claytor Project. The SMP provides that existing, non-conforming structures such as boat docks are grandfathered and need not be modified to meet the new SMP requirements. However, the SMP further provides that: "[i]f maintenance requires more than 50% of the physical structure to be replaced or repaired then the structure must conform to the new requirements [of the SMP]."<sup>3</sup>

---

<sup>2</sup> Appalachian also argues that Article 411(a) should not have made any reference to the proposed new canoe portage facilities as those facilities are distinct and unrelated to the picnic area enhancements. Since we are deleting Article 411(a) from the license, Appalachian's argument in regard to the proposed canoe portage facilities is moot.

<sup>3</sup> See, e.g., Section 2.5.4(22) of Appalachian's SMP, which applies to single family, residential dock facilities. The 50-percent rule applies to other types of docking facilities as well. See, e.g., Sections 2.5.4 and 2.5.5 of the SMP. The 50-percent rule also

9. The SMP also includes a Variance Process, so that, where warranted, Appalachian may allow for exceptions to the requirements of the SMP. Appalachian proposes to evaluate such variances on a case-by-case basis.<sup>4</sup>

10. Article 414 of the license modified and approved Appalachian's proposed SMP. The license order found that the language of the 50-percent rule is ambiguous because it does not describe whether it is to apply only in cases where more than 50 percent of a structure is repaired at one time or whether the 50-percent criterion is cumulative.<sup>5</sup> Article 414(e) thus requires Appalachian, after consultation with specified entities, to file an amendment to its SMP within 60 days of license issuance providing clarification on how the 50-percent rule is to be implemented.

11. As to Appalachian's proposed Variance Process, the order noted that more detail regarding when Appalachian might consider exceptions to the SMP guidelines would provide a better understanding of when a variance might be granted and inform landowners as to the purpose behind certain SMP specifications.<sup>6</sup> Therefore, Article 414(f) requires Appalachian to file, within 60 days of license issuance, an amendment to its SMP describing the criteria it will use to review requests for a variance.

12. On rehearing, Appalachian asks the Commission to extend the deadlines for filing amendments to the 50-percent rule and the Variance Process to six months from license issuance. Appalachian explains that the Commission has required Appalachian to file a similar amendment to clarify application of the 50-percent rule in the SMP for its Smith Mountain Project No. 2210.<sup>7</sup> There, the Commission provided Appalachian with six months to consult the appropriate stakeholders and to file its amendment. Appalachian states that the complexities of the 50-percent rule for the Claytor Project are similar to those for the Smith Mountain Project, and it therefore asks for the same amount of time (i.e., six months) to consult with its stakeholders and file its amendment for the Claytor Project. Appalachian also states that the stakeholders it must consult with before it

---

specifies that nonconforming structures may continue to exist and may be expanded provided the nonconforming aspect of the structure is not increased.

<sup>4</sup> Section 3.3 of Appalachian's SMP.

<sup>5</sup> *Appalachian Power Co.*, 137 FERC ¶ 62,258 at P 130.

<sup>6</sup> *Id.* P 129.

<sup>7</sup> *Appalachian Power Co.*, 137 FERC ¶ 61,065, *reh'g denied*, 137 FERC ¶ 61,208 (2011).

proposes an amendment to the 50-percent rule are identical to those it must consult with for its Variance Process. Further, Appalachian claims that its Variance Process and the 50-percent rule contain overlapping items that Appalachian must address prior to filing those amendments with the Commission. Hence, Appalachian requests that the deadlines for both the 50-percent rule and the Variance Process be identically set at six months.

13. Appalachian's request to extend the deadlines is reasonable. Thus, we grant it and modify Article 414 accordingly.

The Commission orders:

(A) Appalachian Power Company's January 24, 2012 request for rehearing of the December 27, 2011 order issuing a new license for Project No. 739 is granted.

(B) Article 401(a) of the license is revised to require the lake level and flow monitoring contingency plan to be submitted to the Commission within 150 days of license issuance.

(C) Article 411(a) of the license is deleted and Article 411(b) and (c) are renumbered accordingly.

(D) Article 414(e) and (f) of the license are revised to require the amendments to be submitted to the Commission within six months of license issuance.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.