

147 FERC ¶ 61,052
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

ECOspensible, Inc.

Docket No. CD14-15-001

ORDER DENYING REHEARING

(Issued April 17, 2014)

1. On February 24, 2014, ECOspensible, Inc. (ECO) filed a request for rehearing of a February 20, 2014 staff letter order rejecting ECO's Notice of Intent (NOI) requesting that the Commission characterize its Caughdenoy Lock Hydro Project as a "qualifying conduit hydropower facility" that would be excluded from the Commission's licensing jurisdiction. The project is proposed to be located on the Oneida Lake Steamboat Canal (Oneida Canal) on the Oneida River, near the Town of Clay, in Onondaga County, New York. For the reasons discussed below, we deny the request for rehearing.

Background

2. The proposed site for the Caughdenoy Lock Hydro Project is a narrow segment of the Oneida Canal that historically served as the Caughdenoy Lock. The Oneida Canal and Caughdenoy Lock are part of the New York State Barge Canal System (New York BCS). Water from the Oneida River enters the Oneida Canal about 2,200 feet upstream of Caughdenoy Dam, then travels through the canal into Caughdenoy Lock. From the lock, water travels approximately 180 feet down the 18-foot-wide canal until it reenters the Oneida River about 1,000 feet downstream of Caughdenoy Dam. Historically, the Oneida Canal and Caughdenoy Lock were used for navigation, but now they are used in conjunction with the Caughdenoy Dam to regulate lake levels and provide flood control.

3. The proposed project would be located in the canal just below Caughdenoy Lock in an area 180-feet long and 18-feet wide.¹ ECO proposes to install three arrays of hydrokinetic cross flow turbines that would rest on the bottom of the canal.² The turbines

¹ ECO's Notice of Intent to Construct Qualifying Conduit Hydropower Facility (NOI), filed Feb. 6, 2014, at Appendix.

² NOI at section (3).

would be anchored using a gravity ballast system that minimizes the need for dredging or underwater foundation work. The project would have a total combined nameplate capacity of 3,000 kilowatts and its estimated annual generation would be approximately 9,000,000 kilowatt-hours per year. The turbines would be connected to an adjacent onshore power station that would connect with the transmission grid via a 60-foot-long transmission line.

4. In August 2013, Congress enacted the Hydropower Regulatory Efficiency Act of 2013 (2013 Act).³ As pertinent here, the 2013 Act amended section 30 of the Federal Power Act (FPA) to create a class of conduit hydropower projects that are excluded from the licensing requirements of Part I of the FPA.⁴ A “qualifying conduit hydropower facility” is one that generates electric power, using for such generation only the hydroelectric potential of a non-federally-owned conduit, without the need for any dam or other impoundment to produce power. The 2013 Act defines “conduit” as “any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.”⁵

5. On February 6, 2014, ECO filed its NOI requesting that the Commission determine that the Caughdenoy Lock Hydro Project meets the criteria of a qualifying conduit facility and thus is excluded from the licensing requirements of Part I of the FPA. ECO explained that the Oneida Canal and Caughdenoy Lock are part of the New York BCS and are used for navigation.

6. On February 20, 2014, Commission staff rejected ECO’s NOI. Commission staff explained that the Caughdenoy Lock Hydro Project does not meet the criteria for designation as a qualifying conduit facility because the project would not generate electricity using a “conduit.” The project site does not qualify as a conduit because the canal and lock are operated for purposes of navigation and not for the “distribution of water for agricultural, municipal, or industrial consumption.”

7. On February 24, 2014, ECO filed a request for rehearing.

³ Pub. L. No. 113-23, § 4(a), 127 Stat. 493 (2013).

⁴ 16 U.S.C. § 823a (2012) *amended by* Pub. L. No. 113-23, § 4(a)(2)(A), 127 Stat. 493, 494 (2013).

⁵ *Id.*

Discussion

8. Although ECO stated in its NOI that the Caughdenoy Lock was used for navigation, it now asserts that the facility “is currently used only as a secondary flood control structure working in conjunction with Caughdenoy Dam to maintain the water levels of Oneida Lake.”⁶ ECO states this supports a finding that the structure is operated for the regulation of water for agricultural, municipal, or industrial consumption.⁷

9. ECO misunderstands the law. To qualify as a conduit, a manmade water conveyance must be “operated for the distribution of water for agricultural, municipal, or industrial consumption.”⁸ ECO states in its rehearing request that the only use of the Caughdenoy Lock and the canal is to regulate water levels to achieve flood control. It does not distribute water for agricultural, municipal, or industrial consumption, and thus does not meet the statutory definition of a conduit.⁹ Accordingly, the proposed project is not a “qualifying conduit hydropower facility.”

10. For the above reasons, we affirm Commission staff’s rejection of ECO’s NOI. We note that this holding in no way precludes ECO from pursuing the development of its project pursuant to the FPA.

⁶ ECO’s responsible’s request for rehearing at 3. Apparently, the lock was at one time used for navigation. *See* Welcome to NY Canals, http://www.nycanals.com/Oneida_Lake (last visited Apr. 10, 2014) (stating that the Caughdenoy Lock “once allowed steamboats to bring people, boats and barges from Oneida Lake down to Three Rivers where it connected to the Oswego Canal. From there, boats could connect to the Erie Canal or Lake Ontario”).

⁷ *Id.* at 4.

⁸ Pub. L. No. 113-23, § 4(a)(3)(A), 127 Stat. 493, 494 (2013).

⁹ ECO makes an alternative argument that water from the Oneida River is used in a wastewater treatment plant located an unspecified distance from the lock and that the Caughdenoy Marina and Campground, which ECO says is adjacent to the proposed project site, uses water from the Oneida Canal. ECO request for rehearing at 4. ECO makes no showing, however, that the lock and canal are operated with the intent of distributing water for consumption at the wastewater plant (which is apparently located on the Oneida River, not on the canal system) or the marina and campground. Even assuming that water that passes through the lock ultimately is used at either facility, nothing in the record shows that this is anything but incidental, rather than being a purpose for which the lock and canal are operated.

The Commission orders:

ECOspensible, Inc.'s request for rehearing, filed on February 24, 2014, is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.