

147 FERC ¶ 61,218
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

BOST3 Hydroelectric LLC

Project No. 12756-004

ORDER ON REHEARING AND AMENDING LICENSE

(Issued June 19, 2014)

1. On May 12, 2014, BOST3 Hydroelectric LLC (BOST3) filed a request for rehearing of Commission staff's April 14, 2014 order¹ issuing an original license for the 36.2-megawatt Red River Lock and Dam No. 3 Hydroelectric Project No. 12756, to be located at the U.S. Army Corps of Engineers' (Corps) Lock and Dam No. 3 on the Red River near the town of Colfax, in Natchitoches Parish, Louisiana. We grant BOST3's request for rehearing and amend the license, as discussed below.

Background

2. In the April 14, 2014 license order, Articles 402, 407, and 408 require the licensee to file for Commission approval a Water Quality Management Plan, a Wetland Mitigation Plan, and a Revegetation Management Plan, respectively, within six months of license issuance or 90 days prior to land-disturbing activities,² whichever comes first.

3. Article 403 requires the licensee to file for Commission approval a Freshwater Mussel Relocation Plan within six months of license issuance or 180 days prior to commencing construction of the project cofferdam,³ whichever comes first.

4. On May 12, 2014, BOST3 filed a timely request for rehearing.

¹ *BOST3 Hydroelectric LLC*, 147 FERC ¶ 62,035 (2014).

² Article 407 uses the term "ground-disturbing activities" instead of "land-disturbing activities."

³ A cofferdam is a temporary dam or barrier used to divert a stream or to enclose an area during construction.

Discussion

A. Request to Modify License Article Deadlines

5. On rehearing, BOST3 asks the Commission to modify the filing deadlines set forth in Articles 402, 403, 407, and 408. BOST3 states it is unlikely it would have a final project design within six months of license issuance. To develop a final project design at a Corps dam, a licensee must finalize a review package with the Corps under section 408 of the Rivers and Harbors Act,⁴ which, according to BOST3, takes more than six months from license issuance.⁵

6. BOST3 argues that having a final project design is essential to preparing the subject plans. It states that preparing the Water Quality Management Plan requires detailed knowledge of the powerhouse configuration and the selected turbine; the Freshwater Mussel Relocation Plan requires the identification of areas that will be disturbed by project construction; the Wetland Mitigation Plan requires identification of affected wetlands; and the Revegetation Management Plan requires the determination of excavated areas, fill sections, disposal areas, and disturbed construction layouts. If BOST3 filed the subject plans within six months of license issuance, BOST3 states the plans would be based on assumptions that could later require amendments to the plans.

7. Therefore, BOST3 asks the Commission to change the filing deadlines set forth in Articles 402, 403, 407, and 408 to the following:

- under Articles 402, 403, and 408, require the licensee to file with the Commission a Water Quality Management Plan, a Freshwater Mussel Relocation Plan, and a Revegetation Management Plan, respectively, 180 days prior to the start of construction; and
- under Article 407, require the licensee to file with the Commission a Wetland Mitigation Plan concurrently with the application for a section 404 permit with the Corps.⁶

⁴ 33 U.S.C. § 408 (2012).

⁵ BOST3 notes that the licensee of the Red Rock Hydroelectric Project No. 12576, to be located at the Corps' Red Rock Dam in Marion County, Iowa, completed the final project design 30 months after license issuance. *See* Request for Rehearing at 3.

⁶ BOST3 asks that the Commission require the Wetland Mitigation Plan to be filed concurrently with BOST3's section 404 permit application because the Corps requests that the section 404 permit process (which also involves the identification of affected

(continued...)

8. For the reasons explained by BOST3, we agree that the six-month deadline may not give the licensee sufficient time to develop a final project design with the Corps and fully develop the required plans. Therefore, we grant rehearing and amend the license to delete the six-month-deadline requirement from Articles 402, 403, 407, and 408. Under Article 402, the Water Quality Management Plan will be due 90 days before land-disturbing activities; under Article 403, the Freshwater Mussel Relocation Plan will be due 180 days before commencing cofferdam construction; under Article 407, the Wetland Mitigation Plan will be due 90 days before any ground-disturbing activities, which presumably would not occur until after BOST3 makes the required Corps filings; and under Article 408, the Revegetation Management Plan will be due 90 days before land-disturbing activities.

B. Minor Correction to License Order

9. BOST3 notes that paragraph 93 of the license order incorrectly states the project will be located in the Southwest Power Pool region of the North American Electric Reliability Corporation. Rather, the project will interconnect with a transmission line owned by Central Louisiana Electric Company, which is a part of the Midcontinent Independent System Operator system. We duly note this correction.

The Commission orders:

(A) BOST3 Hydroelectric LLC's May 12, 2014 request for rehearing of the April 14, 2014 order issuing an original license for Project No. 12756 is granted to the extent set forth in this order.

(B) The first sentences of license Articles 402, 403, 407, and 408 are revised by deleting "[w]ithin six months of license issuance, or" and "whichever comes first."

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

wetlands) occur concurrently with the section 408 approval process. *See* Request for Rehearing at 7.