

156 FERC ¶ 61,192
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Domtar Paper Company, LLC

Project No. 2212-049

ORDER MODIFYING AND APPROVING DRAWDOWN PLAN PURSUANT TO
ARTICLE 404 AND GRANTING TEMPORARY VARIANCE OF ARTICLE 402

(Issued September 22, 2016)

1. On June 10, 2016, and supplemented on August 18, 2016, Domtar Paper Company LLC (Domtar), licensee for the Rothschild Hydroelectric Project No. 2212, filed a request for a temporary variance of Article 402 and a Reservoir Drawdown Plan for Commission approval pursuant to Article 404 of the project license.¹ The project is located on the Wisconsin River in Marathon County, Wisconsin.

I. Background

2. Article 402 requires the licensee to operate the project in a run-of-river mode in which the reservoir surface elevation remains between 1,160.6 and 1,160.8 feet National Geodetic Vertical Datum.

3. Part 12 of the Commission's regulations require the licensee to periodically conduct a dam safety inspection under the direction and responsibility of an independent consultant.² During a dam safety inspection completed on August 14, 2013, the independent consultant discovered concrete deterioration at the waterline on the upstream side of the dam. In order to repair the dam, the licensee must drawdown the reservoir below the required minimum reservoir surface elevation specified in Article 402.

¹ *Weyerhaeuser Company*, 76 FERC ¶ 61,057 (1996).

² 18 C.F.R. pt. 12 Subpt. D (2016).

4. Article 404 requires the licensee to file a Reservoir Drawdown Plan each time the licensee seeks to draw down the reservoir, to minimize the impact of project-related maintenance drawdowns on aquatic resources. The plan must include an implementation schedule and documentation of consultation with the U.S. Fish and Wildlife Service (FWS) and the Wisconsin Department of Natural Resources (Wisconsin DNR).

II. Licensee's Plan

5. Domtar proposes to drawdown the project reservoir, Lake Wausau, by five feet to repair the dam. In order to minimize impacts to recreation and aquatic resources, Domtar proposes to lower Lake Wausau starting no earlier than September 12, 2016, using a maximum daily drawdown rate of less than four inches per day. The reservoir would reach its lowest level no later than October 1, 2016, and Domtar would begin refilling the reservoir by November 15, 2016. Domtar states that the reservoir would be completely refilled by November 20, 2016.

6. In order to minimize impacts to recreation during the drawdown, Domtar posted signage at popular access sites along Lake Wausau to inform the public and recreational users of the proposed drawdown. In addition, the licensee proposes to issue a media release and provide a telephone hotline to increase public awareness of the drawdown and to answer any questions.

7. Domtar consulted with the Wisconsin DNR and FWS to develop the drawdown plan in a manner that would minimize adverse effects to aquatic resources and determined that starting the drawdown no earlier than September 12 would avoid significant aquatic spawning periods and that a slower daily drawdown rate of four inches would allow less-mobile aquatic organisms to better adjust to lower water levels. Given these measures, the licensee does not propose surveying for stranded aquatic organisms.

8. After consulting with the Wisconsin DNR and FWS, Domtar provided a draft copy of its plan for comment to both agencies on April 29, 2016. The FWS did not provide any comments. The Wisconsin DNR asked the licensee to post signage notifying potential recreation users of the drawdown by August 1, 2016, which it did.

III. Notice, Comments, and Motion to Intervene

A. Public Notice

9. The Commission issued public notice of the licensee's request and drawdown plan on August 4, 2016. The deadline to file protests, comments, and motions to intervene was August 19, 2016.

B. Motion to Intervene

10. On August 9, 2016, Mr. Kevin S. Fabel filed a motion to intervene stating that the proposed drawdown would negatively affect recreation opportunities on Lake Wausau, specifically duck hunting and trapping.³ Mr. Fabel acknowledges that the licensee must complete the repairs to the dam, but states that the repairs are not urgent and asks the licensee to consider three alternative schedules for getting this work done. Mr. Fabel suggests that the licensee reschedule the drawdown to occur in either: (1) late May and early June 2017, after the spring runoff; (2) earlier this year so that the work can be completed by the middle of September 2016; or (3) after November 1, 2016 with a compressed work schedule, so the repairs can be completed and the reservoir refilled sooner. All three of Mr. Fabel's proposed alternative schedules would avoid all or most of the local duck hunting season.

C. Comments

11. The Commission received 127 comments in response to the public notice. Of the comments filed, 16 commenters oppose the full five-foot drawdown and/or the licensee's proposed schedule to begin the drawdown by September 12, 2016 (similar to Mr. Fabel's comments). All remaining commenters support the licensee's proposal to begin the drawdown this September. In general, most commenters do not want the reservoir lowered during any part of the primary recreation season (late May through August). Most commenters said the Commission should prioritize recreation during the summer, when the greatest use occurs.

12. On August 17, 2016, Mr. Fabel filed additional comments responding, in part, to the many commenters supporting the licensee's proposed schedule. In his new comments, he stated that the length of time and the depth of the drawdown proposed by the licensee are unreasonable and recommends the Commission grant a temporary variance for a shorter period and for a drawdown of less than five feet. In addition, Mr. Fabel proposed another alternative schedule under which the licensee would begin the drawdown on October 20, 2016, complete the work by early November, and refill the reservoir by mid-November 2016, which he states would allow duck hunting to continue on the lake for the majority of the season until October 20. Mr. Fabel also questioned whether the drawdown would affect wells bordering the reservoir that provide drinking water for the City of Schofield. Specifically, he was concerned that the drawdown could affect the city's water supply and/or water quality. Mr. Fabel recommended that the

³ Timely, unopposed motions to intervene are granted automatically pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2016).

licensee conduct a study before starting the drawdown to ensure that lowering the reservoir would not significantly affect the city's wells and drinking water supply.

13. On August 18, 2016, Mr. Fabel filed additional comments recommending the repairs be made without lowering the reservoir so no recreational uses would be affected. Mr. Fabel stated that there have been major bridge projects completed on Lake Wausau, where concrete footings have been installed and repairs made without a reservoir drawdown.

IV. Discussion

A. Recreation Resources

14. When considering the potential impacts to recreational use resulting from the proposed drawdown of a project reservoir, the Commission must evaluate the overall potential impacts to all project users. The duck hunting season on Lake Wausau, as permitted by the Wisconsin DNR, runs from September 1 through September 7 for early teal, from September 1 through September 15 for early goose, and from September 24 through November 22 for regular ducks.⁴ Mr. Fabel states that the proposed drawdown would force residential nesting ducks out of their habitat on the lake, which would negatively affect the duck population in the coming season and may impact migration patterns and future duck populations in the area as well. He also states that the licensee's proposed schedule for lowering the reservoir and completing dam repairs could adversely affect a portion of the trapping season.

15. Mr. Fabel's suggestion of long-term impacts on the duck population are unsupported, and the impacts on hunting would be short-term and of limited impact. Further, lowering the reservoir starting in late May or early June 2017, as Mr. Fabel suggests, would adversely affect most of the summer recreation season, when Lake Wausau is used heavily for various recreational activities including water skiing, fishing, swimming, kayaking, and boating. Lowering the water level in May or June would severely impact these activities, in part, because the four public boat launches at the lake are at a depth of approximately three feet.⁵ Lowering the reservoir beginning on or after September 12, 2016, as proposed by the licensee, would avoid the primary recreation season, therefore affecting fewer recreational users.

⁴ Wisconsin DNR, 2016 Wisconsin Hunting and Trapping Season (April 13, 2016), <http://dnr.wi.gov/files/PDF/pubs/wm/WM0153.pdf>.

⁵ Wisconsin DNR, Lake Wausau: Boat Landings, <http://dnr.wi.gov/lakes/lakepages/LakeDetail.aspx?wbic=1437500&page=boating>.

B. Scheduled Length and Magnitude of Drawdown

16. Mr. Fabel's other two alternatives would either have the licensee perform the drawdown earlier this year so that the work can be completed by the middle of September 2016, or after November 1 of this year, with a compressed work schedule. It is now too late for the licensee to complete the dam repairs by the middle of this September because, as discussed above, the licensee needs roughly 10 weeks from start to finish to lower the reservoir, make the repairs, and return Lake Wausau to its normal elevation. Mr. Fabel's recommendation for a November 1 start date (2016), with a compressed work schedule would extend dam repairs into the winter season. This late start date would complicate finishing the repairs during a shortened construction period, and may require implementing cold weather construction procedures which could jeopardize completing the repairs. A later start date would also necessitate crews working 24 hours a day.

17. Mr. Fabel also states that the length of time required for construction and drawdown is unreasonable, and recommends making the repairs without lowering the reservoir. In its August 24, 2016 filing, Domtar states that it selected a five-foot drawdown in order to provide the access and work space needed to complete the repairs. This includes a depth that ensures that fluctuations in the reservoir don't encroach on the concrete repair work limits. Completing the repairs without drawing down the reservoir would require cofferdams or other water-retaining structures around the spillway gates, an expensive and time-consuming measure. Keeping the reservoir at its normal level while blocking the spillway gates would create additional risks to the project and the public should high flows occur due to a storm event. Domtar also stated that it will attempt to keep the drawdown period as short as possible.

C. Aquatic Resources and Water Supply

18. Lowering the reservoir surface elevation by five feet could have short-term, minor effects on aquatic resources in Lake Wausau, especially near-shore habitats important to aquatic invertebrates including mussels and juvenile fish. Lake Wausau is about 1,851 acres in size, and is a shallow, eutrophic impoundment.⁶ It has a maximum depth of 30 feet and a mean depth of seven feet.⁷ Twenty-three percent of the lake is less than 3 feet deep, while only 8 percent of the lake has a depth over 20 feet.⁸ Accordingly,

⁶ Wisconsin DNR, Lake Wausau: Facts and Figures, <http://dnr.wi.gov/lakes/lakepages/LakeDetail.aspx?wbic=1437500&page=facts>.

⁷ *Id.*

⁸ Wisconsin DNR, Lake Survey Map (October 1973), <http://dnr.wi.gov/lakes/maps/DNR/1437500a.pdf>.

lowering the lake would in the short term reduce aquatic habitat. Commission staff does not expect that this would have significant or ongoing impacts.

19. Panfish species found in Lake Wausau include sunfishes and crappie. Important gamefish include walleye, largemouth bass, smallmouth bass, northern pike, and muskellunge.⁹ Panfish and gamefish in Lake Wausau spawn beginning in early spring for northern pike, extending into early summer for largemouth bass and sunfishes. Bottom substrate in the lake consists of about 75 percent sand, 20 percent muck, and 5 percent rock.¹⁰

20. Domtar proposes a drawdown rate of four inches per day. Mr. Fabel recommends increasing the rate of the drawdown to minimize the amount of time necessary to complete the repairs and refill the lake. In the absence of site specific information, many state and federal agencies recommend a drawdown rate of six inches per day. However, Lake Wausau is quite shallow. Therefore, we conclude that the licensee's proposed slower drawdown rate of four inches would help minimize adverse effects on aquatic organisms from stranding and desiccation or from being isolated in any pools that may form while the lake is being lowered.

21. Delaying the drawdown until late May and early June, as Mr. Fabel suggests, would have a clear adverse effect on most fish species spawning within Lake Wausau. While lowering the lake in spring or early summer would have a short-term effect, it could lead to longer-term effects to the populations' age distribution. Because important fish species in Lake Wausau spawn during the spring, we conclude that scheduling the drawdown in the fall would minimize adverse effects on panfish and gamefish spawning within the reservoir.

22. Finally, the City of Schofield obtains drinking water from three wells at depths of 72, 80, and 100 feet near Lake Wausau.¹¹ We do not anticipate that the proposed 5-foot reservoir drawdown would affect the City's drinking water supply or quality.

⁹ Wisconsin DNR, Lake Wausau: Facts and Figures, <http://dnr.wi.gov/lakes/lakepages/LakeDetail.aspx?wbic=1437500&page=facts>.

¹⁰ Wisconsin DNR, Lake Wausau: Facts and Figures, <http://dnr.wi.gov/lakes/lakepages/LakeDetail.aspx?wbic=1437500&page=facts>.

¹¹ Wisconsin DNR, 2015 Schofield Water Consumer Confidence Report, <http://dnr.wi.gov/ccr/>.

V. Conclusion

23. Although the licensee's proposed schedule for lowering Lake Wausau could adversely affect a portion of the duck hunting and trapping seasons during this fall and winter, it would not affect the entire season, as early teal and goose hunting seasons would occur prior to or at the very beginning of the drawdown. Further, we are issuing this order on September 22, which is later than Domtar proposes. The proposed schedule would also avoid any effects to the primary recreation season during the summer. The licensee's proposed drawdown schedule is reasonable and would help minimize effects to recreation and aquatic resources. Accordingly, because the licensee's request for a temporary variance of Article 402 and its Reservoir Drawdown Plan under Article 404 will allow for necessary repairs and will have minimal, short-term negative environmental impacts, we will approve it.¹²

24. To ensure that the Commission and the resource agencies are made aware of any changes to the circumstances of the proposed drawdown, the licensee should provide timely notification to these entities if the drawdown is modified. Finally, the licensee should notify the Commission when reservoir is refilled and returned to its normal elevation.

The Commission orders:

(A) The licensee's application for a temporary variance to Article 402 and its Reservoir Drawdown Plan filed pursuant to Article 404 are approved, as modified by paragraphs (B), (C), and (D) below. The temporary variance expires December 31, 2016.

(B) The licensee must notify the Commission within 15 days of the project reservoir returning to its normal elevation as specified in Article 402, providing the date of that event.

(C) If the schedule or drawdown rate as proposed in the Reservoir Drawdown Plan are modified prior to or during the drawdown, the licensee must notify the Commission, the U.S. Fish and Wildlife Service and the Wisconsin Department of Natural Resources as soon as possible, but no later than 10 days after making such modifications.

(D) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section

¹² Our temporary variance is being granted until December 31, 2016 to ensure Domtar has enough time to complete this work given the uncertainties of construction and weather.

313(a) of the Federal Power Act, 16 U.S.C. § 825*l* (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2016). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.