

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

PCA Hydro, Inc.

Project No. 2180-009

ORDER ON REHEARING

(Issued May 9, 2005)

1. PCA Hydro, Inc. (PCA), has requested rehearing of four requirements set forth in the January 6, 2005 Order issuing it a new license to operate the Grandmother Falls Hydroelectric Project No. 2180.<sup>1</sup> For the reasons discussed below, we grant rehearing in part. This order is in the public interest because it clarifies the licensee's obligations under its license.
2. The 3.0-megawatt Grandmother Falls Project is a run-of-river operation located on the Wisconsin River, in the townships of Rock Falls and Bradley, in Lincoln County, Wisconsin.<sup>2</sup>
3. On January 6, 2005, the Director, Office of Energy Projects, issued PCA a new license for the project.<sup>3</sup> On February 8, 2005, PCA timely filed a request for rehearing of the order, asserting that the Director erred in requiring PCA to prepare certain plans: (1) compliance monitoring pursuant to Article 403; (2) reservoir drawdown pursuant to

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<sup>1</sup> 110 FERC ¶ 62,010.

<sup>2</sup> The project has been in operation since 1924; PCA obtained its first license in 1955. *See* 14 FPC 924. The Commission issued PCA a new license on September 16, 1977, 59 FPC 2034, with a term ending on June 30, 2003.

<sup>3</sup> The Grandmother Falls Project includes: a 758-acre reservoir; a powerhouse; a 2,900-foot-long, 44-kilovolt transmission line extending from the powerhouse to a Wisconsin Public Service transmission line; and appurtenant facilities.

Article 404; (3) woody debris management pursuant to Article 405; and (4) invasive species monitoring and eradication pursuant to Article 407.

## **Discussion**

### **A. Compliance Monitoring Plan**

4. On September 27, 2002, Wisconsin Department of Natural Resources (Wisconsin DNR) issued a water quality certification (certificate) for the Grandmother Falls Project.<sup>4</sup> Condition D of the certificate requires PCA, in operating the project in a run-of-river mode, to minimize fluctuation of the reservoir surface elevations and of tailwater reaches. Condition E requires PCA to, among other things, maintain existing headwater and tailwater level sensors, monitor and record data from them on an hourly basis, and, in order to demonstrate compliance with run-of-river mode, report these levels to Wisconsin DNR upon the agency's request.

5. Article 403 of the license requires PCA, in consultation with Wisconsin DNR and the U.S. Fish and Wildlife Service (FWS), to file for Commission approval a plan to monitor reservoir surface elevations and the continuous flow releases specified in certificate conditions C<sup>5</sup> and D. The plan is to include, among other provisions: the location of the headwater and tailwater sensors; the frequency of required maintenance or calibration of these sensors; the frequency of reporting of water levels to Wisconsin DNR and FWS; and provisions for filing with the Commission, Wisconsin DNR, and FWS annual reports summarizing the data.

6. On rehearing, PCA argues that the water quality monitoring and reporting requirements of Article 403 are unnecessary because they duplicate the requirements of the certificate, and that such requirements are burdensome. PCA assures the Commission that, just as it is required to provide pertinent data to Wisconsin DNR upon request, PCA will provide to the Commission pertinent data upon the Commission's request.

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<sup>4</sup> Section 401(d), 33 U.S.C. § 1341(d) of the Clean Water Act provides that state certification shall become a condition on any federal license or permit that is issued. Only a reviewing court can revise or delete these conditions. *See American Rivers v. FERC*, 129 F.3d 99 (D.C. Cir. 1997).

<sup>5</sup> Condition C requires the licensee to maintain an impoundment level of 1419.3 feet National Geodatic Vertical Datum (NGVD), and to limit the reservoir fluctuation to 0.3 feet.

7. Article 403 does not duplicate certificate conditions. Rather, it supplements the requirements of the certificate by requiring additional information to be provided to assist the Commission in verifying that the project is operating in compliance with its license.

8. We also reject PCA's claim that the compliance monitoring plan is burdensome, and that PCA should only be required to provide monitoring data to the Commission upon request. The physical and financial burden of providing these important data to the Commission is minimal, costing only about \$790 annually.<sup>6</sup> Moreover, the Commission has an independent responsibility to ensure compliance with the license. Here, we have determined that the most effective means of achieving that end is to require the licensee to file a compliance monitoring plan. Accordingly, we will deny rehearing on this issue.

**B. Reservoir Drawdown Plan**

9. Condition G of the certificate requires PCA to file with Wisconsin DNR for review any proposals for reservoir drawdowns.<sup>7</sup> License article 404 requires PCA to file for Commission approval a plan for emergency and planned drawdowns, which shall include, at a minimum, procedures for such drawdowns, including the timing, duration, and rate of drawdown and measures to minimize the effects on water quality, recreation, and fish and wildlife resources.

10. PCA argues that it is not reasonable to prepare a "generic drawdown" plan as there has been one drawdown in 75 years (for maintenance) at the Grandmother Falls Project, and there are so many factors that are at play in both emergency and planned drawdowns, including the season and the weather, that it will be very difficult, if not impossible, to develop a useful plan.<sup>8</sup>

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<sup>6</sup> See October 28, 2004 environmental assessment (EA) prepared for the project, at 86. The estimated annual net benefit of the Grandmother Falls project, as licensed, is \$330,000. See PCA Hydro, 110 FERC ¶ 62,010 at P 54.

<sup>7</sup> Condition G states:

To ensure that environmental impacts are minimized, any proposals for project maintenance or repair work involving the river, including reservoir drawdowns, shall be filed with the Department for prior review.

<sup>8</sup> Rehearing request at 5.

11. We disagree. Drawdowns may be needed for a number of reasons, such as: (1) maintenance drawdowns for dam inspection or dam rehabilitation; (2) emergency drawdowns when safety issues arise that may affect the stability of the dam and/or in response to a Commission order; and (3) drawdowns for habitat management, utility and highway repairs, law enforcement, recreational improvements, habitat improvements, chemical spills, and the recovery of drowning victims.

12. Moreover, drawdowns can have adverse environmental effects, and negatively affect recreational activities if conducted without proper planning. To that end, the purpose of the reservoir drawdown plan is to provide guidelines to be considered during drawdown events, both planned and unplanned, which can assist in ameliorating many potential adverse effects. These guidelines include: (1) procedures for notifying the Commission and appropriate agencies of each drawdown event; (2) procedures for inspecting the impoundment for stranded organisms; (3) optimal rate of drawdown to reduce stranding of organisms; and (4) optimal timing and duration of the drawdown to minimize effects on water quality, recreation, and fish and wildlife resources.

13. Similarly, in case of emergency drawdowns, it is important to have a reservoir drawdown plan in place to ensure to the extent possible the protection of aquatic, wildlife, and recreation resources where there is limited time or no time to consult with the Commission or the appropriate resource agencies.

14. That there has only been one drawdown at the Grandmother Falls Project does not obviate the need for such a plan. We find that a plan, estimated to cost \$790<sup>9</sup>, will provide important information at a minimal cost. Accordingly, we will deny rehearing on this issue.<sup>10</sup>

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<sup>9</sup> EA at 87.

<sup>10</sup> We note that Commission approval of the drawdown plan does not authorize the licensee to undertake specific drawdowns, other than emergency or unplanned drawdowns, without prior Commission approval.

**C. Woody Debris Management Plan**

15. Condition L of the certificate requires that PCA “pass all large woody debris downstream that may be done in a safe and reasonable manner.”<sup>11</sup> Article 405 of the project license requires PCA to file a woody debris management plan that would include the frequency and methods to be used to safely pass the woody debris downstream of the project.

16. On rehearing, PCA asks that we remove Article 405 because it is unduly burdensome and not worth the time and expense, as “woody debris will likely not be an issue at set and established intervals.” PCA adds that it will pass woody debris in a “reasonably safe” manner as required by the certificate.<sup>12</sup>

17. As stated earlier, the Commission has an independent obligation to ensure compliance with a license. To that end, while we have no reason to doubt that PCA intends to comply with the certificate, we conclude that it is in the public interest to require PCA to develop a plan for handling woody debris in a safe, effective manner. Moreover, the estimated annual cost of preparing and implementing the plan is only \$410.<sup>13</sup> We conclude that this is a minimal expense for an important public benefit, and we will deny rehearing.<sup>14</sup>

**D. Invasive Species Monitoring and Control Plan**

18. Purple loosestrife, an invasive species that displaces native wetland vegetation and degrades wildlife habitat, occurs within the project boundary, and another nuisance species, Eurasian milfoil, is known to occur throughout Wisconsin.<sup>15</sup> Accordingly,

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<sup>11</sup> As PCA notes in its November 22, 2004 comments on the EA, Article L is needed because the configuration of the intake trash racks at the Grandmother Falls project is such that conveyance of large woody debris around the project could create significant safety hazards to operating personnel.

<sup>12</sup> Rehearing request at 6.

<sup>13</sup> See EA at 87.

<sup>14</sup> Wisconsin DNR often works with Commission licensees in the development of such plans, and we are confident that, with minimal problem, PCA can work with Wisconsin DNR in this case to develop an appropriate plan.

<sup>15</sup> See EA at 88.

Article 407 of the license requires PCA to develop and implement an invasive plant species monitoring and control plan in consultation with Wisconsin DNR and FWS.<sup>16</sup> The EA estimates the annual cost of this measure at \$720.<sup>17</sup>

19. On rehearing, PCA asks the Commission to remove Article 407 from the license, arguing that invasive species are “neither a cause nor an effect of hydroelectric

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<sup>16</sup> Article 407 states in relevant part:

The plan shall include, at a minimum: 1) the criteria used to determine and list which invasive plant species are at the project; 2) the results of baseline field surveys to determine the presence/absence of invasive species; 3) follow-up methods of monitoring and schedule for monitoring; 4) a description of the specific measures that PCA will implement to increase public awareness of invasive species; 5) a description of management practices the licensee will implement to help prevent the spread of nuisance species; 6) a description of the criteria that will be used to determine when control measures are needed and a description of the specific control measures that the licensee will implement to control/eliminate each nuisance species found at the site (i.e., manual pulling, chemical application, biological controls); 7) recommended procedures for obtaining technical assistance from WDNR, FWS and others; and 8) a schedule for filing monitoring reports with WDNR, FWS, and the Commission for review.

If at any time during the term of license, the agencies and the Commission deem it necessary to control/eliminate nuisance species, the licensee shall work with the resource agencies to successfully control the nuisance species. The licensee shall include with the plan documentation of agency consultation on the draft plan, copies of all agency comments and verification on how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and make recommendations before filing the plan and all subsequent monitoring reports with the Commission. If the licensee does not adopt a recommendation the filing shall include the licensee's reasons, based on project-specific information.

<sup>17</sup> EA at 88.

generation,” and invasive species monitoring and eradication is a matter to be addressed on a state-wide basis in coordination with all landowners.

20. The arguments PCA raises were recently considered, and rejected, in *Rhineland Paper Company v. FERC*.<sup>18</sup> In this case, the court reasoned that, since hydroelectric projects may increase the spread of noxious weeds such as purple loosestrife, the Commission was within its authority to require the licensee to monitor the project site for the presence of invasive species, deferring control measures unless and until the weeds become an actual problem. An invasive species monitoring plan will help prevent these species from colonizing and disrupting the environment within the project area throughout the license term.

21. PCA also argues that Article 407 is so broadly written as to open up the potential for limitless activities at the project site, precludes “due process rights for PCA to show that eradication is not warranted,” and leaves open the issues of when invasive species are successfully controlled, and how much money and resources PCA must expend to control the species.<sup>19</sup>

22. Article 407 was not intended to require PCA to implement control measures. The primary purpose of the article is to require PCA to submit a plan to *monitor* invasive species. Whether control measures are needed in the future will depend on the results of the monitoring. We will modify Article 407 to make clear the extent of PCA’s obligations under the article and to clarify the Commission’s reserved authority to require PCA to undertake reasonable control measures in the future, if warranted. We believe these changes address PCA’s concerns over the breadth of Article 407.<sup>20</sup>

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<sup>18</sup> See *Rhineland Paper Company v. FERC*, No. 04-1133 (D.C. Cir., April 12, 2005).

<sup>19</sup> Rehearing request at 7.

<sup>20</sup> PCA also asserts that the Commission has underestimated the cost of complying with the requirements of Article 407. Because we are modifying Article 407 to clarify that only a plan to monitor invasive species is required, we conclude that \$720 is a reasonable estimate.

The Commission orders:

(A) The February 8, 2005 request for rehearing of the January 6, 2005 Order in this proceeding is granted to the extent set forth in this order, and denied in all other respects.

(B) Article 407 is revised to read as follows:

Article 407. *Invasive Plants.* Within six months of issuance of this order, the licensee shall file for Commission approval a plan to monitor invasive plant species, such as purple loosestrife (*Lythrum salicaria*) and Eurasian water-milfoil (*Myriophyllum spicatum*), at the project. The plan shall be prepared after consultation with the Wisconsin Department of Natural Resources (Wisconsin DNR) and the U.S. Fish and Wildlife Service (FWS). The plan shall include, but not be limited to, the following: (1) a description of the monitoring method; (2) frequency of monitoring; (3) a schedule for filing monitoring reports with Wisconsin DNR, FWS, and the Commission; and (4) a description of and implementation schedule for providing public information about the species.

The licensee shall include with the plan documentation of agency consultation, copies of comments and recommendations on the plan after it has been developed and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

If at any time during the term of the license, the Wisconsin DNR and FWS demonstrate invasive species are significantly affecting fish and wildlife populations at the project and that control measures are needed, and the Commission agrees with those determinations, the Commission reserves authority



to require the licensee to cooperate with the Wisconsin DNR and FWS to undertake reasonable measures to control or eliminate the invasive species in project area.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.