

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

SAF Hydroelectric, LLC

Project No. 12451-003

ORDER ON REHEARING

(Issued June 15, 2006)

1. On February 21, 2006, the Commission issued an original license<sup>1</sup> to SAF Hydroelectric, LLC (SAF) to construct, operate, and maintain the 8.98-megawatt (MW) Lower St. Anthony Falls Hydroelectric Project (LSAF Project). The LSAF Project would be located at the U.S. Army Corps of Engineers' (Corps) Lower St. Anthony Falls Lock and Dam (LSAF Lock & Dam) on the Mississippi River, in the City of Minneapolis, Hennepin County, Minnesota.

2. On March 23, 2006, SAF filed a timely request for rehearing of the license order, seeking to delete or modify requirements for including in the license a 2.5-acre embankment adjacent to the LSAF Lock & Dam (Article 202); filing a plan for bank fishing on the embankment (Article 409); paying annual charges for use of surplus water from the government dam involved (Article 201); monitoring the Corps' locks as part of the run-of-river monitoring plan (Article 402); and filing a transmission line plan (Article 410). SAF also requests correction of minor errors in the order. We are granting rehearing in certain respects, amending and clarifying the license order in certain respects, and denying rehearing on other issues, as described below.

**Project Description**

3. The LSAF Project will use the Corps' existing LSAF Lock & Dam and reservoir. The Corps' lock and dam (from left to right, facing the dam from downstream) is

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<sup>1</sup> 114 FERC ¶ 62,173 (2006).

comprised of: a main navigation lock on the south bank of the river, an auxiliary lock with a Taintor gate, a section with three more Taintor gates, and a non-overflow structure. The non-overflow structure extends from the Taintor gates structure to an earth embankment constructed by Northern States Power Company (Northern States). The embankment extends to a retaining wall that runs along the left bank of the river.

4. Northern States originally constructed two separate earth embankments as a result of the 1987 collapse of its powerhouse at the site.<sup>2</sup> One was built at the upstream (upper) side and the other at the downstream (lower) side of the collapsed powerhouse in order to restore the navigation pool. Subsequently, the powerhouse was removed, and in 2000 the space between the two embankments was filled in to form a single continuous embankment covering about 2.5 acres.

5. The license for the LSAF Project authorizes SAF to place eight moveable steel modules (each containing two turbine-generators) having a total installed capacity of 8.98 MW in eight stoplog slots on the auxiliary lock structure. In addition, SAF will install a spill gate at the top of the turbine-generator assembly and a hoist to raise and lower the turbine units. Almost all of the project's 1,205-foot-long, 13.8-kilovolt transmission line will be constructed underground.

6. The LSAF Project will use flows made available by the Corps and will operate so as not to conflict with the Corps' navigation functions. The Corps operates the dam to maintain a constant water surface elevation and to minimize fluctuations in the reservoir level.

#### **A. Licensing the Lower Embankment**

7. The license order concluded that Northern States' 2.5-acre parcel of land that includes the two earth embankments is a water retaining structure of the LSAF Project, and its maintenance is required under the Commission's dam safety regulations.<sup>3</sup> Because the embankments are necessary for project operation, the license requires the

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<sup>2</sup> The powerhouse was part of the Lower Development of Northern States' St. Anthony Falls Project No. 2056. The powerhouse was deleted from the license in 1997, 80 FERC ¶ 62,107, and the Lower Development was not reauthorized when Project No. 2056 was relicensed in 2004. See *Northern States Power Co.*, 106 FERC ¶ 62,185 at P 9-13 (2004).

<sup>3</sup> 114 FERC ¶ 62,173 at P 57.

land parcel to be included as a project feature, and license Article 202 requires SAF to bring this parcel within the project boundary.

8. On rehearing, SAF argues that only the upper embankment (which covers about 0.9 acres of the 2.5-acre area) should be included in the license as an impoundment structure for the LSAF Project. It contends that the lower embankment and surrounding land serves no project purpose, and therefore does not need to be included in the project.<sup>4</sup>

9. Contrary to SAF's assertions, the lower embankment, as well as the fill material between the upper and lower embankments, are required to be in the license for dam maintenance and dam safety purposes. Design plans for the upper and lower embankments included in a construction report filed by Northern States for Project No. 2056 show the upper and lower embankments as one continuous 2.5-acre land mass containing a sub-surface drainage system that extends from the toe of the upper embankment to the base of the lower embankment.<sup>5</sup> This drainage system is an integral component of the 2.5-acre parcel and must be monitored and maintained to preserve the integrity of the water retaining structure. For this reason, the entire 2.5-acre area must be included in the license for Project No. 12451.<sup>6</sup> Consequently, we deny rehearing on this point.

#### **B. Public Access to the Embankments**

10. Article 409 requires SAF to develop a plan for public access to the 2.5-acre embankment for bank fishing. The plan is to be developed in consultation with the Corps, the U.S. Fish and Wildlife Service, and the Minnesota Department of Natural Resources.

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<sup>4</sup> In support, SAF cites to an independent consultant's safety inspection report (referenced by SAF as a 2000 report although it actually was dated and filed with the Commission in December 1999) that states that the upper embankment's purpose is "to complete the dam components across the river [and that the upper embankment] extends...from the left river embankment to the Corps non-overflow dam."

<sup>5</sup> Filing of December 7, 2000, in Project No. 2056.

<sup>6</sup> In addition, see the discussion in the 1997 Commission staff order in Project No. 2056 de-authorizing reconstruction of the collapsed powerhouse and describing the upper and lower embankments as necessary to maintain the navigation pool. 80 FERC ¶ 62,107 (1997).

11. On rehearing, SAF contends that the bank-fishing requirement should be deleted from the license. SAF states that the area proposed for bank fishing has a relatively high incidence of vandalism and other criminal activity, and that creation of bank fishing will create additional security risks to project structures and those owned by the Corps. The area, which is adjacent to the Corps' retaining wall and Taintor gate structure, is currently fenced to prevent public access, and public boating downstream of the dam is prohibited by the Corps. According to SAF, automobile access to the embankment is limited to a narrow, non-public road. Moreover, SAF asserts that the bank fishing requirement could interfere with the Corps' development of a congressionally authorized whitewater recreation park at the site.<sup>7</sup>

12. We agree with SAF that, under the above circumstances, public access to the upper and lower embankments for bank fishing is not warranted. Accordingly, we grant rehearing on this issue, and we will delete Article 409.<sup>8</sup>

### **C. Annual Charges**

13. Article 201(2) requires SAF to pay the United States annual charges for the project's use of surplus water or water power from a government dam.

14. On rehearing, SAF contends that it should not be required to compensate the United States for the use of surplus water at the Corps dam, while at the same time it is incurring costs to acquire and maintain the above-described 2.5-acre embankment, which it claims is (or should be) a part of the Corps project. SAF argues that, if it is required to compensate the Corps for the use of its dam, then the Corps should be required to

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<sup>7</sup> SAF submits with its rehearing request (Appendix A) a letter from the Corps echoing the concerns regarding security, public safety, and the potential for interference with the planned whitewater park. SAF also cites to Commission staff's environmental assessment for the St. Anthony Falls Project No. 2056, which did not recommend recreation facilities at the embankments because of the potential conflict with the whitewater park. See March 8, 2004 Environmental Assessment for relicensing Project No. 2056, at 66. The issue became moot in that proceeding when that project's Lower Development and associated embankments were deleted from the license.

<sup>8</sup> We assume that the Corps' development of such a whitewater park would be done in a manner that would resolve any safety or security concerns.

compensate SAF for expenses that assist, operationally and financially, the Corps' federal project.<sup>9</sup>

15. Section 10(e) of the Federal Power Act, 16 U.S.C. § 803(e) (2000), requires the Commission to collect annual charges for a licensee's development and use of power created by any government dam, and there is no question that the LSAF Project will use the water power potential of the Corps dam. That SAF incurs expenses related to the embankments does not relieve it of the obligations to pay annual charges for its use of the federal dam. If SAF desires compensation for its acquisition and maintenance of the embankments, it will have to seek such compensation from the Corps. Therefore, we will deny rehearing on this issue.

#### **D. Run-of-River Monitoring**

16. Article 402 requires SAF to develop a plan to monitor compliance with the run-of-river-operation requirement of Article 401 and to ensure that project operations are consistent with the Corps' applicable operational requirements. The plan must include provisions for monitoring headwater and tailwater discharge levels, maintaining turbine operation logs, and monitoring lockages (the process of filling and emptying locks to allow passage of ships).<sup>10</sup>

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<sup>9</sup> SAF points to Northern States' upstream St. Anthony Falls Project No. 2056, which is not charged for use of the Corps' (next upstream) lock facility at its project. However, the facts in that case are distinguishable. The water power potential of Project No. 2056 is created by Northern States 1,952-foot-long U-shaped dam. The Corps' lock, to which one side of Northern States' dam is attached, is an incidental structure (much like the embankment for SAF's project) that aids, but does not itself create, the project's hydropower potential. By contrast, in the case of SAF's project, it is the federal dam that creates the projects' water power potential.

<sup>10</sup> 114 FERC ¶ 62,173, *supra*, at 64,474-75. As pertinent, Article 401 states, *id.*:

The licensee shall operate the project in a [run-of-rive] mode within the constraints established by the [Corps] at the Lower St. Anthony Falls Lock and Dam to protect water quality and fishery resources in the Mississippi River and to meet the Corps' operational requirements at the locks of providing flood control and navigation on the Mississippi River.

17. On rehearing, SAF requests that we delete the requirement to monitor lockages as unnecessary and unduly burdensome. According to SAF, the Corps' storage and release of water from its relatively small reservoir are greatly influenced by discharges from the next-upstream Corps lock, and that the releases from both Corps lock facilities are dictated by the Corps' Water Control Manual, which specifies the operating requirements for the Corps project.<sup>11</sup> SAF explains that it would have to collect data (currently not recorded by the Corps) on a 24-hour-per-day basis for the timing of filling and emptying of two lock chambers. In addition, it points out that, since operation of the Taintor gates at the project is the Corps' responsibility, SAF should not be responsible for documenting the Corps' operation of its facilities. We agree that monitoring of lockages is not necessary, and we will revise Article 402 accordingly.<sup>12</sup> In addition, we will make a minor correction to item (3) of the second paragraph of Article 402, by deleting the phrase "and the minimum surface covering flow over the main spillway."

#### **E. Deadline for Transmission Line Plan**

18. The project as licensed requires construction of a 1,205-foot-long underground transmission line, part of which will pass through 0.15 acre of land owned by the Minneapolis Park and Recreation Board (Park Board). As explained in the license order, SAF cannot use eminent domain authority to obtain sufficient rights in this park property to construct and maintain the project's transmission line, so the Park Board must approve use of the land for the transmission line.<sup>13</sup> To ensure that SAF can obtain from the Park Board the rights necessary to construct and operate the transmission line, Article 410 of the license requires SAF, prior to beginning project construction, to file a plan that documents authorization to use the Park Board land in question, describes the authorized line and the lands through which it will pass, and includes a construction schedule. The plan must be filed at least 180 days before the start of project construction.

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<sup>11</sup> SAF states that, in light of the limited storage capacity of, and frequent lockage operations at, the project's reservoir, the Corps' manual requires maintenance of reservoir elevations within a two-foot band width.

<sup>12</sup> SAF also asks that we delete the monitoring plan requirement altogether, arguing that compliance with the Corps' Water Control Manual should suffice. However, SAF did not provide information to support its request, nor did it include the request in its "Statement of Issues" section of its request for rehearing. *See* 18 C.F.R. § 385.713(c)(2) (2005).

<sup>13</sup> *See* 114 FERC ¶ 62,173 at 58-59.

19. On rehearing, SAF requests modification of Article 410 to shorten (from 180 days to 60 days before the start of project construction) the time frame in which the plan must be submitted. SAF explains that project financing would be jeopardized by the delay in commencing project construction that would result from the 180-day filing date. SAF's request is reasonable, and we will modify Article 410 accordingly.<sup>14</sup>

The Commission orders:

(A) The rehearing request filed by SAF Hydroelectric, LLC on March 23, 2006, is granted to the extent discussed set forth below and is denied in all other respects.

(B) Article 402 of the license for the Lower St. Anthony Falls Project No. 12451 (114 FERC ¶ 62,173 at 64,474) is revised as follows:

(1) The first sentence is revised by deleting the word "lockages."

(2) Item (3) of the second paragraph is revised by deleting the phrase "and the minimum surface covering flow over the main spillway."

(C) Article 409 of the license for the Lower St. Anthony Falls Project No. 12451, 114 FERC ¶ 62,173 at 64,477, is deleted.

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<sup>14</sup> SAF's rehearing request also states that it no longer plans to construct the 1,205-foot-long underground primary transmission line that is authorized by the license. Instead, it proposes to install a transmission line consisting of a 75-foot buried line originating at the project's control building and connecting to an existing power pole located in the Corp's service yard, which it asserts is the interconnection point with Northern States' transmission system. From there, the line would extend to the Elliott Park Substation on existing Northern States' transmission poles with pole "extenders" attaching three new lines on top of the poles. On April 24, 2006, SAF filed for Commission approval its new transmission-line proposal, which is pending Commission action.

(D) The first sentence of Article 410 of the license for the Lower St. Anthony Falls Project No. 12451 (114 FERC ¶ 62,173 at 64,477) is revised by changing “180 days” to “60 days.”

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.