

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

FPL Energy Maine Hydro, LLC

Project No. 2283-037

ORDER ON REHEARING

(Issued January 19, 2007)

1. On September 22, 2006, FPL Energy Maine Hydro LLC (FPL Energy or licensee) filed a request for rehearing of the Commission staff's August 23, 2006 Order¹ issuing a new license for its 31.54-megawatt Gulf Island-Deer Rips Project No. 2283, located on the Androscoggin River in Androscoggin County, Maine. For the reasons discussed below, we will grant the rehearing request in part and deny it in part.

Background

2. Central Maine Power Company (Central Maine) held the original license for this project and filed an application for a new license in 1991. The original license was later transferred to FPL Energy, which assumed the new license application. The original license expired in 1993, and the project was operated under annual licenses until staff issued the new license. Staff prepared draft and final environmental impact statements for the application in 1995 and 1996, respectively. Delay in issuing the license was due to the absence of water quality certification, which was issued by the Maine Department of Environmental Protection (Maine DEP) on September 21, 2005. A more extensive discussion of the procedural history of this application is found in the staff's license order.

3. On rehearing, FPL Energy objects to a requirement for inclusion of certain facilities in the project boundary, the issuance of a license for only a 30-year term, a

¹ *FPL Energy Maine Hydro LLC*, 116 FERC ¶ 62,159 (2006).

requirement for the release of minimum flows that it believes are unnecessarily high, and water quality monitoring requirements that it considers unnecessary and duplicative.

Discussion

Inclusion of facilities in project boundary

4. As the holder of the original license, Central Maine, in 1991, entered into an agreement with three paper companies for operation of the Gulf Island Pond Oxygenation Project (GIPOP). Since 1992, the GIPOP facility has injected oxygen into Gulf Island Pond, the Gulf Island-Deer Rips Project's upper reservoir, to address dissolved oxygen violations in the Androscoggin River resulting from the paper companies' discharges, as exacerbated by the project's impoundment of the river. Following transfer of the license, FPL Energy continued to participate in the partnership, but neither such participation nor the oxygen injection itself was a requirement of the original license.² However, the application for new license proposed to continue the licensee's participation in the GIPOP partnership.

5. In the EIS, staff had recommended that water quality problems in Gulf Island Pond should continue to be jointly remedied by the GIPOP partnership. Subsequently, Maine DEP issued its water quality certification, condition 5.A of which requires FPL Energy to continue to participate in the GIPOP partnership with the paper companies "to operate and maintain an oxygen injection system at Upper Narrows in such manner as is currently approved by the Department." Pursuant to section 401(d) of the Clean Water Act, this certification condition became a condition of the license.³ License Article 205 requires the licensee to file, for Commission approval, revised Exhibit G drawings enclosing within the project boundary all principal project works necessary for operation and maintenance of the project. Article 205 provides specifically for the GIPOP facility to be included among those project works.

² The original paper companies were Boise Cascade, Inc., James River Paper Company, and International Paper Company. The first two companies are now Rumford Paper Company and Fraser Paper, respectively.

³ Under section 401(d), 33 U.S.C. § 1341(d), whenever a discharge into the navigable waters would result from an activity authorized in a federal license, any water quality certification issued by a state in which the discharge would occur becomes a condition of that license.

6. FPL Energy urges us not to require inclusion of the GIPOP facility in the project boundary as project works necessary for the operation and maintenance of the project. It explains that the GIPOP lands and facility are jointly owned with the paper companies through the partnership. The contractual arrangements call for the partners to share the costs of the facility, including operation and maintenance. In addition, the partnership agreement provides that the legal title to any property to be acquired by the partnership shall be acquired and held by it in its own name. Further, some of the equipment, such as the oxygen storage tanks, is leased by the partnership from the liquid oxygen supplier. Therefore, FPL Energy asserts, it lacks the authority to acquire control over the GIPOP lands and facility as project works. FPL Energy adds that the GIPOP agreement for re-oxygenating Gulf Island Pond was established mainly to fulfill the paper companies' obligations under consent orders relating to their discharge permits, and that the partnership's purchase of the lands and the construction and operation of the facility were undertaken primarily to fulfill those purposes, not purposes of the hydropower project.

7. FPL Energy states that, as the operator for the project, it has sufficient contractual rights to ensure the fulfillment of its license requirements and, therefore, does not need to have sole control of the facility. It argues that the Commission does not need to have regulatory jurisdiction over the GIPOP facility, since the partners, through the partnership, are required by Maine DEP to maintain it. FPL Energy acknowledges that parts of the GIPOP facility, specifically the pipeline and underwater diffuser, need to be located on project lands in order to inject oxygen into the impoundment, but it points out that these works are already on project lands, pursuant to previous Commission approval.⁴ FPL Energy also questions whether the Commission has authority to place the GIPOP facility under its regulatory control, on the grounds that the Commission has no jurisdiction outside a project boundary and does not exercise regulatory control over non-project lands and facilities.

8. Standard article 5 of each license issued by the Commission requires a licensee to acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project, and to retain the possession of all project property covered by the license, including the project works. It has been Commission policy to require the inclusion in

⁴ An application for non-project use of project lands to grant an easement to the partnership for these facilities in fulfillment of the terms of the GIPOP agreement was approved by Commission staff in *Central Maine Power Co.*, 55 FERC ¶ 62,250 (1991). This approval did not make the pipeline and diffuser project works, however.

the project boundary of such lands and facilities.⁵ Further, in issuing a new license, the Commission has the authority, based on a new record in the relicensing proceeding, to require the licensee to undertake new actions as to additional lands and facilities that necessitate the inclusion of those lands and facilities in a project boundary.⁶ Here, not only is the licensee's participation in the GIPOP partnership required by the water quality certification, but Commission staff's own analysis supported use of the GIPOP facility to address dissolved oxygen problems in Gulf Island Pond. Because we will be requiring continuing licensee action in respect to the facility during the term of the license, it is appropriate to bring the facility and lands within the project boundary.

9. However, inclusion in the project boundary does not demand fee ownership by FPL Energy of the GIPOP facility.⁷ Condition 5.A of the water quality certification requires the licensee to continue to participate with the paper companies in the operation and maintenance of the existing oxygen injection system. It does not require the licensee to bear the entire economic or operational burden of the GIPOP facility, and, in its order, staff recognized that water quality problems in Gulf Island Pond were jointly caused and should be jointly remedied by the GIPOP partnership.⁸ FPL Energy need only acquire and maintain an interest in the facility sufficient to comply with this participation requirement. Therefore, FPL Energy's concerns about the impossibility or impracticality of obtaining actual ownership or sole control of the facility should not be an issue.⁹

⁵ See, e.g., *Public Utility District No. 1 of Lewis County, Washington*, 117 FERC ¶ 61,188 at P 20 (2006) (“[t]he project boundary must include all lands and facilities . . . that serve project purposes”), citing *Portland General Electric Company, et al.*, 117 FERC ¶ 61,112 at P 57-59 (2006).

⁶ See, e.g., *Confederated Tribes and Bands of the Yakima Nation v. FERC*, 746 F.2d 466, 470-71 (9th Cir. 1984) (Commission must conduct full public interest inquiry on relicensing, including consideration of possible mitigative measures).

⁷ See *Wisconsin Public Service Company*, 104 FERC ¶ 61,295 at P 15 and n.16 (2003).

⁸ *FPL Energy Maine Hydro LLC*, 116 FERC ¶ 62,159 at P 89-90.

⁹ FPL Energy asserts that our treatment of the GIPOP facility as project works is inconsistent with our previous action permitting the pipeline and diffuser to be installed as a non-project use of project land. But the original license did not include any conditions regarding participation in the GIPOP partnership or operation of the GIPOP facility; therefore, the pipeline and diffuser did not serve a project purpose under the

(continued)

Water quality monitoring requirements

10. License Article 402 requires the licensee to continue to participate in the GIPOP partnership, but also requires the licensee, within one year of license issuance, to file for Commission approval a dissolved oxygen enhancement plan to coordinate efforts among the GIPOP partners to protect and improve dissolved oxygen conditions in Gulf Island Pond and in the Androscoggin River downstream from the project. Article 403 requires the licensee, within 180 days of license issuance, to file for Commission approval a plan to monitor water quality at select sites in Gulf Island Pond and in the river downstream of the project, to ensure that the impoundment and the river comply with Maine's Class C water quality standards for dissolved oxygen, water temperature, and nutrients. Article 403 provides that the monitoring plan shall include a provision to monitor aquatic invertebrates downstream in reaches of the Androscoggin River affected by the project. FPL Energy argues that the Article 403 monitoring plan is unnecessary, because the requirements for monitoring downstream water quality and invertebrates are not warranted by the record, and because the Gulf Island Pond monitoring requirements duplicate monitoring requirements in Article 402.

11. As to downstream water quality, FPL Energy states that Article 402 of the license for its Lewiston Falls Project No. 2302, located immediately downstream of the Gulf Island-Deer Rips Project, required it to monitor dissolved oxygen concentrations below the Lewiston Falls Dam and Dressers Rips, a river reach below Lewiston Falls, and to maintain records of monitoring data. The water quality certification for that project contained a similar requirement. According to FPL Energy, the results of the monitoring, conducted from 1998 through 2001, showed that, since the start of GIPOP operations in 1992, dissolved oxygen levels at the two monitoring sites consistently exceeded the dissolved oxygen levels required by Class C water quality standards. Accordingly, FPL Energy received permission from Maine DEP in 2002 to cease the dissolved oxygen monitoring since the results had demonstrated that the standards were being met. FPL Energy notes that the water quality certification and the relicense order for the Gulf Island-Deer Rips Project each refer to these findings.¹⁰ Since both Maine DEP and the Commission have acknowledged that downstream water quality standards are already

original license. This is not the case under the new license, since the water quality certification requires, and Commission staff recommended, continued participation in the GIPOP partnership as a license condition.

¹⁰ Water quality certification at p. 9; *FPL Energy Maine Hydro LLC*, 116 FERC ¶ 62,159 at P 85.

being met, FPL Energy argues, it should not again be required to monitor downstream water quality.

12. As to invertebrate monitoring, FPL Energy points out that, in issuing water quality certification for this project, Maine DEP found that the proposed operation of the project would be adequate to ensure that the water in the impoundments and tailrace areas would be suitable for the designated use of habitat for aquatic life. While noting that no studies of aquatic macroinvertebrates in the project waters had been conducted in connection with the license application, Maine DEP stated that available data from the upstream and riverine reaches of the river indicated that the aquatic macroinvertebrate communities in the Deer Rips impoundment and tailwater areas met Class C standards.

13. For these reasons, FPL Energy asks to be relieved of the downstream water quality and invertebrate monitoring requirements of Article 403. However, these Article 403 provisions implement a recommendation made by the U.S. Department of the Interior (Interior), on behalf of its Fish and Wildlife Service (FWS), pursuant to section 10(j) of the Federal Power Act (FPA),¹¹ that the licensee file with the Commission a plan and schedule for monitoring dissolved oxygen and aquatic invertebrate populations in downstream areas affected by the project's operation.¹² Under section 10(j), the Commission must include license conditions based on recommendations submitted by federal and state fish and wildlife agencies for the protection, mitigation of damages to, and enhancement of fish and wildlife, unless it finds that the recommendations would be inconsistent with the purposes and requirements of Part I of the FPA or other applicable law. Section 10(j) also requires the Commission to attempt to resolve any such inconsistency before declining to include a section 10(j) recommendation as a license condition.

14. Commission staff found no inconsistency between the monitoring recommendation and the FPA. Because the recommendation was submitted by Interior and evaluated by staff in the mid-1990s, subsequent events may have altered the need for this monitoring. However, it would be inappropriate to remove these monitoring requirements without first either obtaining Interior's concurrence or implementing the findings and resolution provisions of section 10(j). Article 403 requires the licensee to consult with FWS and several Maine agencies in preparing the water quality monitoring plan. If FWS agrees that downstream water quality and invertebrate monitoring are no

¹¹ 16 U.S.C. § 803(j).

¹² See *FPL Energy Maine Hydro LLC*, 116 FERC ¶ 62,159 at P 36.

longer necessary in light of more recent developments, this can be reflected in the plan submitted to the Commission.¹³

15. FPL Energy contends that the requirement in Article 403 for a plan to monitor water quality for dissolved oxygen in Gulf Island Pond duplicates the Article 402 requirement that it file a dissolved oxygen enhancement plan designed to protect and improve dissolved oxygen conditions in Gulf Island Pond and in the Androscoggin River downstream from the project. FPL Energy reasons that any monitoring measures under Article 403 would be encompassed in those established to comply with Article 402, and that the dissolved oxygen monitoring requirement of Article 403 is therefore unnecessary.

16. Articles 402 and 403 are intended to serve somewhat different purposes. Although Article 402 requires the licensee to continue participating in the GIPOP partnership, its primary emphasis is on developing measures that would bring additional improvements to water quality in Gulf Island Pond. As staff noted in the relicense order, the existing oxygen injection system has improved water quality in Gulf Island Pond, but Maine's Class C dissolved oxygen standards are still not being met during all seasons and in all places. Studies conducted in 1999 and 2000 showed that, in particular, about 10 percent of the modeled volume of Gulf Island Pond does not meet Maine's Class C dissolved oxygen standards during the summer low-flow, high-temperature period, and 23 percent of the modeled volume does not meet the minimum monthly dissolved oxygen level needed for indigenous fish.¹⁴

17. Maine DEP sought to address this problem by requiring, in its water quality certification, that the licensee inject a specified amount of oxygen at the existing facility at Upper Narrows and an even greater amount of oxygen at a new site, Lower Narrows, or take "other measures as may be approved by Maine DEP to mitigate the impact of Gulf Island Dam on dissolved oxygen levels in Gulf Island Pond."¹⁵ FPL Energy appealed certain conditions of the certification, including the conditions that required

¹³ We would also point out that the monitoring measures undertaken under the Lewiston Falls Project license did not address the reach of the river between the Gulf Island-Deer Rips and Lewiston Falls Projects. In addition, Article 403 contemplates a plan for monitoring not only dissolved oxygen but also water temperature and nutrients. Therefore, it might still be appropriate for the licensee to monitor water quality between the Deer Rips dam and the headwaters of the Lewiston Falls Project.

¹⁴ See *FPL Energy Maine Hydro LLC*, 116 FERC ¶ 62,159 at P 85-88.

¹⁵ *Id.* at P 21.

these additional measures. Maine DEP's Board of Environmental Protection stayed the conditions that were the subject of the appeal, pending its resolution, which has not yet occurred. Because the conditions had been stayed, staff did not include them in the license. Article 402 is intended to ensure that the licensee nevertheless addresses the continuing failure to meet Class C dissolved oxygen standards.¹⁶

18. Article 403 is a more general water quality monitoring article, requiring a monitoring plan that would ensure compliance with Maine's standards not only for dissolved oxygen but also for water temperature and nutrients. Nevertheless, Articles 402 and 403 are interrelated. Article 402 provides that the dissolved oxygen enhancement plan is to contain a provision for monitoring dissolved oxygen after any identified measures to improve dissolved oxygen have been implemented, "as provided for by Article 403." Article 403 provides that the water quality monitoring plan is to contain "a provision to address long-term water monitoring needs associated with enhancement measures implemented under Article 402." These provisions are intended to ensure coordination of the water quality requirements of the two articles.

19. FPL Energy argues that, to the extent that we determine to retain any of the requirements of Article 403, we should require that the Article 402 and 403 plans both be filed within one year of license issuance, since it makes no sense to require the downstream water quality monitoring plan to be filed six months before the plan to enhance water quality for dissolved oxygen. We agree that, because the plans overlap, it would be impractical to give them different filing deadlines. Therefore, we will require that both plans be filed within one year of license issuance. If it wishes, FPL Energy may file a single plan in satisfaction of the requirements of both articles.

Minimum flows

20. Article 405 of the license requires the licensee to release a minimum flow of 1,700 cubic feet per second (cfs) from May 1 through November 30 and 1,400 cfs from December 1 through April 30, for the protection and enhancement of water quality and fishery resources in the river downstream of the project. FPL Energy contends that these required flows are unreasonably high and cannot be justified by existing fishery habitat criteria or specific fishery management objectives.

21. The original license had no required minimum flow release, but FPL Energy had been releasing a voluntary minimum flow of 1,000 cfs year-round to meet the minimum flow requirements of its downstream Lewiston Falls Project, and the license application

¹⁶ *Id.* at P 23-25.

proposed a minimum flow of 1,100 cfs year-round. Pursuant to section 10(j) of the FPA, Interior recommended that, under the new license, the project operate in a run-of-river mode during May and June and release a minimum flow of 1,700 cfs during the remaining 10 months. Staff, in its final EIS, recommended the seasonal flow regime that was ultimately required by Article 405 rather than the flow regimes proposed in the application or recommended by Interior. In recommending this flow regime, staff's primary consideration was establishing favorable conditions for brown trout stocked by the Maine Department of Inland Fisheries and Wildlife (Maine DIFW) in two reaches of the river downstream of the project, Deer Rips and Dressers Rips. The water quality certification, which was issued some 12 years after Interior filed its section 10(j) recommendations and 9 years after staff's final EIS, required the licensee to release a year-round minimum flow of 1,430 cfs.

22. The minimum flow condition of the water quality certification was among the conditions that FPL Energy appealed and that have been stayed by Maine DEP. In an October 7, 2005, submission to the Commission, FPL Energy argued that the certification flows are unreasonably high and that the application-proposed 1,100-cfs flow would be sufficient to satisfy current fishery objectives. In particular, it stated that Maine DIFW had curtailed the stocking and management of the lower Androscoggin River for brown trout, so that there is no longer a need for flows high enough to optimize brown trout fishery habitat. In response to this contention, staff determined that Maine DIFW had discontinued stocking brown trout downstream of Lewiston, including in Dressers Rips, but that Deer Rips continued to contain priority habitat for brown trout. In the relicense order, staff explained why its recommended flow release would continue to provide additional benefits for brown trout in Deer Rips beyond those that would occur with a flow release of 1,100 cfs.

23. FPL Energy now asserts that brown trout stocking has also ceased in Deer Rips, so that there is no basis for flows high enough to optimize brown trout habitat anywhere downstream of the project. FPL Energy argues that the release of seasonal flows that are higher than necessary will significantly affect its ability to generate power during peak hours at both the Gulf Island-Deer Rips Project and the Lewiston Falls Project. Specifically, it states that release of the flows required by Article 405 will result in a shift of 5,990 megawatt-hours (MWh) per year from on-peak to off-peak generation. It also claims that this reduction in on-peak energy will necessitate more fossil-fueled generation in New England during on-peak hours, with an adverse effect on air emissions. FPL Energy asks us to adopt the 1,100-cfs flow regime, or at least no more restrictive a flow regime than Maine DEP's 1,430-cfs year-round requirement if that water quality certification condition is upheld on appeal.

24. It is possible that the flow regime required by Article 405 is no longer necessary to satisfy fisheries objectives in the river below the Gulf Island-Deer Rips Project.

However, as support for its assertion that Maine DIFW no longer manages for brown trout in Deer Rips, FPL Energy cites only a “personal communication” between individuals representing its consultants and Maine DIFW. FPL Energy has not provided documentation of that communication or any other written confirmation from Maine DIFW regarding its current brown trout policy as to Deer Rips. A licensee seeking the modification of a license condition based on changed circumstances has the obligation to provide sufficient support for the requested modification; it is not the responsibility of the Commission to seek out evidence to support a contention made by a licensee on rehearing.

25. Further, as noted earlier, Interior recommended run-of-river operations for May and June and a flow regime of at least 1,700 cfs throughout the rest of the year.¹⁷ In recommending a 1,700-cfs flow release for May 1 through November 30 and adopting that requirement in the license, staff accepted Interior’s recommendation in respect to the months of July through November. We do not find it reasonable, based on the scanty, anecdotal evidence provided by FPL Energy, to assume that Maine has changed its fishery policies or to conclude that Interior’s flow recommendation is inconsistent with the FPA or other applicable law.

26. For these reasons, we will not modify the Article 405 flow regime at this time. Our action does not preclude FPL Energy from seeking an amendment of the license to substitute lower flow releases. However, such an amendment application should be accompanied by substantial evidence sufficient to support that flow reduction, such as evidence that Maine DEP has ceased managing Deer Rips for brown trout. In addition, to the extent that FPL Energy can obtain Interior’s prior consent to a reduction of these flows, it would avoid raising any section 10(j) issues.¹⁸

¹⁷ Although Interior recommended run-of-river operations for May and June, this would have guaranteed a release of at least 1,700 cfs for those months.

¹⁸ Because Maine stayed the minimum flow condition of the water quality certification pending its appeal, staff adopted its own 1,400-cfs recommended flow for December through April rather than the 1,430-cfs flow of the certification. If the certification flow is upheld on appeal, the license’s 1,400-cfs minimum flow requirement will have to be raised accordingly, and we would be unable to grant any amendment request for a lower flow regime for any months, since we are required to adopt conditions at least as restrictive as those in a water quality certification.

License term

27. Section 15(e) of the FPA¹⁹ provides that new licenses are to be issued for a term that the Commission determines to be within the public interest, but no less than 30 years and no more than 50 years. Our policy is to issue 30-year licenses for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation or enhancement measures, 40-year licenses for projects with a moderate amount of such activities, and 50-year licenses for projects with extensive measures. Following that policy, staff issued a 30-year new license for the Gulf Island-Deer Rips Project.

28. FPL Energy argues that the level of activities required by the new license warrants a longer license term. It identifies, in particular, requirements to continue operating the GIPOP oxygen injection system, to develop the dissolved oxygen enhancement and water quality monitoring plans, to restrict lake level changes and provide increased minimum flows, to upgrade or provide existing and new recreational facilities, and to undertake other specified environmental measures. FPL Energy states that the final EIS estimated the cost of the non-operational enhancement measures at \$594,000, annualized in 1995 dollars; this annual cost would be \$722,000 if adjusted for inflation to 2005. Since, in the license order, staff estimated the annual cost of the minimum flow restrictions at \$82,000, the total annual cost of the environmental commitments would be \$804,000. Further, FPL Energy points out that it had entered the GIPOP agreement voluntarily while the new license proceeding was pending and had already invested nearly \$2 million in the undertaking. It argues that it should not be penalized for undertaking this environmental enhancement measure in anticipation of the new license rather than delaying participation until the new license was issued.

29. FPL Energy also points to our policy in favor of coordinating the expiration dates of licenses for projects located in the same river basin, to enable us to address cumulative impacts in the basin more effectively.²⁰ FPL Energy notes that, in 1998, we issued new 50-year licenses for International Paper Company's Riley-Jay-Livermore Project

¹⁹ 16 U.S.C. § 808(e) (2000).

²⁰ This policy is codified in the Commission's regulations at 18 C.F.R. § 2.23 (2006), which provide that, in issuing both original and new licenses, the Commission "will coordinate the expiration dates of the licenses to the maximum extent possible, to maximize future consideration of cumulative impacts at the same time in contemporaneous proceedings at relicensing."

No. 2375 and Otis Hydroelectric Company's Otis Project No. 8277,²¹ both of which are located on the Androscoggin River directly upstream of the Gulf Island-Deer Rips Project. FPL Energy states that these licenses incorporate environmental measures related to those required in the new license for the Gulf Island-Deer Rips Project, that some of the waste discharges of the Riley-Jay-Livermore Project reaches directly affect the water quality of Gulf Island Pond, and that the owners of these projects participate in the monitoring of dissolved oxygen in the river through GIPOP.²² FPL Energy urges us to extend the term of the Gulf Island-Deer Rips license to 42 years to coordinate the review of these projects when they are next due for relicensing, as well as to reflect the expenses of the environmental measures specified above.

30. In issuing the new license, staff estimated that the Gulf Island-Deer Rips Project, as licensed, would produce power valued at \$13,318,130, or \$7,874,030 less than the cost of alternative power in its first year of operation.²³ Therefore, the project would not sustain a heavy economic burden in relation to its significant economic benefits, even with the cost of the required enhancements and operational changes. However, FPL Energy correctly identifies our coordination policy as a factor in determining the appropriate term for this license. Given the proximity of the other identified projects to the Gulf Island-Deer Rips Project and the issues, in particular water quality in Gulf Island Pond, that connect these projects, it would be beneficial to coordinate the license terms of these projects to enable these issues to be addressed comprehensively at the time of future relicensing. Therefore, we will extend the license term of the Gulf Island-Deer Rips Project to 42 years, so that the license will expire at approximately the same time as the projects directly above it on the river.

Correction of dissolved oxygen discussion

31. Consistent with Commission practice, staff attached Maine DEP's water quality certification conditions as an appendix to the order. The appendix also contains portions of the certification text that staff included because the certification conditions referred to them. Although this text was intended to reflect the certification text verbatim, the text in the appendix includes the following sentence:

²¹ See *International Paper Company*, 84 FERC ¶ 62,235 (1998), and *Otis Hydroelectric Company*, 84 FERC ¶ 62,234 (1998).

²² The Otis Project is managed by International Paper Company.

²³ 116 FERC ¶ 62,159 at P 130.

In 1999, the DEP approved a revised GIPOP operational plan designed to maximize the transfer of oxygen when not needed to meet water quality standards and to minimize the transfer of oxygen when not needed to meet standards.

FPL Energy points out that the sentence should read:

In 1999, the DEP approved a revised GIPOP operational plan designed to maximize the transfer of oxygen to the river when needed to meet water quality standards and to minimize the transfer of oxygen when not needed to meet standards.

As FPL Energy is correct, we will modify this text accordingly.

The Commission orders:

(A) Ordering paragraph (A), first sentence, of the license issued August 23, 2006, for this project is modified to read: “This license is issued to FPL Energy Maine Hydro LLC (licensee) for a period of 42 years, effective the first day of the month in which this order issued, to operate and maintain the Gulf Island-Deer Rips Project Hydroelectric Project.”

(B) Article 403, first sentence, of the license is modified to read: “Within one year of the issuance date of this license, the licensee shall file with the Commission, for approval, a plan to monitor water quality at select sites in Gulf Island Pond and in the Androscoggin River downstream from the Gulf Island-Deer Rips Project.”

(C) Appendix A, section 4.c., third paragraph, second sentence of “[Water Quality Certification Text - Relevant Excerpts]” is modified to read: “In 1999, the DEP approved a revised GIPOP operational plan designed to maximize the transfer of oxygen to the river when needed to meet water quality standards and to minimize the transfer of oxygen when not needed to meet standards.”

(D) The request filed September 22, 2006, for rehearing of the August 23, 2006, order issuing new license for the Gulf Island-Deer Rips Project No. 2283 is denied in all other respects.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.