

UNITED STATES OF AMERICA 115 FERC ¶62,199
FEDERAL ENERGY REGULATORY COMMISSION

City of Norway

Project No. 2720-042

ORDER MODIFYING AND APPROVING WATER QUALITY
MONITORING AND FISH TISSUE PLAN, PER ARTICLE 404
AND APPENDIX A, CONDITIONS 2 AND 3

(Issued May 18, 2006)

On July 5, 2005, the City of Norway, Michigan, (licensee) filed its Water Quality Monitoring and Fish Tissue Plan pursuant to Article 404 and Appendix A, Conditions 2 and 3, of the Order Issuing New License,¹ issued January 6, 2005 for the Sturgeon Falls Hydroelectric Project. The project is located on the Menominee River in Dickinson County, Michigan, and in Marinette County, Wisconsin.

BACKGROUND AND LICENSE REQUIREMENTS

License Article 404 requires the licensee, in consultation with the Michigan Department of Natural Resources (MDNR) and the United States Fish and Wildlife Service (USFWS), to develop and file for Commission approval, a plan to monitor water quality in the Menominee River. The plan is required to include monitoring of: water temperature and dissolved oxygen (DO) concentrations from May through September every five years; thirteen parameters of sediments of the Sturgeon Falls Impoundment every ten years; and total mercury and polychlorinated biphenyls in edible portions of fish every ten years as described in Conditions 2 and 3 of Appendix A of the license. The plan is also required to include, if needed, an alternative plan to monitor water quality and sample sediment and fish tissue.

LICENSEE'S PLAN

The licensee's Water Quality Monitoring and Fish Tissue Plan (Plan) proposes monitoring of temperature and DO from May 1 through September 30 at three locations in 2010 and at five year intervals after 2010 throughout the term of the license. Sampling

¹ *Order Issuing New License*, 110 FERC ¶ 62,011 (2005). Appendix A of the license order contains the State of Michigan's Water Quality Certification for the Sturgeon Falls Project pursuant to Section 401 of the Clean Water Act.

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locations are to be determined in consultation with the Michigan Department of Environmental Quality (MDEQ), with consideration of the tailrace, the Sturgeon River at or near Highway 2, and the Menominee River at or near Highway 8 as target locations for sampling. Hourly measurements are to be recorded using portable instruments that have been calibrated per manufacturer's specifications. Collected and summarized temperature and DO data and quality assurance data will be submitted to the MDEQ and MDNR within three months of the completion of sampling.

The licensee's Plan proposes to collect samples of sediments in 2015 and at ten year intervals after 2015 throughout the term of the license using appropriate containers and methods in addition to developing complete chain of custody records. The sampling location will be determined in consultation with the Michigan Department of Environmental Quality (MDEQ), or other state protection entity charged with water quality protection, and will be mapped with water depth recorded. Samples will be analyzed by a licensed laboratory using United States Environmental Protection Agency methods for oil and grease, total cadmium, total arsenic, total chromium, total copper, total lead, total mercury, total nickel, total selenium, total phosphorus, total zinc, total silver, and total polychlorinated biphenyls. Sediment sampling results and quality assurance data will be submitted to the MDEQ and the MDNR within three months of completion of analysis of the samples.

The licensee's Plan proposes to collect samples of the edible portions of fish from the project reservoir in 2006 and at ten year intervals after 2006 throughout the term of the license, with one month's prior notice to the MDEQ prior to collection of samples and consultation with the MDEQ staff biologist or other designated natural resource agency representative regarding a specific collection plan. The Plan includes the possible substitution of fish tissue data less than three years old from other nearby impoundments on the Menominee River in consultation with the MDEQ staff biologist or other designated natural resource agency representative. According to the Plan, the sample is to include ten, legal-size resident predator fish of one species and ten bottom-feeding fish of one species that represent fish normally consumed by anglers, with possible substitutions allowed as decided in consultation with appropriate resource agency representatives. Samples are to be processed using equipment cleaned before each fish is filleted, packaged according to a written method, and frozen for shipment to a state-sponsored or state-licensed analytical laboratory. Analyses are to be conducted using EPA-approved methods and a quantification level of 0.01 parts per million for mercury content. Fish tissue sampling results and quality assurance data will be submitted to the MDEQ and the MDNR within two months of obtaining analysis results.

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The licensee proposes that alternatives to the monitoring procedures specified in the Plan will be implemented only upon written approval from the MDEQ.

AGENCY CONSULTATION

The licensee provided a copy of the Plan and requested comments from the MDNR, the MDEQ, and the USFWS by letter dated May 18, 2005. No comments were received from the USFWS. The MDEQ provided comments dated June 3, 2005, regarding quality assurance of the DO monitors. The licensee incorporated the requirement into the Plan. The MDNR provided comments dated June 13, 2005, regarding the need for the MDEQ to determine when substitution of samples is appropriate.

DISCUSSION AND CONCLUSIONS

The licensee's Water Quality Monitoring and Fish Tissue Plan should provide the data necessary to identify water quality changes at the project over time and to identify possible contamination of water, sediments, and fish.

The licensee stated in its response to agency comments that the Plan had been modified to state that fish tissue data substitutions would be made as deemed appropriate by the MDEQ. However, the text of the Plan was not modified, with the first paragraph of Section 4.B reading "as deemed appropriate." The substitution of fish tissue samples should be allowed as deemed appropriate 'by the MDEQ'.

The licensee's proposal to submit copies of reports to the MDEQ and the MDNR and to change the monitoring schedule, methodology, and/or reporting with written approval of the MDEQ could result in changes to an approved plan without Commission review or approval. To avoid this, the licensee should file copies of reports with the Commission, in addition to the MDEQ and the MDNR, and any proposed modifications to the approved Plan should be filed with the Commission for approval prior to their implementation.

The licensee's Plan as modified satisfies the requirements of license Article 404 and Conditions 2 and 3 of the Water Quality Certification. Therefore, the licensee's Plan, as modified, should be approved.

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The Director Orders:

(A) The Water Quality Monitoring and Fish Tissue Plan (Plan), filed July 5, 2005, by the City of Norway (licensee), under license Article 404 and Appendix A, Conditions 2 and 3, of the January 6, 2005, Order Issuing New License for the Sturgeon Falls Hydroelectric Project, as modified by paragraphs (B) and (C), is approved.

(B) The licensee shall substitute fish tissue samples only as deemed appropriate by the Michigan Department of Environmental Quality.

(C) The licensee shall file with the Commission copies of water temperature and dissolved oxygen reports, sediment sample reports, and fish tissue sample reports by the deadlines established in the Plan. The licensee, after consultation with the resource agencies, shall apply to the Commission to amend the Plan if changes in monitoring schedules or methodologies are proposed based on the monitoring results and the workability of the Plan. The Commission reserves the right to make changes to the monitoring program based upon the review of the reports.

(D) The licensee shall file an original and seven copies of any filing required by this order with:

The Secretary
Federal Energy Regulatory Commission
Mail Code: DHAC, PJ-12.3
888 First Street, NE
Washington, DC 20426

(E) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days from the date of issuance of this order, pursuant to 18 CFR § 385.713.

George H. Taylor
Chief, Biological Resources Branch
Division of Hydropower Administration
and Compliance

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