

UNITED STATES OF AMERICA 99 FERC ¶ 62,205
FEDERAL ENERGY REGULATORY COMMISSION

Flambeau Hydro, L.L.C.

Project Nos. 2395-018, 2421-018,
2473-017 & 2640-025

COMPLIANCE ORDER

(Issued June 18, 2002)

Flambeau Hydro, L.L.C., (Flambeau or licensee) licensee for the Pixley, Lower, Crowley Rapids, and Upper Projects, located on the North Fork of the Flambeau River in Price County, Wisconsin, has failed to respond to letters from the Commission dated April 11, 2002 and May 3, 2002. Those letters identified multiple failures by Flambeau to submit compliance filings for each of the four projects. This Compliance Order directs the licensee to submit, within 21 days from the date of this order, all of the compliance filings requested in the April 11, and May 3, 2002 letters.

Background

The project licenses were issued to Fraser Papers, Inc. on February 5, 1997.¹ Fraser timely filed for a stay of the licenses pending disposition of its then pending request that the licenses for the four projects be transferred to Flambeau. On March 27, 1997, the Commission issued an order that, *inter alia*, stayed the four licenses pending Commission action on the transfer applications and, if the applications were granted, until the documentation required in the transfer order is filed.²

On December 20, 1999, the Commission approved the transfer of the licenses from Fraser Papers to Flambeau.³ Approval was made contingent on two actions: 1) transfer of title to the properties under license and the delivery of all license instruments to Flambeau and 2) Flambeau filing a signed acceptance sheet (of the transfer order) and certified copies of the instruments of conveyance within 60 days of the order.

¹78 FERC ¶¶ 62,083, 62,082, 62,084, and 62,085. Each license became effective on February 1, 1997, and expires on January 31, 2037.

²78 FERC ¶ 61,346.

³89 FERC ¶ 61,286.

By letter dated January 29, 2001, the Division of Hydropower Administration and Compliance (DHAC) in the Commission's Office of Energy Projects acknowledged that the transferee, Flambeau, had filed the documentation required by the transfer order. The letter also referenced the Commission's stay order of March 27, 1997, and in accordance with that order, advised Flambeau that the stay of the four licenses would expire as of the issuance date of the letter. The letter also informed Flambeau that staff would provide a revised compliance schedule by separate letter.

Discussion

By letter dated March 9, 2001, the licensee requested a 90-day extension of the license imposed compliance schedule. The licensee also stated that the Wisconsin Department of Natural Resources (WDNR) and the U.S. Fish and Wildlife Service concurred with the extension request under one condition. Flambeau agreed to their request to start maintaining a year-round minimum flow in 2001 of 50 cfs in the bypass channel of the Upper Project, as required by license article 405.

By letter dated April 5, 2001, DHAC granted Flambeau's extension request and provided an example of how to recalculate the filing dates of all items required by each of the project licenses. The Hydropower Compliance Management Plan (HCMP) now became the first scheduled filing for each of the four projects. It was due on July 10, 2001.⁴

Flambeau failed to submit an HCMP for any project by July 10, so DHAC telephoned the licensee to remind it of the overdue filings. During at least two discussions, Flambeau informed Commission staff that it would make the filings in the near future.

By letter of September 24, 2001, the WDNR advised that it was disturbed by the licensee's casual approach to its mandatory license requirements. WDNR noted that the licensee's HCMP filing was more than 70 days late. On October 17, 2001, DHAC telephoned the licensee to ask about several overdue filings and to inform Flambeau of WDNR's concerns. The licensee replied that a letter apprising the Commission of the various steps being taken to comply with the license articles would be sent as soon as possible. Although Flambeau submitted some required reports by letters filed on February 13, 2002, it made no reference to the overall compliance efforts that were the subject of the October 17 call.

⁴Each of these four licenses requires the filing of an HCMP for Commission approval four months after license issuance.

By letter dated April 11, 2002, DHAC informed the licensee that the Commission had not received any letter describing its compliance efforts. Attached to the letter was an updated list of the overdue filing requirements. The letter advised the licensee to submit, within 15 days, the overdue materials or a detailed plan and schedule of how it proposed to come into compliance. The letter also contained notice of Section 31(a) of the Federal Power Act (FPA), a prerequisite to the issuance of this compliance order.

On April 24, 2002, the licensee telephoned DHAC and requested clarification of certain items listed on the attachment to the April 11 letter. By letter of May 3, 2002, DHAC provided the clarification as well as an updated list of the 33 overdue filings, identified by project, license article number, and due date. DHAC informed Flambeau that this May 3 letter should not be construed as an extension of the 15-day filing deadline contained in the letter of April 11, 2002. DHAC also reminded Flambeau that it remained responsible for compliance with the terms and conditions of each of its licenses.

The following 33 article requirements are overdue:

Pixley Project No. 2395

As-Built Drawings	Article 415	Due: 03/11/2002
Hydro Compliance Management Program	Article 501	Due: 07/10/2001
Land/Buffer Zone Management Plan	Article 414	Due: 03/11/2002
Purple Loosestrife Monitoring Plan	Article 410	Due: 09/07/2001
Reservoir Operation Plan	Article 404	Due: 09/07/2001
Spill Containment Plan	Article 418	Due: 09/07/2001
Water Level Plan	Article 403	Due: 09/07/2001
Water Quality Monitoring Plan	Article 406	Due: 09/07/2001

Lower Hydro Project No. 2421

As-Built Drawings	Article 416	Due: 03/11/2002
Hydro Compliance Management Program	Article 501	Due: 07/10/2001
Land/Buffer Zone Management Plan	Article 415	Due: 03/11/2002
Purple Loosestrife Monitoring Plan	Article 410	Due: 09/07/2001
Reservoir Operation Plan	Article 404	Due: 09/07/2001
Spill Containment Plan	Article 414	Due: 09/07/2001
Water Level Plan	Article 403	Due: 09/07/2001
Water Quality Monitoring Plan	Article 406	Due: 09/07/2001

Crowley Rapids Project No. 2473

As-Built Drawings	Article 415	Due: 03/11/2002
Erosion Control Plan	Article 413	Due: 03/11/2002
Hydro Compliance Management Program	Article 501	Due: 07/10/2001
Land/Buffer Zone Management Plan	Article 414	Due: 03/11/2002
Purple Loosestrife Monitoring Plan	Article 410	Due: 09/07/2001
Reservoir Operation Plan	Article 404	Due: 09/07/2001
Spill Containment Plan	Article 419	Due: 09/07/2001
Water Level Plan	Article 403	Due: 09/07/2001
Water Quality Monitoring Plan	Article 406	Due: 09/07/2001

Upper Hydro Project No. 2640

Hydro Compliance Management Program	Article 501	Due: 07/10/2001
Minimum Flow Plan	Article 405	Due: 09/07/2001
Purple Loosestrife Monitoring Plan	Article 412	Due: 09/07/2001
Reservoir Operation Plan	Article 404	Due: 09/07/2001
Revised Recreation Plan	Article 416	Due: 09/07/2001
Spill Containment Plan	Article 420	Due: 09/07/2001
Water Level Plan	Article 403	Due: 09/07/2001
Water Quality Monitoring Plan	Article 408	Due: 09/07/2001

Conclusion

To date, Flambeau Hydro, LLC has not responded to DHAC's letter of May 3, 2002, clarifying its letter of April 11, 2002, or submitted any filings listed above. By this Compliance Order, Flambeau is required to submit all of these 33 overdue filings within 21 days of the date of this order.

Flambeau's violation of the above referenced license article filing requirements, and DHAC's May 3, 2002 letter, will be made a part of the compliance history of each of these projects. The Commission may take enforcement action against Flambeau pursuant to FPA Section 31 for the violations that have already occurred. Further, failure to comply with this Order will also subject Flambeau to the enforcement and civil penalty provisions of FPA Section 31, which includes penalties of up to \$10,000 per day for each violation, or revocation of the license. This order is issued pursuant to FPA Section 31(a).

The Director Orders:

(A) Within 21 days from the date of this order, Flambeau Hydro, L.L.C. shall submit all of the materials listed above, which were required by DHAC's April 11, 2002 letter, as clarified by the May 3, 2002 letter.

(B) Failure to submit the materials required by Paragraph (A) may result in the imposition of civil penalties of up to \$10,000 per day per violation or revocation of license pursuant to FPA Section 31(b).

(C) This Compliance Order is issued under authority delegated to the Director of the Commission's Division of Hydropower Administration and Compliance, and it constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2001).

Mohammad Akbar
Acting Director
Division of Hydropower Administration
and Compliance