

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

104 FERC ¶ 62,083

Flambeau Hydro, LLC

Project Nos. 2640-030, 2421-023
2395-023, and 2473-022

ORDER APPROVING AND MODIFYING WATER QUALITY MONITORING
PLANS UNDER ARTICLES 406 and 408

(Issued August 1, 2003)

On April 17, 2003, Flambeau Hydro, LLC (licensee), filed plans to monitor water quality in the impoundments of the Flambeau (Upper) Hydroelectric Project (P-2640), Flambeau (Lower) Project (P-2421), Pixley (P-2395), and Crowley (P-2473). The plans were filed pursuant to Article 406 of the licenses for Flambeau (Lower), Pixley, and Crowley Projects and Article 408 of the Flambeau (Upper) Project¹. These four projects are located on the North Fork Flambeau River in Price County, Wisconsin.

LICENSE REQUIREMENTS

License Articles 406 and 408 require the licensee to file, for Commission approval, plans to monitor: (1) water clarity; (2) phosphorus; (3) chlorophyll a; (4) water temperature; and (5) dissolved oxygen in the project impoundment monthly from June 1 through August 31. The plans are required to be prepared after consultation with the Wisconsin Department of Natural Resources (WDNR). In the Order on Rehearing of Orders Issuing New Licenses and Orders Issuing Subsequent Licenses issued May 4, 1998, the monitoring period in Articles 406 and 408 was changed to, "at iceout in March or April and monthly from July 1 through August 31".

Articles 406 and 408 require that the monitoring plans include a schedule for: (1) implementation of the monitoring program; (2) consultation with the WDNR concerning the results of the monitoring; and (3) filing the monitoring results, agency comments, and licensee's response to agency comments with the Commission. The licensee is required to include with the plans documentation of consultation and copies of comments received during consultation on the plan. If the licensee does not adopt a recommendation, the

¹78 FERC ¶ 62,082; 78 FERC ¶ 62,083; 78 FERC ¶ 62,084; and 78 FERC ¶ 62,085, respectively.

filing shall include the licensee's reasons, based on project-specific information. Upon Commission approval, the licensee is required to implement the plans, including any changes required by the Commission.

LICENSEE'S PLAN

As stated in licensee's plans the purpose of the monitoring program is to establish a long-term database of the water quality measurements to document the trophic state, dissolved oxygen, and any stratification of the project impoundments at the time and location of the sampling.

The licensee proposes that the water quality monitoring program consist of three sampling events each year at one WDNR approved sampling location on the project impoundment. One sampling event will be conducted during the spring iceout² of the project impoundment and one sampling event will be conducted each during the months of July and August. The July and August sampling events will be at least 21 days apart. The licensee proposes to conduct the water quality monitoring each year for the term of the license following Commission approval of the plans. The licensee's plan includes a map showing the location of the sampling site in each of the project impoundments.

The licensee's plans include a description of the sampling protocol for water clarity, phosphorus, chlorophyll a, water temperature, dissolved oxygen (DO), and true color. Field sample handling procedures will be consistent with the methods outlined in "Standard Methods for the Examination of Water and Wastewater", 20th Edition (1998). For the measurement of water clarity with a Secchi disk the licensee will use the WDNR's procedure included in the plan as Appendix A. Access to the sampling site will be by boat and care will be taken so as not to disturb the water column or bottom sediments when positioning or anchoring the boat. For phosphorus, chlorophyll a, and true color that need to be analyzed in a laboratory the licensee will select a Wisconsin State Certified Laboratory to perform these analyses.

During the first 2 years following Commission approval of the plans and for 2 years following Commission approval of any license transfer, the licensee proposes to provide copies of the sampling data for each sampling event to the WDNR and the U.S.

²Iceout is defined as the 14-day period following breakup or melting of the impoundment surface ice, that results in continuous exposure of 95% or more ice-free surface area.

Fish and Wildlife Service (FWS) allowing 30 days for these agencies to comment. Further, the licensee proposes to notify these agencies within 48 hours of the discovery of the following: DO concentrations are below the 5 milligram per liter (mg/l) Wisconsin state standard, conditions that delay or prevent sampling, and equipment loss or failure.

The licensee's plans include a schedule for preparation of an annual report and providing this report to the WDNR, FWS, and the Commission. Within 90 days of the monitoring analysis report for the August sampling the licensee will prepare a draft report and provide it to the WDNR and FWS allowing 30 days for any comment. If there is substantive agency disagreement with the draft report, the licensee will meet with the disagreeing agency within 30 days from receiving that agency's comments. Within 60 days of receipt of the agencies' comments and conclusion of any meeting with a disagreeing agency, the licensee will provide the WDNR, FWS, and the Commission the final annual report for the study year.

RESOURCE AGENCY CONSULTATION

On July 11, 2002, the licensee, the WDNR and the FWS met to discuss several plans being developed by the licensee regarding requirements in the licenses for its four North Fork Flambeau River projects including the water quality monitoring plans. Notes from this meeting are included in licensee's water quality monitoring plan. At this meeting the licensee pointed out that it has been conducting water quality monitoring at the four projects. By letter dated January 28, 2003, the licensee requested comments on the draft water quality monitoring plans from the WDNR and the FWS. The FWS did not respond; the WDNR responded by letter dated February 19, 2003. The WDNR provided comments and recommendations regarding the purpose of the studies, sampling periods, and sampling protocol. Regarding the sampling protocol the WDNR provided recommendations on the sampling location, analysis of water quality parameters, reporting of monitoring results, and training of personnel conducting the monitoring.

The WDNR expressed concern about the time frames in the licensee's reporting of monitoring results. The WDNR stated that potential disagreements that arise may not be fully resolved by the time of the next sampling season, and as a result unresolved problems could complicate future studies. The WDNR recommended that in order to reach consensus on any issues before the start of the next monitoring season, the 60-day and 90-day periods in the licensee's reporting schedule be reduced to 30 days.

DISCUSSION AND CONCLUSION

The licensee's plan provides for the sampling of water quality parameters required in Articles 406 and 408 annually for the term of the license in accordance with a sampling protocol that was developed in consultation with the WDNR. The licensee's plans addressed and are consistent with the comments and recommendations of the WDNR with the exception of the reporting schedule and training of personnel involved with the monitoring. The licensee stated that the reporting schedule contained in the plan is reasonable and necessary to allow enough time to analyze, prepare and submit reports on the monitoring the water quality at all four of its licensed projects on the North Fork Flambeau River. The licensee added that it proposed to conduct water quality monitoring at the four projects on the same day to provide more useful data.

The WDNR's concern with the length of the time frames in the licensee's reporting schedule of the monitoring results is that any disagreements that may arise would not be fully resolved prior to the start of the next monitoring season. The WDNR did not elaborate as to the nature of any disagreements that could arise during the course of the monitoring that would be conducted under plans that incorporate its recommendations. Further, the licensee's plans provide for a meeting with the agencies to resolve disagreements with a draft report. However, should the licensee and the agencies fail to reach a resolution on disputed issues, the licensee should notify and request the assistance of Commission staff in resolving any disagreements prior to the start of the next monitoring season. While the licensee's reporting schedule for the monitoring results is somewhat lengthy, the licensee plans to prepare reports at the same time on water quality monitoring to be conducted during the same period at its four North Fork Flambeau River projects and provide these four reports to the agencies and the Commission. With the reporting schedule as outlined in the licensee's plan, the licensee should file with the Commission the final water quality monitoring reports by March 1 for the previous year's monitoring results. These reports should include any agency comments, licensee's responses to these comments and any recommendations for changes to the monitoring plan.

In regard to annual training of personnel conducting the monitoring as recommended by the WDNR, the licensee should ensure that personnel are adequately trained before the start of monitoring of each monitoring season. Monitoring personnel should be up to date and current in the use of monitoring equipment and monitoring procedures.

The licensee's plans to monitor water quality in the project impoundments fulfills the requirements of Articles 406 and 408 of the project licenses. Implementation of the licensee's plans should contribute to the development of a water quality data base for the North Fork Flambeau River. The licensee's plans, as modified, should be approved.

The Director orders:

(A) The water quality monitoring plans, filed on April 17, 2003, pursuant to Article 406 of the licenses for the Flambeau (Lower), Pixley, and Crowley Projects and Article 408 of the license for Flambeau (Upper) Project, all issued February 5, 1997, and revised by Order on Rehearing issued May 4, 1998, as modified by paragraphs (B), (C), and (D), are approved.

(B) The licensee shall file with the Commission by March 1 the water quality monitoring reports on the results from the previous years monitoring and for approval, any recommendations for changes to the water quality monitoring plans. Prior to filing the reports with the Commission, the licensee shall provide draft reports to the WDNR and the FWS, allowing 30 days for review and comment. The reports shall include any comment letters from these agencies and licensee's response to these comments. The Commission reserves the right to require changes to the water quality monitoring plans.

(C) The licensee shall ensure that personnel conducting the water quality monitoring are adequately trained prior to the start of each monitoring season.

(D) Should any disagreements arise between the licensee and the resource agencies during the water quality monitoring program that are not resolved as set forth in the plans, the licensee shall request the assistance of Commission staff in resolving any disagreements prior the start of the next monitoring season.

(E) This order constitutes final agency action. Request for rehearing by the Commission may be filed within 30 days of 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

