

112 FERC ¶ 62,045
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Tomahawk Power & Pulp Company

Project No. 2239-033

ORDER MODIFYING AND APPROVING NOXIOUS PLANT MONITORING PLAN
PURSUANT TO ARTICLE 407

(Issued July 19, 2005)

On April 21, 2005, Tomahawk Power & Pulp Company (licensee) filed its Noxious Plant Monitoring Plan, pursuant to article 407 of the license¹ for the Kings Dam Hydroelectric Project (FERC No. 2239). The project is located on the Wisconsin River in Lincoln County, Wisconsin.

LICENSE REQUIREMENTS

Article 407 requires the licensee to file for Commission approval a plan to monitor purple loosestrife (*Lythrum salicaria*) in project waters. The plan is required to be developed in consultation with the U.S. Fish and Wildlife Service (FWS), and the Wisconsin Department of Natural Resources (WDNR). The plan is required to include, but not limited to: (1) the method of monitoring, (2) the frequency of monitoring, and (3) documentation of transmission of monitoring data to the FWS and the WDNR. If at any time during the period of the license, the FWS and the WDNR deem it necessary to control or eliminate purple loosestrife, the licensee is required to cooperate in this measure.

The licensee is required to include documentation of consultation with the FWS and the WDNR before preparing the plan, copies of the agencies' comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies comments were accommodated by the plan. The licensee is required to allow a minimum of 30 days for the agencies to comment and to make recommendations prior to filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing is required to include the licensee's reasons, based on project-specific information.

BACKGROUND

The licensee was required to file its Noxious Plant Monitoring Plan by January 14, 1997 (within 180 days after the issuance of the license). It failed to do so, and by letter

¹ 76 FERC ¶ 61,055. Issued July 18, 1996.

dated May 16, 2002, the Commission requested the licensee to submit a Noxious Plant Monitoring Plan by June 15, 2002. On June 24, 2002, the licensee filed a cover letter and report with the Commission, however, the information provided was insufficient, did not contain evidence of resource agency consultation, and therefore was considered deficient. By letter dated October 18, 2002, the Commission again directed the licensee to submit the plan with a due date of December 2, 2002. The licensee again failed to do so. On February 13, 2003, the Commission issued a Compliance Order,² requiring the licensee, in part, to file a purple loosestrife monitoring plan pursuant to article 407. On April 23, 2003, and again on October 20, 2003, the licensee filed a noxious plant monitoring plan that did not contain the required consultation documentation; therefore, the Commission found these plans deficient and requested the license to file a plan within 60 days that contains all of the provisions identified in article 407. After again failing to comply with the Commission's requests, the Commission issued, on April 11, 2005, a second Compliance Order³ requiring the licensee, in part, to file within 60 days from the date of the order, in accordance with article 407 of the project license, a plan to monitor purple loosestrife. The licensee's April 21, 2005, filing fulfills this requirement.

LICENSEE'S PLAN

The licensee proposes to conduct baseline monitoring for purple loosestrife between July 15 and August 15, 2005. This monitoring would be conducted by the project operator, who would be trained by the Wisconsin Valley Improvement Company. The field investigation would involve the inspection of the project headpond by boat and shoreline areas for purple loosestrife. Additionally, baseline monitoring would include the collection of submerged aquatic plant species.

The licensee proposes that if baseline monitoring does not locate purple loosestrife within the project area then additional monitoring would occur every five years. If baseline monitoring located the presence of purple loosestrife then the licensee proposes to complete follow-up monitoring every two years. If at any time during the period of the license the FWS and WDNR deem it necessary to control or eliminate purple loosestrife, the licensee proposes to cooperate in this measure.

The licensee proposes to submit a monitoring report to the FWS and the WDNR within 45 days of each year's monitoring. The reports would be submitted to the Commission within 45 days of date of submittal to the FWS and WDNR. Reports that confirm the presence of noxious plants would include a map documenting the location and outline of the noxious plant communities as well as report on the water depth and other growth and size characteristics of these plants.

² 102 FERC ¶ 62,103.

³ 111 FERC ¶ 62,038.

AGENCY COMMENTS

The licensee submitted the plan to the WDNR and FWS by letters dated March 11, and March 18, 2005, respectively. The WDNR did not provide comments to the proposed plan. The FWS provided comments and recommendations by letter dated March 24, 2005. In their letter, the FWS recommended follow-up monitoring every two years within the project area, whether or not purple loosestrife is located during any single survey. They recommended surveying every two years because purple loosestrife can become established and spread very quickly from the seed stock or rhizomes of only a few plants within the project or nearby areas. The FWS also stated that they agree with the proposal to observe for the presence of other invasive plants, especially Eurasian watermilfoil (*Myriophyllum spicatum*), which can spread rapidly, and dominate other aquatic plants, resulting in an altered fish community.

DISCUSSION

The licensee is proposing to monitor for the presence of purple loosestrife and underwater aquatic species in the headpond and shorelines of the project areas. If the licensee identifies any additional noxious plants, such as Eurasian watermilfoil, while monitoring underwater aquatic species, they should describe the species, abundance and location in their report. It is equally as important to monitor for Eurasian watermilfoil as it is purple loosestrife since Eurasian watermilfoil is an exotic species that has become a successful invader of Wisconsin inland lakes. It has the ability to form vast mats of surface foliage that shade-out native aquatic plants, can become stagnant thereby preventing oxygenated surface water from mixing with deeper waters, trap sediments, and impede recreational activities.

The licensee proposes to conduct a baseline inspection between July 15 and August 15, 2005, and complete follow-up monitoring every two years if purple loosestrife is identified within the project area or every five years if purple loosestrife is not identified within the project area. The FWS recommend that the licensee monitor for the presence of purple loosestrife every two years regardless if it is found to be present within the project. They cite the need for more frequent monitoring due to the plant's ability to quickly establish and spread itself by seed stock or rhizomes within the project or nearby areas. We agree with the FWS that monitoring should be implemented more frequently so that any spread or establishment of purple loosestrife or Eurasian watermilfoil can be quickly identified and controlled before it further spreads throughout the project or neighboring areas.

Furthermore, the licensee is proposing to use a staff person trained by another utility group, as opposed to an expert, to go out and conduct the initial survey for purple

loosestrife. One year of monitoring every five years may not be adequate to assure the presence or absence of noxious plants, or to assure it is not spreading, especially for an inexperienced surveyor. Due to the probability of overlooking the presence of a plant, the highly aggressive nature of purple loosestrife, its ability to appear stable if present and then germinate seeds at any time, and its ability to dominate wetlands and out-compete native plants for space and sunlight, the licensee should monitor more frequently than proposed. While the initial survey is considered the establishment of baseline data, this survey alone will not provide suitable information on the plants ability to grow and spread at the project site over a number of years. Therefore, it is recommended that the surveys be conducted for at least five consecutive years after issuance of this order, beginning in the summer of 2005.⁴

It is also recommended that after five consecutive years of monitoring from the date of this order, the licensee should file a comprehensive monitoring report that contains a comparison of all five years of data. If after five consecutive years there appears to be either no noxious species present or no spread of existing noxious species, then the licensee may propose an alternative monitoring frequency. Until that time, the licensee does not yet have sufficient information to justify monitoring for noxious plants only once every five years. After five years, the Commission may consider a reduction in the frequency of monitoring at that time. However, if the next five years of surveys show any increase in the extent and /or location of noxious plants, then annual surveys should continue, until such time that the Commission concurs with evidence that such increase in noxious plant species has totally ceased.

The licensee is proposing to submit monitoring reports to the resource agencies within 45 days of each year's monitoring, and to the Commission 45 days thereafter. Taking into consideration now requiring the licensee to monitor for five consecutive years, these reports should be filed annually. So that the Commission can stay apprised of the resource agencies' recommendations and comments regarding annual monitoring, the licensee should allow the resource agencies a minimum of 30 days to respond to the report before filing the report with the Commission. The report should be filed with the Commission, including comments from the resource agencies and the licensee's response to the agencies comments, by December 31, of the year the monitoring occurred. Therefore, the licensee's first annual report should be due by December 31, 2005, and every year thereafter, for at least five years, until an alternative monitoring frequency, if proposed by the licensee, is approved by the Commission as specified above.

The licensee's Noxious Plant Monitoring Plan contains all the provisions required by article 407 and therefore should be approved with the above mentioned modifications.

⁴ The Commission has similar requirements for other hydropower projects. See 101 FERC ¶ 61,335. Issued December 20, 2002.

The Director orders:

(A) Tomahawk Power & Pulp Company's (licensee) Noxious Plant Monitoring Plan, filed April 21, 2005, for the Kings Dam Project, as modified by ordering paragraphs (B), and (C) below, is approved.

(B) The licensee shall monitor, for at least five consecutive years after the issuance of this order, noxious plant species within the project boundary, including at minimum purple loosestrife and Eurasian watermilfoil.

(C) The licensee shall file annual monitoring reports with the U.S. Fish and Wildlife Service and the Wisconsin Department of Natural Resources within 45 days after completing each survey, beginning in 2005. The licensee shall allow the agencies a minimum of 30 days to provide comments and/or recommendations on the reports. By December 31, 2005, and every year thereafter, the license shall file the annual monitoring report with the Commission, including any comments and/or recommendations from the resource agencies, and the license's response to the comments. If the licensee does not adopt a recommendation, the report shall include the licensee's reasons, based on project-specific information. The licensee's fifth monitoring report, to be filed on December 31, 2009, shall contain a comparison of all data collected in the previous five years. If after five consecutive years there appears to be either no noxious species present or no spread of existing noxious species, then the licensee may propose an alternative monitoring and reporting frequency. The licensee shall continue to annually monitor for the presence of noxious plants until an alternative monitoring frequency, if proposed, is approved by the Commission. The Commission reserves the right to require modifications to the monitoring plan based on the licensee's monitoring reports or new information as it becomes available.

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

The Secretary
Federal Energy Regulatory Commission
Mail Code: DHAC, PJ-12.3
888 First Street, N.E.
Washington, D.C. 20426

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(E) This order 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 CFR § 385.713.

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