

139 FERC ¶ 62,214
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Wisconsin Public Service Corporation

Project Nos. 2525-074, 2595-100,
2522-096, 2546-088,
2560-073 and 2581-055

ORDER MODIFYING AND APPROVING UPDATED COMPREHENSIVE LAND
AND WILDLIFE MANAGEMENT PLAN

(Issued June 12, 2012)

1. On December 16, 2011, Wisconsin Public Service Corporation (WPS) filed an Updated Comprehensive Land and Wildlife Management Plan (CLWMP) for the Peshtigo River Hydroelectric Projects, pursuant to the approved CLWMP.¹ The CLWMP and its updates are required by articles 412, 409, 410, 411, 409, and 408 of the Caldron Falls (FERC No. 2525),² High Falls (FERC No. 2595),³ Johnson Falls (FERC No. 2522),⁴ Sandstone Rapids (FERC No. 2546),⁵ Potato Rapids (FERC No. 2560),⁶ and Peshtigo (FERC No. 2581)⁷ Hydroelectric Project licenses, respectively, issued on June 26, 1997. The projects are located on the Peshtigo River in Marinette County, Wisconsin. The Caldron Falls Hydroelectric Project is also partially located in Oconto County, Wisconsin.

BACKGROUND

2. The currently approved CLWMP (March 29, 2006) requires the licensee to file an updated CLWMP, for Commission approval, every six years. The CLWMP is to include at a minimum: maps showing all licensee-owned land; land management categories with

¹The 2005 updated CLWMP was approved in an Order Approving Updated Comprehensive Land and Wildlife Management Plan for the Peshtigo Projects, issued March 29, 2006 (114 FERC ¶62,325).

² See Order Issuing New License (79 FERC ¶ 62, 219).

³ See Order Issuing New License (79 FERC ¶ 62, 223).

⁴ See Order Issuing New License (79 FERC ¶ 62, 222).

⁵ See Order Issuing New License (79 FERC ¶ 62, 221).

⁶ See Order Issuing Subsequent License (79 FERC ¶ 62, 218).

⁷ See Order Issuing Subsequent License (79 FERC ¶ 62, 220).

allowable uses and activities within each category, including public recreational use of project lands; a shoreline development policy including lease policies and other conveyances of land use rights; a 200-foot, no timber harvest zone policy for the landward side of all riparian areas within the project boundary; monitoring plans for zebra mussels, purple loosestrife, and Eurasian water milfoil; a bald eagle protection plan; and provisions for consulting with the Wisconsin Department of Natural Resources (WDNR) for input regarding decisions affecting wildlife and cooperation with WDNR in conducting wildlife surveys on project lands. The plan is to be prepared in consultation with WDNR, the U.S. Fish and Wildlife Service (FWS), and the Marinette County Land and Water Conservation Department (MCLWCD).

PROPOSED UPDATED CLWMP

3. The intent of the proposed CLWMP is to maintain project lands in a manner that protects environmentally sensitive habitat and ensures that land use is compatible with wildlife management. WPS manages the Peshtigo River hydroelectric lands under a wild shores philosophy which promotes a multiple-use concept while regulating shoreline uses to keep the shoreline close to a natural state. Six objectives outlined in the plan are to: (1) manage forest practices in an integrated resource management program; (2) manage for and make available the wildlife resource for consumptive and non-consumptive use by providing for wildlife diversity; (3) provide compatible outdoor recreation opportunities as needed to satisfy demand; (4) protect archeological and historical sites on project lands; (5) protect and manage for endangered resources; and (6) implement WDNR best management practices for water quality for all ground disturbing activities.

4. The proposed updated CLWMP includes the following: (1) an introduction outlining license requirements, intent of the plan, and objectives; (2) a description of project properties; (3) land management categories with allowable uses for each; (4) management practices; (5) plan implementation; and (6) consultation. Appendices include the WDNR Peshtigo River State Forest Master Plan,⁸ approved exhibit G drawings, a bald eagle management plan, invasive species monitoring plans, and documentation of consultation.

5. The proposed updated CLWMP is similar to the 2005 approved plan. Updates and revisions include an addition of a project facility timber description in the property description section; the addition of a forest management section and revision of the fire

⁸ The WDNR Peshtigo River State Forest Master Plan, included as an appendix and discussion item in the licensee's proposed updated CLWMP, is recognized by Commission staff as a means to illustrate the agreement between WPS and WDNR to manage the lands transferred to WDNR in a manner that aligns with the intent and objectives of WPS's updated CLWMP. This order only addresses the licensee's proposed updated CLWMP, and not the state agency's master plan itself.

control section in the management practices discussion; revisions to the purple loosestrife and zebra mussel monitoring plans; and an appendix for WDNR's master plan.

6. The project facility timber section describes a management plan, timber types, and total acres for timber land located at each of the Peshtigo River hydroelectric projects. The added forest management section indicates that forest management would be implemented using the WDNR Public Forest Lands Handbook and reviewed through annual agency consultation. WPS revised the fire control section by proposing to consult annually with WDNR (the agency, in cooperation with local fire departments, responsible for fire detection and suppression on unincorporated lands) regarding wildfire issues on company owned land. This revision removes WPS from previous agreements which authorized WDNR to use WPS employees and equipment for fire control projects as described in the 2005 updated CLWMP.

7. The proposed purple loosestrife monitoring plan would require the licensee to conduct a shoreline survey of all the impoundments on the Peshtigo River, all water bodies, and all wetlands that occur on WPS property within the project boundaries of all six projects and record the relative density and abundance of purple loosestrife. The survey would be completed in either July or August (depending on when the plant is in bloom) of every third year beginning in 2014, in conjunction with the Eurasian milfoil survey. Survey results would be displayed on a map of the combined project areas to WDNR and FWS by September 30 every year a survey is completed. Documentation of submittal to the agencies would be filed with the Commission by December 31 of a survey year.

8. Relative populations of purple loosestrife would be indicated based on (1) small colonies of 1 – 5 plants; (2) medium colonies of 6 – 50 plants, and (3) dense colonies of more than 50 plants. Control methods would be implemented as follows: (1) small colonies would be cut by hand, sprayed with an approved herbicide, or pulled and disposed of off-site; and (2) large (i.e., medium and dense) colonies would be surveyed for signs of *Galerucella* sp. beetle feeding; if beetle feeding is not observed, WPS would consult with WDNR and FWS to determine if a *Galerucella* beetle release or other types of control may be warranted. If beetle feeding is observed, WPS would continue the use of beetles as a control method.

9. WPS indicates that it has successfully controlled the spread and significantly reduced purple loosestrife at the Peshtigo Project through the release of *Galerucella* beetles. Currently only the Peshtigo project has purple loosestrife colonies located within the project boundary.

10. Purple loosestrife has been monitored at the Potato Rapids Project since 1999, and one single small colony was found in the 2011 survey. The colony was hand pulled and disposed of off-site. Given the 2011 survey result, WPS proposes to monitor the Potato Rapids Project site annually on a separate schedule through 2014. The above described control plans would be utilized. If purple loosestrife is no longer observed at the Potato

Rapids Project during the 2014 survey, WPS would survey this site every three years in conjunction with the Eurasian water milfoil survey. Public awareness of purple loosestrife would be increased by displaying invasive species signage, supplied by WDNR, at public access areas. The proposed purple loosestrife plan would revise the control methods in the 2005 plan by adding the beetle release as a biological control method.

11. As well, the currently proposed plan would revise the approved 2009 CLWMP supplement for the Peshtigo Project (supplemental plan)⁹ by altering the five year annual beetle release and monitoring schedule to a monitoring frequency of every three years in alignment with the existing Eurasian water milfoil monitoring schedule, due next in 2014.

12. The proposed plan would revise the documentation schedule for zebra mussels at the projects from an annual report to a report every three years, in conjunction with the proposed purple loosestrife and existing Eurasian water milfoil schedules. Documentation of zebra mussels would be provided to WDNR, FWS, and the University of Wisconsin—Sea Grant by September 30 every third year, beginning in 2014. Documentation of submittal of the results to the agencies would be provided to the Commission no later than December 31 every third year. If zebra mussels are observed at a project in a non report submittal year, WPS would inform WDNR, FWS, and the University of Wisconsin-Sea Grant by September 30 of that year.

13. In 2004, WPS transferred lands to WDNR and has an agreement with WDNR that those lands would be managed in alignment with the objectives and intent of the CLWMP. The first 200 feet landward of the shoreline lie within the project boundary and are managed by WDNR under the classification of “shoreland management overlay zone,” as intended in the CLWMP. Generally, management of lands in this classification must protect natural resources, provide public recreation access to the river and flowages. WDNR’s Peshtigo River State Forest Master Plan requires that any development in that zone be approved by the Commission and that vegetative management within this classification requires approval by WPS, WDNR, FWS, and the National Park Service.

AGENCY CONSULTATION

14. WPS provided a draft of the CLWMP to WDNR, FWS, and the MCLWCD on October 7, 2011. WDNR, by letter dated November 4, 2011, responded with 21 comments. Nineteen of these comments were either suggested revisions to the draft CLWMP or comments indicating agreement with specific statements and policies in the plan. WPS incorporated all suggested revisions/edits into the final CLWMP and acknowledged all comments. WDNR also suggested that WPS utilize WDNR’s

⁹See Order Approving Supplement to Comprehensive Land and Wildlife Management Plan (128 FERC ¶ 62,073), issued July 30, 2009.

voluntary best management practices for invasive species intended for use during forest stewardship activities. WPS responded that they would continue to utilize their internal policies developed to comply with the WDNR Chapter NR 40 Invasive Species Identification, Classification, and Control Rule. WDNR was also opposed to the proposed revisions to the purple loosestrife monitoring plan; both WDNR's comments and WPS' response are addressed in the discussion below. No comments were received from FWS or MCLWCD.

DISCUSSION

15. The proposed CLWMP update fulfills the requirements of the 2005 CLWMP. The 2011 proposed plan is similar to the approved 2005 CLWMP, with revisions and additions as outlined above in the proposed plan. With the exception of the proposed revisions to the purple loosestrife monitoring plan, WPS received agreement with the plan from WDNR, with no comments from the other agencies.

16. WPS proposes to report survey results for purple loosestrife, for all of the Peshtigo River projects except the Potato Rapids Project, every three years, beginning in 2014, in conjunction with Eurasian water milfoil monitoring. This proposal would reduce the timeframe for the requirements in the approved 2009 supplemental plan for purple loosestrife control at the Peshtigo Project. The 2009 supplemental plan requires WPS to release *Galerucella* sp. beetles as a biological control measure, for five years, or until each purple loosestrife colony has an established beetle population, and conduct annual surveys of the entire project for five years. If after five years, the annual surveys indicate that the spread of purple loosestrife is controlled or the population is reduced, WPS will reduce the frequency of monitoring to every 3 years, in conjunction with Eurasian water milfoil monitoring. The spread of purple loosestrife will be considered controlled if there is documented beetle feeding on all colonies, the colonies are contained or reduced, or the condition of the plants has deteriorated. If the surveys do not demonstrate control of the spread of purple loosestrife, WPS will consult with WDNR and FWS on an appropriate monitoring plan. Plan implementation was to begin in 2009.

17. In response to the proposed revision, WDNR recommended that WPS continue the approved 2009 supplemental plan and release *Galerucella* sp. beetles for two more years for evaluation during the annual surveys through 2014. WDNR stated that while WPS documented increased feeding by *Galerucella* sp. beetles, increased feeding does not equate to established beetle populations. WPS responded that of the 14 remaining purple loosestrife colonies documented in 2011, four had beetle feeding at 50 percent or less, and the remaining colonies had beetle feeding at greater than 50 percent. WPS states that it has established beetle populations at every purple loosestrife colony and would not release any additional *Galerucella* sp. beetles at this time and would allow the population to naturally reproduce and fluctuate as observed at other hydroelectric projects. Therefore, WPS proposes to complete purple loosestrife surveys every third year at the Peshtigo Project with the next survey scheduled for 2014, and not annually until 2014, as proposed by WDNR.

18. WPS released beetles in 2009, 2010, and 2011 with documented beetle feeding in 2010 and 2011 and a consistent decrease in purple loosestrife colonies. The 2011 results provide a basis for WPS' statement that it has successfully controlled the spread of and significantly reduced the purple loosestrife colonies at the Peshtigo Project. However, WPS has not completed the implementation timeframe of 5 years as required in the approved 2009 supplemental plan. In its 2009 supplemental plan, WPS acknowledges the interdependence between beetle and purple loosestrife colony populations, stating that studies have shown beetles are dependent almost exclusively on purple loosestrife, and that, if purple loosestrife has been controlled in an area, the beetles will either migrate to other purple loosestrife colonies or decrease. WPS also notes that "...it has been WDNR's experience that the beetle population fluctuates with the purple loosestrife population, thus periodic increases and declines may be expected." In the three years of data collection (2009 - 2011), WPS has observed a decline in purple loosestrife colonies and beetle feeding on all remaining colonies. WPS has not, as of yet, observed fluctuations in beetle and purple loosestrife colonies. While WPS proposes to allow the fluctuation to happen naturally, completion of the supplemental plan implementation would provide the licensee and agencies more clear data on the effectiveness of the initiated protocol. The additional time would allow WPS to vary the amount of beetles released based on survey results to see the effects on the purple loosestrife colonies, potentially strengthening its control plan and response to fluctuations in the beetle population and purple loosestrife colonies in future years. Therefore, WPS should be required to continue its implementation of the approved 2009 supplemental plan, through 2013, for purple loosestrife control at the Peshtigo Project.

19. Upon completion of the implementation cycle for 2013, WPS should, based on the five year survey results, determine if the spread of purple loosestrife is controlled at the Peshtigo Project and respond, in accordance with the approved 2009 supplemental plan, by either reducing the monitoring frequency to every three years if the spread is controlled, or, if the spread is not controlled, reinstate agency consultation to determine other control measures. By September 30, 2013, WPS should be required to file its annual report with WDNR and FWS, including a summary conclusion, based on the five years of data, regarding the control of the spread of purple loosestrife at the project. By December 31, 2013, WPS should be required to file, for Commission approval, documentation of submittal of the annual report to WDNR and FWS, its purple loosestrife monitoring schedule with any revisions to the purple loosestrife control plan at the Peshtigo Project, documentation of agency consultation, including comments and recommendations, and how those comments are accommodated by the plan. The licensee is required to allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing should include the licensee's reasons, based on project-specific information.

20. WPS also proposes to change the documentation schedule for the zebra mussel monitoring plan to every three years, in conjunction with the Eurasian water milfoil schedule. Given that WPS would provide a report to the designated agencies by

September 30 of a non report submittal year in which zebra mussels are found, the documentation schedule should sufficiently keep the agencies and Commission informed.

21. The updated CLWMP, with the above modification, should be approved. The next six year update is to be filed with the Commission, for approval, by December 31, 2017.

The Director orders:

(A) Wisconsin Public Service Corporation's Comprehensive Land and Wildlife Management Plan Update for the Peshtigo Hydroelectric Projects (FERC Nos. 2525, 2595, 2522, 2546, 2560, and 2581), filed on December 21, 2011, as modified by paragraph (B), is approved.

(B) With regard to the purple loosestrife monitoring plan for the Peshtigo Project No. 2581, the licensee shall continue to implement the provisions of the approved 2009 supplement to the Comprehensive Land and Wildlife Management Plan for purple loosestrife control through 2013. Upon completion of the implementation cycle for 2013, the licensee shall, based on the five year survey results, determine if the spread of purple loosestrife is controlled at the Peshtigo Project and provide its recommendation(s), in accordance with the approved 2009 plan, by either reducing the monitoring frequency to every three years if the spread is controlled, or, if the spread is not controlled, reinstate agency consultation with the Wisconsin Department of Natural Resources (WDNR) and the U.S. Fish and Wildlife Service (FWS) to determine other control measures. By September 30, 2013, the licensee shall file its annual report with WDNR and FWS, including a summary conclusion, based on the five years of data, regarding the control of the spread of purple loosestrife at the project and its resulting action (i.e., either reduction to an every three year monitoring schedule or the need to reinstate consultation to determine other control measures). By December 31, 2013, the licensee shall file, for Commission approval, documentation of submittal of the annual report to WDNR and FWS, its purple loosestrife monitoring schedule for the Peshtigo Project with any revisions to the purple loosestrife control plan, documentation of agency consultation, including comments and recommendations, and how those comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information. The Commission reserves the right to make any necessary revisions to the plan.

(C) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2006), and the Commission's regulations at 18 C.F.R. § 385.713 (2011). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Robert J. Fletcher
Chief, Land Resources Branch
Division of Hydropower
Administration and Compliance

Document Content(s)

P-2525-074.DOC.....1-8