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131 FERC ¶ 62,252
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Central Vermont Public Service Corporation Project No. 11475-010

ORDER APPROVING RECREATION PLAN PURSUANT TO ARTICLE 401 AND WATER QUALITY CONDITIONS L AND 12

(Issued June 21, 2010)

1. On February 25, 2010, and supplemented on April 12, 2010, Central Vermont Public Service Corporation (licensee) filed a recreation plan (plan) for the Carver Falls Hydroelectric Project (FERC No. 11475) pursuant to license article 401 and water quality certification (WQC) conditions L and 12.[1] Article 401 requires, in part, the licensee to file, for Commission approval, a recreation plan that is consistent with the WQC conditions from the Vermont Agency of Natural Resources (VANR), condition L, and New York Department of Environmental Conservation (NYSDEC), condition 12. The project is located on the Poultney River in Washington County, New York, and Rutland County, Vermont.

2. Condition L of the Vermont WQC requires the plan to: (1) allow but not encourage access to the promontory;[2] (2) include an implementation schedule; (3) include details on erosion control; and (4) be updated at intervals not to exceed ten years. Condition L requires that the plan be approved by the VANR. Condition 12 of the New York WQC requires the licensee to provide cartop boat access to the impoundment with a parking area for no less than five cars, and provide a canoe portage route around the dam to a point downstream of the powerhouse. Article 401 requires the plan to include the proposed signage, trail registers, and overlook improvements described in the license application and the licensee's March 6, 1996 additional information response. The plan is to be prepared in consultation with the VANR, NYSDEC, and U.S. Fish and Wildlife Service (FWS).

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[1] Order on Offer of Settlement and Issuing Original License issued February 25, 2009 (126 FERC ¶ 62,144).

[2] The promontory is an overlook feature located on a ledge outcrop that provides a view of the falls.

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DESCRIPTION OF PLAN

3. Existing recreation facilities at the project include a parking area, a walking trail to an informal canoe launch on the impoundment, a trail to a promontory overlook at the dam and falls, and a portage trail that provides access to the river downstream of the dam. In the plan, the licensee describes measures to provide continued public access to the project area during daylight hours only, displaying the use restrictions on a new sign to be posted at the parking area.

4. Pursuant to condition L of the Vermont WQC, the proposed plan includes the following required elements: (1) measures to discourage, but not prohibit, use of the existing promontory overlook; (2) an implementation schedule; (3) implementing a soil erosion and sediment control plan; and (4) measures to update the plan at intervals not to exceed ten years.

5. The proposed plan includes the provision of a canoe portage around the falls, as required by condition 12 of the New York WQC, but does not provide the required cartop boat access. Rather, the proposed plan would limit access to the impoundment to foot travel only, due to project security and public safety concerns.

6. Pursuant to the requirements of license article 401, the proposed plan provides for the required signage and overlook improvements, but does not provide for trail registers due to concerns regarding public misuse. Additional provisions of the plan include: (1) constructing a new footpath and viewing platform to access the falls; (2) improving the downstream section of portage trail to include a terraced stairway access to the river at the trail end; (3) installing interpretive signage at the powerhouse, falls viewing location, and parking area; (4) improving the existing parking area; and (5) accounting for the needs of the disabled. The licensee states that the construction and use of the downstream portage trail and river access could adversely affect cultural resources, and proposes to finalize the specific location of the canoe put-in area and steps following completion of archaeological studies.

CONSULTATION

7. The licensee developed the plan in consultation with the VANR, NYSDEC, and FWS. The VANR and NYSDEC participated in a site visit on June 2, 2009, where several items and changes to the draft plan were discussed. One noteworthy change that was discussed at the site visit was that, due to security concerns, vehicle access would not be allowed beyond the existing gates, and subsequently, cartop access to the impoundment would not be provided. Following the site visit, the licensee sent email correspondence to the VANR and NYSDEC summarizing the discussed changes. On June 4, 2009, the NYSDEC responded that the meeting minutes provided by the licensee accurately reflect the issues that were discussed, and that it had no further comments. The licensee states that the NYSDEC participated in development of the plan, including

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the aforementioned site visit, but that the NYSDEC stated in a telephone conversation on February 18, 2010, that it would not submit comments on the plan. The VANR approved the plan by letter dated February 25, 2010. The FWS, by email dated April 8, 2010, states that it will not be commenting on the plan.

DISCUSSION

8. Regarding the final location of the downstream portage trail and river access, since the historic properties management plan (HPMP) filed by the licensee on February 25, 2010 has not yet been approved by the Commission, the licensee should follow the procedures discussed in the Programmatic Agreement (PA) approved on August 8, 1997.[3] If the HPMP is approved prior to beginning construction of the trail and river access, the licensee should follow the procedures contained in the final HPMP approved by the Commission. We find that adhering to the PA or HPMP, as appropriate, would adequately protect cultural resources that may be in the vicinity of the proposed canoe portage.

9. Article 401 requires the plan to include trail registers, as originally included in the license application, and condition 12 of the New York WQC requires the plan to provide cartop boat access to the impoundment. Neither of these requirements are included in the proposed plan. The licensee states that these elements have been eliminated from the plan, in consultation with the VANR and NYSDEC, due to concerns regarding public misuse. The licensee states that the project area is located at the end of a dead-end road, is unmanned, and has experienced vandalism problems in the past. The trail registers were originally proposed to gather recreational use data for future evaluation of the adequacy of the project's recreation facilities. Because the licensee is required, under the Commission's regulations, to monitor recreation use at the project every six years,[4] and because the plan proposes to determine whether updates to the plan are needed every ten years,[5] Commission staff agrees that not including trail registers would still allow the licensee to adequately monitor recreation facilities, and the other provisions, above, would ensure that the recreation plan is updated, as appropriate.

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[3] According to the PA, pending the review and implementation of the plan, the licensee is to consult with the New York and Vermont State Historic Preservation Officers regarding all activities, including recreation developments, that require ground disturbance.

[4] 18 C.F.R. §8.11 requires the licensee to file, every six years, information on recreation use at the project (i.e., FERC Form 80).

[5] The requirement to update the plan at intervals not exceeding ten years is meant to comply with Vermont WQC conditions L.

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10. Regarding the exclusion of the cartop boat access from the proposed plan, Commission staff finds that the proposed plan would still allow adequate public access to the project's impoundment. The terrain upstream of the parking area is relatively flat and free of obstructions, and the trail would be approximately 600 feet from the improved parking area. The distance and terrain could be reasonably navigated by cartop boaters carrying their boats from the improved parking lot. Further, the proposed plan includes improved gates with 3-foot clearance on either side, which better allow for passage of carry-in boaters and disabled persons while discouraging potential inappropriate use and improving public safety. Although NYSDEC did not formally approve the proposed plan, it did indicate its concurrence with the changes in its June 4, 2009 email.

11. The licensee's plan would improve recreation opportunities at the project, and meets the requirements of license article 401, and the Vermont and New York WQC conditions L and 12, respectively, and should be approved. Within 90 days of completion of the constructed recreational facilities (i.e., downstream river access, improved parking area, and viewing platform), the licensee should be required to file, for Commission approval, as-built drawings for the recreational facilities constructed, showing the location and layout of the completed facilities in relation to the project boundary. In order to accurately include these recreation facilities (i.e., upstream impoundment access, downstream river access, and viewing platform) in the Commission's geographic database for the project, the licensee should file site-specific information on their location.

The Director orders:

(A) The recreation plan, filed on February 25, 2010 and supplemented on April 12, 2010, by the Central Vermont Public Service Corporation for the Carver Falls Hydroelectric Project, pursuant to article 401 and water quality certification conditions L and 12, is approved.

(B) Within 90 days of completing construction of the recreational facilities approved in this order, the licensee shall file, for Commission approval, as-built drawings for all recreation facilities that the licensee is responsible for operating and maintaining at the project. The drawings shall show the location and layout of the facilities in relation to the project boundary.

(C) Within 45 days of issuance of this order, the licensee shall file location point data representative of each of the facilities provided under the recreation plan approved in ordering paragraph (A), above. The location point must be positionally accurate to comply, at a minimum, with National Map Accuracy Standards for maps at a 1:24,000 scale. The location point must include latitude/longitude, in decimal degrees, based on the horizontal reference datum of the North American Datum of 1983 (NAD 83). The location point data of the downstream river access shall be filed within 45 days of a final

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decision on its location.

(D) 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.

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

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