

Environmental Impacts

Construction of recreational facilities at the project would result in increased sedimentation, noise and air pollution, and vegetation damage. These impacts will be short-term and minor, and be limited to the construction period. Increased recreational use may result in impacts on vegetation, soils and wildlife. However, management plans will be implemented to minimize such impacts.

For the above reasons, it is concluded that approval of the application will not constitute a major Federal action significantly affecting the quality of the human environment.

It is ordered that:

(A) The Report on Recreational Resources consisting of pages 25 through 46 inclusive, filed on September 1, 1982, and the following drawings are approved and made a part of the license for Project No. 400:

| Drawing | FERC No. 400- | Showing |
|-----------------------------|------------------|--|
| Recreation Plan (1 of 2) | 97 | Proposed Recreational Facilities-Tacoma |
| Recreation Plan (2 of 2) | 98 | Proposed Recreational Facilities-Tacoma |
| Recreation Plan | 99 | Proposed Recreational Facilities-Ames |

(B) The following articles are added to the license for FERC Project No. 400:

Article 41. Licensee shall commence construction of the recreational facilities within 1 year from the date of issuance of this order. Also, Licensee shall, in consultation with the Forest Service of the U.S. Department of Agriculture, the Colorado Division of Wildlife, the Electra Sporting Club, and any other appropriate agency, establish a test period for implementation of the recreational use management plan at the Tacoma Development. The test period may extend over three full recreation seasons, but not beyond 4 years from the date of issuance of this order. During this period Licensee, upon agreement

by the consulted agencies, may, for testing purposes, depart from the approved recreational use management plan contained within the Report on Recreational Resources in such ways as may be necessary to ensure that the most appropriate means to achieve the goals and objectives with respect to public access and resource protection are instituted. At the end of the test period, Licensee shall file with the Commission a report on the results of the testing, to include the comments of the consulted agencies, and for Commission approval, any revisions of the Report on Recreational Resources that may be indicated.

Article 42. Licensee shall, in cooperation with the Fish and Wildlife Service of the U.S. Department of the Interior and the Colorado Division of Wildlife, develop a management plan for the protection of raptors from adverse impacts that may be caused by increased recreational use at the project. Licensee shall, within 1 year from the date of issuance of this order, file a copy of the plan with the Commission along with the comments of the cooperating agencies.

(C) The Licensee's failure to file a petition appealing this order to the Commission shall constitute acceptance of this order. In acknowledgment of acceptance of this order and its terms and conditions, it shall be signed by the Licensee and returned to the Commission within 60 days from the date this order is issued.

— Footnote —

¹ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under § 375.308 of the Commission's regulations, 18 C.F.R. § 375.308 (1982). This order may be appealed to the Commission within 30 days of its issuance pursuant to Rule 1902, 18 C.F.R. § 385.1902, 47 Fed. Reg. 19014 (1982). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application for rehearing as provided in Section 313 (a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically directed by the Commission.

[¶ 62,160]

**Arkansas Electric Cooperative Corporation, Riceland Electric Cooperative, Inc.
and C&L Electric Cooperative, Inc., Project No. 3033-001**

Order Issuing License (Major)

(Issued August 10, 1983)

Lawrence R. Anderson, Director, Office of Electric Power Regulation.

On April 19, 1982, Arkansas Electric Cooperative Corporation, Riceland Electric Cooperative, Inc., and C&L Electric Cooperative, Inc. (Applicants) filed an application for a license, under Part I of the Federal Power Act (Act), for Dam No. 2 Hydropower Project No. 3033-001. The project would utilize the water power potential of an existing U.S. Army Corps of Engineers (Corps) dam. ¹ The project would be located on the Arkansas River at Dam No. 2 about 15 miles southwest of Dumas, in Desha and Arkansas Counties, Arkansas. The Arkansas River was declared to be a navigable waterway of the United States in 1923 when the Carpenter-Remmel Project No. 271 was first licensed.

The Corps' Dam No. 2 consists of overflow and non-overflow embankment sections and a gated spillway 1,130 feet in length with a maximum height of 54 feet. The spillway is controlled by sixteen 30-foot-high by 60-foot-wide conventional Taintor gates. The non-overflow embankment is 3,150 feet in length with a crest elevation at 180 feet mean sea level (m.s.l.). Dam No. 2 creates a reservoir with a normal surface area of 10,560 acres at 162 feet m.s.l.

The new project facilities would consist of a powerhouse, a headrace channel, a tailrace channel, three turbines each with a rated capacity of 40 MW, and a 230-kV transmission line approximately 11.5 miles long. The project would be operated as run-of-river. The project is more fully described in Ordering Paragraph (B).

Public Notice

Notice of the application has been published and comments have been received from interested Federal, State and local agencies. No protest has been received and no agency has objected to issuance of the license. The Arkansas Public Service Commission was granted intervention. It wanted to be informed regarding the proceeding. Significant comments are also discussed below.

Compliance with Federal Statutes

The U.S. Fish and Wildlife Service (FWS) and the Arkansas Game and Fish Commission (AGFC) informed the Applicants that the proposed project would have no significant impact on federally listed threatened or endangered species.

Four historical sites are known to be located in the project area; none are eligible for the *National Register of Historic Places*. These sites include a twentieth century tenant house site with no structure remaining, located within the 100-foot-wide transmission line

corridor. No archeological sites are known to exist in the project impact areas. The Applicants received a water quality certificate on November 4, 1981, from the Arkansas Department of Pollution Control and Ecology.

Historical and Archeological Resources

The U.S. Department of the Interior (Interior) recommended that the application be supplemented to: (1) describe the results of an archeological survey; (2) include the comments of the SHPO on the survey; and (3) describe any necessary mitigation measures. The Applicants, in consultation with the National Park Service, the Arkansas State Archeologist, and the Arkansas State Historic Preservation Officer, have agreed to conduct, prior to any construction, an archeological survey of all areas that would be affected by the proposed project, and subsurface tests in impact areas in which soils and topography suggest the possibility of buried sites.

It is concluded that measures should be undertaken to inventory and protect archeological sites within the project impact areas. Undiscovered historic sites may also be present in these areas, and requirements to inventory and protect these sites are also being included. Special Article 50 will safeguard any cultural resources at the project.

Recreational Development

Interior recommended that the Applicants conduct an analysis to determine if there is a need for additional recreational facilities and be responsible not only for the cost of relocation of part of Pendleton Bend Park, but for developing additional recreation facilities if a demonstrated need exists. The Applicants have proposed in their recreational report to replace in kind the park facilities that would be disrupted by the Applicants' project.

The Report on Recreational Resources provides for the existing recreational needs for the project and is approved herein. License Article 17 provides for future additional recreation development, if there is a demonstrated need.

Land Management and Aesthetics

The transmission line would be routed the shortest distance feasible through bottomland hardwoods and avoid, wherever feasible, the small stands of trees scattered throughout the agricultural fields. The Corps recommended that in order to minimize any adverse impacts, the transmission corridor route selection, clearing design, and maintenance plan should be prepared by a team which includes a wildlife biologist and a landscape architect.

Article 33 requires, among other things, that transmission corridors be designed, constructed, and maintained in accordance with the Commission's guidelines and other recognized guidelines which would, in turn, provide for wildlife and visual protection as recommended by the Corps.

Environmental Impacts

Approval of this application would not result in any significant adverse long-term environmental impacts. Construction activities would produce some temporary adverse impacts, such as dust and noise from vehicles and machinery, a small amount of turbidity and sedimentation in the Arkansas River at the powerhouse site, and the disturbance of some vegetation in the transmission line corridor. Applicants' proposed mitigative measures should ensure that these impacts are relatively minor in scope and temporary in duration.

On the basis of the record and the Staff's independent analysis, it is concluded that issuance of a license for the project, as conditioned, would not constitute a major Federal action significantly affecting the quality of the human environment.

Safety, Comprehensive Development, Economic Feasibility and Annual Charges

The proposed project will include a headrace channel, powerhouse and tailrace channel. Operation of the project would not alter the river flow regime or the Corps' current operating procedures.

In response to comments submitted by the Corps, Article 43 is included requiring the Licensees to evaluate the adequacy of the powerhouse location prior to preparation of plans and specifications. Other recommended articles require that final design and construction be reviewed and approved by the Corps (Articles 40 and 44), an independent board of consultants (Article 49) and the Commission staff (Article 39). It is concluded that the project will be safe and adequate upon compliance with the license articles.

The project would have an installed capacity of 120,000 kW and generate an estimated average 340,000,000 kWh of energy annually.² Power generated by the project would be utilized by the Applicants. The project is economically feasible based on the estimated cost of producing an equivalent amount of energy from a coal-fired steam electric plant.

Section 10(e) of the Act³ requires the Commission to fix a reasonable annual charge to be paid to the United States for the use of a government dam. The Commission issued on

March 31, 1983, a proposed rulemaking, RM83-13-000 [*FERC Statutes and Regulations* § 32.310], reassessing comprehensively the subject of suitable annual charges for use of government dams and other facilities, for the purpose of making recommendations to the Commission for any appropriate changes in its policies and regulations. Consequently, a final determination on the annual charges for the use of these Federal facilities will be reserved. Article 42 provides for a future determination of the annual charge.

The project will make good use of the flow and fall of the Arkansas River, and is not in conflict with any planned or authorized development. It will be best adapted to the comprehensive development of the Arkansas River for beneficial public uses under present conditions, upon compliance with the terms and conditions of the license.

It is ordered that:

(A) This license is issued to the Arkansas Electric Cooperative Corporation, the Riceland Electric Cooperative, Inc., and the C&L Electric Cooperative, Inc. (Licensees), under Part I of the Federal Power Act (Act), for a period of 50 years, effective the first day of the month in which this order is issued, for construction, operation and maintenance of the Dam No. 2 Hydropower Project No. 3033, located on the Arkansas River, a navigable waterway of the United States, in Desha and Arkansas Counties, Arkansas. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The Dam No. 2 Hydropower Project No. 3033 consists of:

(1) all lands, to the extent of the Licensees' interests in those lands, constituting the project area and enclosed by the project boundary. The project area and boundary are shown and described by certain exhibits that form part of the application for license and that are designated and described as:

| <i>Exhibit</i> | <i>FERC No. 3033-</i> | <i>Showing</i> |
|----------------|-----------------------|-----------------------|
| G, Sheet 1 | 6 | Location Map |
| G, Sheet 2 | 7 | Project Boundary Map |
| G, Sheet 3 | 8 | Transmission Corridor |

(2) project works consisting of: (1) a reinforced concrete powerhouse, 190 feet wide by 250 feet long, located 500 feet downstream from the centerline of the dam and containing three horizontal shaft 40.0-MW turbine/generator units operating under a maximum power head of 44.5 feet; (2)

headrace and tailrace channels; (3) the 6.9-kV generator leads; (4) the three main step-up transformers; (5) a 230-kV transmission line 11.5 miles long; and (6) appurtenant mechanical and electrical facilities and equipment.

The location, nature, and character of these project works are generally shown and described by the exhibits cited above and more specifically shown and described by certain other exhibits that also form a part of the application for license and that are designated as:

| <i>Exhibit A, Section</i> | <i>Title</i> |
|---------------------------|--|
| Sheet 3 | Turbine Generation |
| Sheet 4 | Transmission Line |
| Sheet 5 | Additional Mechanical and Electric Equipment |

Exhibit E—Pages E-33 through E-36, Titled *Report on Recreational Resources*, filed April 19, 1982.

| <i>Exhibit A, Section</i> | <i>FERC No. 3033-</i> | <i>Title</i> |
|---------------------------|-----------------------|---------------------------|
| Sheet 1 | 1 | Site Plan |
| Sheet 2 | 2 | Powerhouse Section |
| Sheet 3 | 3 | Powerhouse Plan |
| Sheet 4 | 4 | Powerhouse Plan |
| Sheet 5 | 5 | Channel Profile & Section |

(3) all of the structures, fixtures, equipment, or facilities used or useful in the operation or maintenance of the project and located within the project boundary, all portable property that may be employed in connection with the project, located within or outside the project boundary, as approved by the Commission, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) Exhibits A, E, F and G, designated in Ordering Paragraph (B) above, are approved and made a part of the license.

(D) This license is also subject to Article 1 through 37, except Article 20, set forth in Form L-6 (revised October 1975), entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States", attached to (reported at 54 FPC 1842) and made a part of this license. The license is also subject to the following additional articles:

Article 38. The Licensees shall commence construction of the proposed project within 2 years of the date of issuance of the license and, in good faith and with due diligence, shall complete construction within 5 years from the date of issuance of the license.

Article 39. The Licensees shall file with the Commission's Regional Engineer and the Director, Office of Electric Power Regulation,

and the Corps of Engineers one copy each of the final contract drawings, specifications and final design report for pertinent features of the project, such as intake structure, at least 60 days prior to start of construction. The Director, Office of Electric Power Regulation, may require changes in the plans and specifications to assure a safe and adequate project.

Article 40. The Licensees shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations are consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the Licensee shall file with the Commission's Regional Engineer, Director, Office of Electric Power Regulation, and the Corps of Engineers one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

Article 41. The Licensees shall have no claim under this license against the United States arising from the effect of any changes made in the operation or reservoir levels at Dam No. 2.

Article 42. The Licensees shall pay the United States for the following annual charges effective the first day of the month in which this license is issued:

(a) For the purpose of reimbursing the United States for the cost of Administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 160,000 horsepower.

(b) For the purpose of recompensing the United States for utilization of surplus water or water power from the Government dam, an amount to be hereafter determined by the Commission.

Article 43. The Licensees shall consult with the Corps of Engineers concerning the type and extent of geological investigations, material tests and model tests needed to determine the best location for the powerhouse. Based on the results of these investigations, the Licensees shall prepare a report evaluating the feasibility of constructing the powerhouse either at the proposed location or an alternative location. Copies of the report shall be submitted to the Little Rock District of the Corps of Engineers Fort Worth Regional Office, and Director, Office of Electric Power Regulation. Contract drawings and specifications shall not be prepared until the powerhouse location has been accepted by the

Corps and approved by the Director, Office of Electric Power Regulation.

Article 44. The design and construction of those facilities that would be an integral part of, or that could affect the structural integrity or operation of Dam No. 2 shall be done in consultation with and subject to the review and approval of the Corps' District Engineer, Little Rock, Arkansas.

Article 45. The Licensees shall enter into an agreement to coordinate their plans with the U.S. Army Corps of Engineers (Corps) for access to and site activities on lands and property administered by Corps so that the authorized purposes, including operation of the Federal facilities, are protected. In general, the agreement shall not be redundant with the Commission's requirements contained in this license and shall identify the facility, and the study and construction activities, as applicable, and terms and conditions under which studies and construction will be conducted. The agreement shall be mainly composed of the following items: (1) Reasonable arrangements for access to the Corps site to conduct studies and construction activities, such access rights to be conditioned by the Corps as may be necessary to protect the federally authorized project purposes and operations; (2) charges to be paid by the Licensees to the Corps (a) for technical studies by the Corps that relate solely to the structural integrity or operation of the Corps dam, and (c) for construction cost that may be incurred by the Corps for the specific and sole purpose of accommodating the installation of power facilities at the existing Corps dam; and (3) charges to be paid by Licensees to the Corps for copies of reports, drawings and similar data based on printing and mailing costs, provided that charges shall not be assessed for information, services, or relationships that would normally be provided to the public. Should the Licensees and the Corps fail to reach an agreement, the Licensees shall refer the matter to the Commission for resolution.

Article 46. The Licensees shall within 90 days of completion of construction file in accordance with the Commission's rules and regulations revised Exhibits A and F to describe and show the project as-built.

Article 47. The construction, operation and maintenance of the project works that, in the judgment of the U.S. Corps of Engineers, Little Rock District, may affect the structural integrity or operation of the Corps' project shall be subject to periodic or continuous inspections by the Corps. Any construction, operation or maintenance deficiencies or difficulties detected by the Corps inspection will be immediately reported to the Regional

Engineer. Upon review, the Regional Engineer will refer the matter to the Licensees for appropriate action. The Corps inspector will report to the Regional Engineer the need to stop construction, operation or maintenance while awaiting resolution of construction, operation or maintenance deficiencies or difficulties if such deficiency or difficulty would affect the structural integrity of the Corps project. In cases when construction, operation or maintenance practice or deficiency may result in an emergency situation causing imminent danger to the structural integrity and safety of the Corps project, the Corps inspector has the authority to stop construction, operation or maintenance while awaiting the resolution of the problem.

Article 48. The Licensees shall, prior to commencement of operation, enter into a memorandum of agreement with U.S. Corps of Engineers, Little Rock District, describing the mode of hydropower operation acceptable to the Corps. The Regional Engineer shall be invited to attend meetings regarding the agreement. The memorandum of agreement shall be subject to revision of mutual consent of the Corps and the Licensees as experience is gained by actual project operation. Should the Corps fail to reach an agreement with the Licensees, the matter will be referred to the Director, Office of Electric Power Regulation, for resolution. Copies of the signed memorandum between the Corps and the Licensees and any revision thereof shall be furnished to the Director, Office of Electric Power Regulation, and the Regional Engineer.

Article 49. The Licensees shall retain a Board of three or more qualified, independent, engineering consultants to review the design, specifications, and construction of the project for safety and adequacy. The names and qualifications of the Board members shall be submitted to the Director, Office of Electric Power Regulation (OEPR), for approval, with a copy to the Commission's Regional Engineer. Among other things, the Board shall assess the geology of the project site and surroundings; the design, specifications, and construction of the powerhouse, power channel, embankment, pile foundation and electrical and mechanical equipment, and emergency power supply; instrumentation; and construction procedures and progress. The Licensees shall furnish to the Board, with a copy to the Regional Engineer and two copies to the Director, OEPR, prior to each meeting, allowing sufficient time for review, documentation showing details and analyses of design and construction features to be discussed, significant events in design and construction that have occurred since the last Board of Consultants meeting, drawings,

questions to be asked, a list of items for discussion, an agenda, and a statement indicating the specific level of review to be performed by the Board. Within 30 days after each Board of Consultants meeting, the Licensees shall submit to the Commission copies of the Board's report and a statement of intent to comply with the Board's recommendations, or a statement identifying a plan to resolve the issue(s). In the event of noncompliance, the Licensees shall provide detailed reasons for not doing so. The Board's review comments for each portion of the project shall be submitted prior to or simultaneously with the submission of the corresponding Exhibit F final design drawings and design memoranda. The Licensees shall also submit a final report of the Board upon completion of the project. The final report shall contain a statement indicating the Board's opinion with respect to the construction, safety, and adequacy of the project structure(s).

Article 50. The Licensees shall, prior to the commencement of any construction or development at the project, consult with the Arkansas State Historic Preservation Officer (SHPO) and the Arkansas State Archeologist (ASA) to design and carry out a survey to identify, describe, and assess the significance of archeological and historical resources within the project impact areas. The survey shall be conducted in a manner satisfactory to the SHPO and the ASA, and each site or property identified during the survey shall be conducted in a manner satisfactory to the SHPO and the ASA, and each site or property identified during the survey shall be evaluated according to the *National Register of Historic Places* eligibility criteria. Following the completion of the survey, the Licensees shall file a report with the Commission, the SHPO, and the ASA describing the nature and extent of the work performed, summarizing the findings and eligibility evaluations related to archeological and historical resources, and recommending measures for the protection of any significant sites or properties. If the survey identifies significant archeological or historical resources that will be adversely affected by project construction or operation, the Licensees shall cooperate with the SHPO and the ASA to develop an appropriate mitigation plan. Prior to the execution of any mitigation work, the Licensees shall file for Commission approval a plan detailing the extent of the mitigation work to be accomplished, and the amount of funding the Licensees propose to make available for such work. If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or other

facilities at the project, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Licensees shall consult with the SHPO and the ASA to develop and execute a mitigation plan for the protection of significant sites and shall inform the Commission of these activities.

The Licensees shall provide funds in a reasonable amount for any archeological and historical work as required. If the Licensees and the SHPO and the ASA cannot agree on the amount of money to be expended on archeological or historical work related to the project, the Commission reserves the right to require the Licensees to conduct, at their own expense, any such work found necessary.

Article 51. (a) In accordance with the provisions of this article, the Licensees shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The Licensees may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensees shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and to ensure compliance with the covenants of the instrument of conveyance for any interests that it has conveyed under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensees for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the Licensees may grant permission without prior Commission approval are: (1) landscape plantings; (2) noncommercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control

to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensees shall require multiple use and occupancy of facilities for access to project lands or waters. The Licensees shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable State and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the Licensees shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the Licensees may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the Licensees' costs of administering the permit program. The Commission reserves the right to require the Licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The Licensees may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges and roads for which all necessary State and Federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the Licensees shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The Licensees may convey fee titles to, easements or rights-of-way across, or leases of project lands for: (1) construction of new

bridges or roads for which all necessary State and Federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters for which all necessary Federal and State water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary for which all necessary Federal and State approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the Licensees must file a letter to the Director, Office of Electric Power Regulation, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any Federal or State agency official consulted, and any Federal or State approvals required for the proposed use. Unless the Director, within 45 days from the filing date, require the Licensees to file an application for prior approval, the Licensees may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraphs (c) or (d) of this article:

(1) Before conveying the interest, the Licensees shall consult with Federal and State fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the Licensees shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

(4) The Commission reserves the right to require the Licensees to take reasonable remedial action to correct any violation of the terms and conditions of this article for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

Article 52. The Licensees shall clear and keep clear to an adequate width all lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which result from maintenance, operation, or alteration of the project works. All clearing of lands and disposal of unnecessary material shall be done with due diligence to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 53. Pursuant to Section 10(d) of the Act, after the first 20 years of operation of the project under license, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One half of the project

surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year after the first 20 years of operation under the license, the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts established in the project amortization reserve account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the annual weighted costs of long-term debt, preferred stock, and common equity, as defined below. The annual weighted cost for each component of the reasonable rate of return is the product of its capital ratio and cost rate. The annual capital ratio for each component of the rate of return shall be calculated based on an average of 13 monthly balances of amounts properly includable in the Licensees' long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for long-term debt and preferred stock shall be their respective weighted average costs for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10 year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

(E) The Licensees' failure to file a petition appealing this order to the Commission shall constitute acceptance of this license. In acknowledgment of acceptance of this order and its terms and conditions, it shall be signed by the Licensees and returned to the Commission within 60 days from the date this order is issued.

— Footnotes —

¹ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under § 375.308 of the Commission's regulations, 18 C.F.R. § 375.308 (1982), *FERC Statutes and Regulations* ¶ 30,238. This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, 18 C.F.R. § 385.1902, *FERC Statutes and Regulations* ¶ 29,052, 47 Fed. Reg. 19014 (1982). Filing an appeal and final Commission action on that appeal are prerequisites

for filing an application for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically directed by the Commission.

² Equivalent energy production using fossil fuels would consume 558,000 barrels of oil or 157,400 tons of coal.

³ 16 U.S.C. § 803(e).

[¶ 62,161]

**Arkansas Electric Cooperative Corporation, Riceland Electric Cooperative, Inc.
and C&L Electric Cooperative, Inc., Project No. 3034-001**

Order Issuing License (Major)

(Issued August 10, 1983)

Lawrence R. Anderson, Director, Office of Electric Power Regulation.

Arkansas Electric Cooperative Corporation, Riceland Electric Cooperative, Inc., and C&L Electric Cooperative, Inc. (Applicants) filed on May 18, 1982, an application for a license under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Lock and Dam No. 3 Hydropower Project No. 3034-001. The project would utilize the water power potential of an existing U.S. Army Corps of Engineers (Corps) dam.¹ The project would be located on the Arkansas River at Dam No. 3 about 29 miles east of Pine Bluff, in Jefferson and Lincoln Counties, Arkansas. The Arkansas River was first declared to be a navigable waterway of the United States in 1923 when the Carpenter-Remmel Project No. 271 was first licensed.

Lock and Dam No. 3 is owned by the United States, and operated and maintained by the Corps as part of the McClellan-Kerr Navigation System. Existing features at Lock and Dam No. 3 include: (1) a 1,260-foot-long gated spillway flanked by 960-foot-long and 4,300-foot-long overflow embankments; (2) a 3,670-acre reservoir with no storage capacity above the normal navigation level; (3) a navigation lock; and (4) Huff's Island Park, a 71-acre recreation area developed and operated by the Corps.

The proposed project would consist of: (1) new headrace and tailrace channels; (2) a new powerhouse; and (3) new generator leads and transformers. The project would operate as a 48-megawatt capacity, run-of-the-river, hydroelectric facility using water not required for navigation that currently flows through the spillway gates. Because the proposed project would be built at the site of existing recreational facilities, the Applicants propose to construct new recreation facilities to replace those displaced by the project. No other new construction is proposed. The project would occupy approximately 49 acres of government land.

Public Notice

Notice of the application has been published and comments have been received from interested Federal, State and local agencies. No protest has been received and no agency has objected to issuance of the license. The Arkansas Public Service Commission was granted intervention. It wanted to be informed regarding the proceeding. The concerns raised by the Arkansas Public Service Commission in its motion to intervene are addressed below. Significant comments are also discussed below.

Compliance with Federal Statutes

A water quality certificate was issued by the Arkansas Department of Pollution Control and Ecology on November 4, 1981. The U.S. Fish and Wildlife Service (USFWS) and the Arkansas Game and Fish Commission (GFC) informed the Applicants that the proposed project would not affect any federally listed threatened or endangered species. There are no historic, architectural, or archeological structures or sites within the project impact areas that have been listed or determined eligible for listing in the *National Register of Historic Places*. There are no areas in or near the proposed project boundary that are included in, or have been designated for study for inclusion in, the National Wild and Scenic Rivers System, or that have been designated as wilderness study areas under the Wilderness Act.

Recreational Resources

The Corps commented that the Applicants' proposal for recreational development at Huff's Island Park is incomplete and should include specific measures for mitigating the loss of future facilities that may be precluded by project construction as well as existing facilities that would be adversely affected. The Corps also stated that consideration should be given to