

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern Wasco County People's
Utility District

Project No. 7076-002

ORDER ISSUING LICENSE

(Major Project - 5MW or Less)
(December 31, 1987)

Northern Wasco County People's Utility District has filed a license application under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Dalles Dam North Fishway Project, located in Klickitat County, Washington. The project would occupy lands of the United States administered by the Corps of Engineers and would be located at the north end of the Corps' Dalles Dam on the auxillary water supply system to the North Fishway fish ladder.

Notice of the application has been published and comments have been received from interested federal, state, and local agencies. The Washington Departments of Game and Fisheries, the National Marine Fisheries Service (NMFS), the Confederated Tribes of the Warm Springs Reservation of Oregon and Columbia River Inter-Tribal Fish Commission, and the Confederated Tribes and Bands of the Yakima Indian Nation have been granted intervention. The NMFS petitioned, in their Motion to Intervene, for a stay of the licensing proceedings until the applicant completed the additional fishery studies requested by the Commission. The significant concerns of the intervenors are fishery resources and the cumulative effect on these resources, wildlife resources, and minimum flows. These concerns, along with those of the commenting agencies, are discussed in the Environmental Assessment.

Recommendations of Federal and State Fish and Wildlife Agencies

Section 10(j) of the Act, as amended by the ECPA, Public Law No. 99-495, requires the Commission to include license conditions, based on the recommendations of federal and state fish and wildlife agencies, for the protection, mitigation, and enhancement of fish and wildlife. The environmental assessment for the Dalles Dam North Fishway Hydroelectric Project addresses the concerns of the federal and state fish and wildlife agencies, and provides recommendations consistent with those of the agencies.

Comprehensive Plans

Section 10(a)(2) of the Act, as amended by ECPA, requires the Commission to consider the extent to which a project is consistent with comprehensive plans (where they exist) for improving, developing, or conserving a waterway or waterways affected by the project. The plans must be prepared by an agency established pursuant to federal law that has the authority to prepare such a plan or by the state in which the facility is or will be located. The Commission considers plans to be within the scope of section 10(a)(2), only if such plans reflect the preparer's own balancing of the competing uses of a waterway, based on their data and on applicable policy considerations (i.e., if the preparers consider and balance all relevant public use considerations). With regard to plans prepared at the state level, such plans are within the scope of section 10(a)(2), only if they are prepared and adopted pursuant to a specific act of the state legislature and developed, implemented, and managed by an appropriate state agency. ^{1/}

The Commission has concluded that comprehensive planning under section 10(a)(2)(A), like comprehensive planning under section 10(a)(1), should take into account all existing and potential uses of a waterway relevant to the public interest, including navigation, power development, energy conservation, fish and wildlife protection and enhancement, recreational opportunities, irrigation, flood control, water supply, and other aspects of environmental quality. In order that the Commission may fully understand or independently confirm the content and conclusions of a comprehensive plan, the Commission provided general guidelines for developing such plans, which should contain the following: (1) a description of the waterways that are subject of the plan, including pertinent maps; (2) a description of the significant resources of the waterways; (3) a description of the various existing and planned uses for these resources; and (4) a discussion of goals, objectives, and recommendations for improving, developing, or conserving the waterways in relation to these resources. The more closely a plan conforms to these guidelines, the more weight it will have on the Commission's decisions. The Commission, however, will consider plans that do not meet the criteria for comprehensive plans, as it

^{1/} See Fieldcrest Mills, Inc., 37 FERC ¶61,264 (1986).

considers all relevant studies and recommendations in its public interest analysis pursuant to section 10(a)(1), to the extent that the documentation supports the plan. 2/

The staff has identified the Northwest Power Planning Council's Northwest Conservation and Electric Power Plan (Plan) and the Northwest Power Planning Council's Columbia River Basin Fish and Wildlife Program (Program) as falling within the scope of section 10(a)(2). The proposed project is consistent with the goals and policies of the Plan and the Program, since as required therein, fish and wildlife agencies, Indian tribes, and the Council have been consulted with regard to the project, and since the license is being conditioned to mitigate fish and wildlife impacts. The staff reviewed two resource plans 3/ that address various aspects of waterway management in relation to the proposed project, as part of a broad public interest examination under section 10(a)(1) of the Act. No conflicts were found.

Based on a review of agency and public comments filed in this proceeding, and on the staff's independent analysis, herein, the Dalles Dam North Fishway Project is best adapted to a comprehensive plan for the Columbia River, taking into consideration the beneficial public uses described in section 10(a)(1) of the Act.

Summary of Findings

An EA was issued for this project. Background information, analysis of impacts, support for related license articles, and the basis for a finding of no significant impact on the environment are contained in the EA attached to this order. Issuance of this license is not a major federal action significantly affecting the quality of the human environment.

The design of this project is consistent with the engineering standards governing dam safety. The project will be safe if constructed, operated, and maintained in accordance with the requirements of this license. Analysis of related issues is provided in the Safety and Design Assessment attached to this order.

2/ See Commission Order No. 481, issued October 20, 1987.

3/ Washington Statewide Comprehensive Outdoor Recreation Plan, 1985, Interagency Committee for Outdoor Recreation; Washington State Coastal Zone Management Program, 1976, Washington Department of Ecology.

The Director, Office of Hydropower Licensing, concludes that the project would not conflict with any planned or authorized development, and would be best adapted to comprehensive development of the waterway for beneficial public uses.

The Director orders:

(A) This license is issued to Northern Wasco County People's Utility District (licensee), for a period of 50 years, effective the first day of the month in which this order is issued, to construct, operate, and maintain the Dalles Dam North Fishway Project. 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 provision of the Act.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by Exhibit G:

<u>Exhibit G-</u>	<u>FERC No. 7076-</u>	<u>Showing</u>
1	1	Location Map
2	2	Project Boundary Map

(2) Project works consisting of: (a) a 210-foot-long, 20-foot-wide rectangular concrete intake channel connected to the auxiliary water supply system to the North Fishway fish ladder of the Corps' Dalles Dam; (b) a 10-foot-diameter, 85-foot-long steel penstock; (c) a 35-foot by 64-foot powerhouse containing one generating unit with an installed capacity of 4200 kW at a design head of 80 feet; (d) a 3-mile-long, 12.5-kV transmission line connecting to the applicant's existing Lambert Substation; and (e) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibits A and F recommended for approval in the attached Safety and Design Assessment.

(3) All of the structures, fixtures, equipment or facilities used to operate or maintain the project and located within the project boundary, all portable property that may be employed in connection with the project and located within or

outside the project boundary, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) The Exhibit G described above and those sections of Exhibits A and F recommended for approval in the attached Safety and Design Assessment are approved and made part of the license.

(D) This license is subject to the articles set forth in Form L-2, (October 1975), entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States", except article 20. The license is also subject to the following additional articles:

Article 201. The licensee shall pay the United States the following annual charge, 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 amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 5,600 horsepower.
- b. For the purpose of recompensing the United States for utilization of surplus water or water power from a government dam a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

Article 202. The licensee 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 301. The licensee shall commence construction of project works within two years from the issuance date of the license and shall complete construction of the project within four years from the issuance date of the license.

Article 302. The licensee shall at least 60 days prior to start of construction, submit one copy to the Commission's Regional Director and two copies to the Director, Division of Inspections of the final contract drawings and specifications for pertinent features of the project, such as water retention structures, powerhouse, and water conveyance structures. The Director, Division of Inspections may require changes in the plans and specifications to assure a safe and adequate project.

Article 303. The licensee shall within 90 days of completion of construction file with the Commission revised Exhibits A, F and G to describe and show the project as built.

Article 304. The design and construction of those permanent and temporary facilities, including reservoir impounding cofferdams and deep excavations, that would be an integral part of, or that could affect the structural integrity or operation of the Government project shall be done in consultation with and subject to the review and approval of the Corps' District Office. Within 90 days from the issuance date of the license, the licensee shall furnish the Corps and the Commission's Regional Director for their information, a schedule for submission of design documents and the plans and specifications for the project. If the schedule does not afford sufficient review and approval time, the licensee, upon request of the Corps, shall meet with the Corps and the Commission's staff to revise the schedule accordingly.

Article 305. The licensee shall review and approve the design of contractor designed cofferdams and deep excavations other than those approved according to Article 304 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 2 copies with the Commission, and submit 1 copy each to the Commission's Regional Director, and the Corps of Engineers, of the approved cofferdam construction drawings and specifications and the letter(s) of approval.

Article 306. Within 90 days from the issuance date of the license, the licensee shall enter into an agreement with the Corps of Engineers to coordinate plans for access to and site activities on lands and property administered by the 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, 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 set forth 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. Should the licensee and the Corps fail to reach an access agreement, the licensee shall refer the matter to the Commission for resolution.

Article 307. The construction, operation and maintenance of the project works that, in the judgment of the Corps of Engineers, 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 and maintenance deficiencies or difficulties detected by the Corps inspection shall be immediately reported to the Commission's Regional Director. Upon review, the Regional Director shall refer the matter to the licensee for appropriate action. In cases when construction, operation or maintenance practices or deficiencies may create a situation posing 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 308. At least 60 days prior to start of construction, the licensee shall submit for approval a regulating plan to the Corps of Engineers, describing (a) the designed mode of hydropower operation, and (b) reservoir flow diversion and regulation requirements as established by the Corps for operation of the Corps project during construction. In addition, the licensee, prior to start of power plant operation, shall enter into an operating Memorandum of Agreement (MOA) with the Corps describing the detailed operation of the powerhouse acceptable to the Corps. The MOA shall specify any restrictions needed to protect the primary purposes of the Corps project for navigation, recreation, water

quality, and flood control. The Regional Director shall be invited to attend meetings regarding the agreement. The MOA shall be subject to revision by mutual consent of the Corps and licensee as experience is gained by actual project operation. Should the licensee and the Corps fail to reach agreement, the matter will be referred to the Commission for resolution. Three copies of the regulating plan and signed MOA between the Corps and the licensee and any revision thereof shall be filed with the Commission and one copy submitted to the Regional Director.

Article 309. The licensee shall have no claim under this license against the United States arising from the effect of any changes made in the operation or reservoir level of the Corps of Engineers' project.

Article 310. The licensee shall provide the Regional Director two copies of all correspondence between the licensee and the Corps of Engineers. The Regional Director shall not authorize construction of any project work until the Corps of Engineers' written approval of construction plans and specifications has been received.

Article 311. The licensee shall enter into a firm agreement with the Corps of Engineers, if the licensee intends to have the Corps operate and maintain the project, to reimburse the Corps for all expenses incurred in the operation and maintenance of the project. The licensee may assume the responsibility for the operation and maintenance of the project if so desired.

Article 312. The licensee shall study the feasibility of the installation of additional capacity based on the current operational criteria of the Corps for the Auxiliary Water Supply System. If the study shows that the installation of additional capacity is feasible, an amendment of license shall be filed, for approval, with the Commission prior to the start of construction.

Article 401. The licensee, after consultation with the Washington Department of Ecology, the Washington Department of Wildlife, the Washington Department of Fisheries, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, and before commencing any project-related land-clearing, land-disturbing, or spoil-producing activities, shall prepare and shall file for Commission approval a comprehensive plan to control erosion, dust, and slope stability, and to

minimize the quantity of sediment and other potential water pollutants resulting from project construction, spoil-disposal, and project operation and maintenance. The Commission reserves the authority to require changes to the plan. No project-related land-clearing, land-disturbing, or spoil-producing activities shall begin until the licensee is notified that the plan complies with the requirements of this article. The plan shall be based on actual-site geological, soil, slope, and groundwater conditions and on the final project design, and shall include detailed descriptions of the actual-site conditions, detailed descriptions and functional design drawings of control measures, topographic map locations of all control measures, a specific implementation schedule, specific details of monitoring and maintenance programs for the project construction period and for project operation, and a schedule for periodic review of the plan and for making any necessary revisions to the plan. The licensee shall include in the filing documentation of consultation with the agencies before preparing the plan, copies of agency comments or recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how all of the agency comments and recommendations are accommodated by the plan. Before filing the plan, the licensee shall allow a reasonable time frame, in no case less than 30 days, for agencies to comment and to make recommendations. If the licensee disagrees with any agency recommendations, the licensee shall provide a discussion of the reasons for disagreeing, based on actual-site geological, soil, and groundwater conditions, and shall provide written responses from the agencies on the licensee's reasons for disagreement.

Article 402. The licensee, after consultation with the Department of the Army, Portland District Corps of Engineers, the Northwest Power Planning Council, the Washington Department of Wildlife, the Washington Department of Fisheries, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Columbia River Inter-Tribal Fish Commission, and the Confederated Tribes and Bands of the Yakima Indian Nation, shall file for Commission approval, for the Dalles Dam North Fishway Hydroelectric Project, functional design drawings of the fish screen, with a design approach velocity of 0.5 foot per second, and functional design drawings of the downstream fish bypass facility for the diversion intake, including an operating and maintenance plan for these facilities, within 1 year after the date of issuance of the license. The licensee shall include documentation of

consultation and comments from the consulted entities on the functional design drawings and on the operating and maintenance plan. The Commission reserves the authority to require changes in the functional design drawings and in the operating and maintenance plan. The licensee shall file as-built drawings of the fish screens and of the downstream fish bypass facility within 6 months after completion of construction.

Article 403. The licensee, after consultation with the Department of the Army, Portland District Corps of Engineers, the Northwest Power Planning Council, the Washington Department of Wildlife, the Washington Department of Fisheries, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Columbia River Inter-Tribal Fish Commission, and the Confederated Tribes and Bands of the Yakima Indian Nation, shall file for Commission approval a plan to monitor the effectiveness of the fish screens and of the downstream fish bypass facility, required by article 402, under the full range of flow conditions under which the project would operate, in protecting downstream migrant fishes and in facilitating downstream fish passage. The plan shall include a proposal whereby project operation could be rapidly altered to protect downstream migrants from project-induced injury, mortality, or migration delays, and a schedule for implementing the monitoring plan and for filing the results of the monitoring program with the consulted entities and with the Commission. The licensee shall file the plan within 1 year after the date of issuance of this license, and shall include documentation of consultation and comments from the consulted entities on the plan and schedule. The Commission reserves the authority to require changes in the monitoring plan and in the schedule.

The licensee shall file with the consulted entities and with the Commission a report on the results of the monitoring study, according to the approved schedule, and shall file for Commission approval any recommendations for changes in project facilities or project operation to facilitate downstream fish passage. The filing shall include comments from the consulted entities on the monitoring results and any recommendations. The Commission reserves the authority to require changes in project facilities or project operation to ensure the protection of the fishery resources.

*Calendar year
Annual Report
Due by Feb. 28*

Article 404. The licensee, after consultation with the U.S. Fish and Wildlife Service and the Washington Department of Wildlife, and within 1 year from the date of issuance of the license and if the final project design includes the provision of above-ground transmission line, shall file for Commission approval a transmission line design plan, prepared in accordance with guidelines set forth in the publication, "Suggested Practices for Raptor Protection on Power Lines," Raptor Research Report No. 4, published by the Raptor Research Foundation, Inc., 1981. The plan shall include detailed design drawings of the transmission line, clearly showing phase spacing, configuration and grounding practices, a construction schedule, and agency comments on the adequacy of the design plan. The licensee must not conduct any transmission line construction until the plan is approved by the Commission.

Article 405. The licensee, before starting any land-clearing or land-disturbing activities within the project boundaries, other than those specifically authorized in this license, shall consult with the State Historic Preservation Officer (SHPO). If the licensee discovers previously unidentified archeological or historic properties during the course of constructing or developing project works or other facilities at the project, the licensee shall stop all land-clearing and land-disturbing activities in the vicinity of the properties and consult with the SHPO. In either instance, the licensee shall file with the Commission a cultural resource management plan prepared by a qualified cultural resource specialist.

The cultural resource management plan shall include the following: (1) a description of each discovered property indicating whether it is listed on or eligible to be listed on the National Register of Historic Places; (2) a description of the potential effect on each discovered property; (3) proposed measures for avoiding or mitigating effects; (4) documentation of the nature and extent of consultation; and (5) a schedule for mitigating effects and conducting additional studies. The Commission may require changes to the plan.

The licensee shall not begin land-clearing or land-disturbing activities, other than those specifically authorized in this license, or resume such activities in the vicinity of a property discovered during construction, until informed that the requirements of this article have been fulfilled.

Article 406. The licensee shall permit representatives from the Department of the Army, Portland District Corps of Engineers, the Northwest Power Planning Council, the Washington Department of Wildlife, the Washington Department of Fisheries, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Columbia River Inter-Tribal Fish Commission, and the Confederated Tribes and Bands of the Yakima Indian Nation, upon showing proper credentials, access to the Dalles Dam North Fishway Hydroelectric Project and to project records related to fish and wildlife mitigative measures.

Article 407. The Commission reserves the authority to order, upon its own motion or upon the recommendation of federal or state fish and wildlife agencies or affected Indian Tribes, alterations of project structures and operations to take into account to the fullest extent practicable at each relevant stage of the decision-making process the regional fish and wildlife program developed and amended pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

(E) The licensee shall serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to that filing. Proof of service on these entities must accompany the filing with the Commission.

(F) This order is issued under authority delegated to the Director and is final unless appealed under Rule 1902 to the Commission by any party within 30 days from the issuance date of this order. Filing an appeal does not stay the effective date of this order or any date specified in this order. The licensee's failure to appeal this order shall constitute acceptance of the license.

Fred E. Springer
Acting Director, Office
of Hydropower Licensing