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86 FERC ¶ 62,076

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

U.S. Generating Company) Project No. 2323-067

ORDER APPROVING AMENDMENT TO ARTICLE 404

JAN 29 1999

On September 25, 1998, U.S. Generating Company (licensee) filed a request for the Commission to amend article 404 of the license for the Deerfield River Project, issued April 4, 1997.1/ The Project is located on the Deerfield River in Windham and Bennington Counties, Vermont, and Franklin and Berkshire Counties, Massachusetts.

LICENSE REQUIREMENTS

License article 404 requires the licensee to file a plan for Commission approval to monitor the effectiveness of ramping rates required below the Deerfield River Project's Somerset development under license article 403 and conditions B and D of the Vermont Section 401 Water Quality Certificate. Required ramping rates are 100 cubic feet per second (cfs) up ramping over a 24 hour period and 50 cfs down ramping over a 24 hour period.

LICENSEE'S REQUEST

The licensee requests the Commission amend article 404 by either deferring the requirement for effectiveness monitoring until the licensee proposes a new ramping rate or to require effectiveness monitoring should the licensee consider alternative ramping rates, so as to reflect the intent of the state and federal fishery agencies and the requirements of the Section 401 certificate. The licensee states that the conditions of the Section 401 certificate do not require monitoring the effectiveness of the ramping rates and that specific information provided during the project relicensing proceeding was adequate to conclude that the current ramping rates required under licensee article 403 would protect the fish resources downstream of the Somerset development.

AGENCY COMMENTS

By letters dated September 23, 1998, the U.S. Fish and Wildlife Service and the Vermont Agency of Natural Resources concurred with the licensee and do not oppose amendment of article 404 to delete the requirement that the effectiveness of the current ramping rates be monitored.

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CONCLUSIONS

The licensee's request to forego the need to test the effectiveness of the existing ramping rates until or unless alternative ramping rates are considered or proposed via amending license article 404 should be approved. Review of the record, the Section 401 Water Quality Certificate, licensee's filings, and agency letters of comment indicate that the current ramping rates were determined to be adequate to protect the aquatic resources downstream from the Somerset development. Effectiveness monitoring would not otherwise be required unless alternative rates were proposed. In addition, should the licensee propose alternative ramping rates, it would be required to file, for Commission approval, an application for amendment to license article 403.

The Director orders:

(A) Article 404 of the license for the Deerfield River Project is amended to read:

Article 404. Should the licensee propose a new or alternative ramping rate regime other than that specified in article 403 of the Deerfield Project license as issued on April 4, 1997, the licensee shall file with the Commission, for approval, a plan to monitor the effectiveness of the new or alternative rates.

The monitoring plan shall include a schedule for:
(1) implementing the plan; (2) consulting with the resource agencies specified below concerning the results of the monitoring; and (3) filing the plan, including the results, agency comments, and Licensee's response to agency comments, with the Commission.

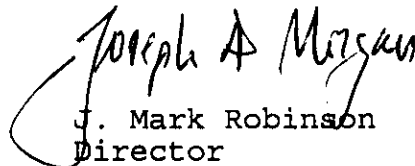
The Licensee shall prepare the monitoring plan after consultation with the Vermont Agency of Natural Resources, the Vermont Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service. The Licensee shall include with the plan: any recommended alternative ramping rates based on biological information resulting from the monitoring; documentation of consultation, including copies of comments and recommendations on the completed monitoring plan after it has been prepared and provided to the agencies; and specific descriptions of how the agencies' 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.

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The Commission reserves the right to require changes to the plan. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission. If the results of the monitoring indicate that changes in project structures or operations, including alternative ramping rates, are necessary to protect fish resources, the Commission may direct the Licensee to modify project structures, operations, or ramping rates.

(B) 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 C.F.R. § 385.713.



J. Mark Robinson
Director

Division of Licensing and Compliance

Document Content(s)

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