

182 FERC ¶ 62,144
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Central Rivers Power MA, LLC

Project No. 10675-021
10676-027
10677-024
10678-026

ORDER AMENDING ARTICLE 2 TERMS AND CONDITIONS AND APPROVING
OPERATIONS AND COMPLIANCE MONITORING PLAN

(Issued March 13, 2023)

1. On January 7, 2022, and supplemented on September 9, 2022, Central Rivers Power MA, LLC (CRP or exemptee) filed an application to amend the Article 2 Terms and Conditions for its exemptions from licensing for the Dwight Hydroelectric Project No. 10675, Red Bridge Hydroelectric Project No. 10676, Putts Bridge Hydroelectric Project No. 10677, and the Indian Orchard Hydroelectric Project No. 10678. The projects are located on the Chicopee River in Hampden County, Massachusetts. The projects do not occupy federal lands.

BACKGROUND

2. On September 11, 1992, the Commission issued exemptions from licensing for the Dwight,¹ Red Bridge,² Putts Bridge,³ and Indian Orchard⁴ projects. In order to potentially qualify for financial incentives (e.g., renewable energy credits), CRP proposes to convert its projects' operations from cycling to an instantaneous run-of-river (ROR) mode of operation and reduce flows to the bypass reaches at the Dwight, Indian Orchard, and Red Bridge projects.

3. The Commission issued a public notice of the amendment application on March 8, 2022, with protests, comments, and motions to intervene due to be filed by April 7, 2022. On April 7, 2022, the U.S. Department of the Interior filed a motion to intervene on behalf of the Fish and Wildlife Service (FWS) and the Bureau of Indian Affairs. No

¹ *Western Massachusetts Electric Company*, 60 FERC ¶ 62,199 (1992).

² *Western Massachusetts Electric Company*, 60 FERC ¶ 62,198 (1992).

³ *Western Massachusetts Electric Company*, 60 FERC ¶ 62,197 (1992).

⁴ *Western Massachusetts Electric Company*, 60 FERC ¶ 62,196 (1992).

comments were received pursuant to the public notice. On August 3, 2022, the Commission requested comments from the Wampanoag Tribe of Gay Head (Aquinnah), Mashpee Wampanoag Tribe, and the Stockbridge-Munsee Community Band of Mohican Indians. No comments were received.

4. Commission staff issued an Environmental Assessment (EA), for public comment, on the proposed amendment on January 23, 2023. The EA contained Commission staff's analysis of the potential environmental effects of the proposed amendment and concluded that it would not constitute a major federal action that would significantly affect the quality of the human environment. Commission staff found that the proposed ROR operation of the projects would benefit aquatic and fishery resources and would have no effect on historic properties or threatened and endangered species, nor would it result in impacts on environmental justice communities.⁵ It was also determined that the proposed amendment would not adversely affect the safety of the project when operated and maintained in accordance with the Commission's standards and oversight. No comments were received on the EA.

PROPOSED ACTION

5. In its amendment application, CRP proposes to formally change the projects' operating regime from peaking, with 0.25 to 2 feet of available storage, to ROR. The proposed amendment also includes modifications to the minimum flow requirements to the bypass reaches. CRP's amendment proposal also includes an Operations and Compliance Monitoring Plan (OCMP) to address how the projects would be operated and monitored to verify compliance with a ROR mode of operation and bypassed reach flow releases, and how the projects would operate during periods when the reservoirs are drawn down for dam maintenance.⁶ The OCMP replaces the operating requirements defined by the Minimum Flow and Impoundment Fluctuation Monitoring Plan, approved by the Commission on August 3, 2012.⁷

6. No new construction is proposed to the projects for these modifications. In order for the Dwight Project to meet the minimum flow requirements, it would have to pass a minimum flow depth of 0.5 foot over the spillway crest (El. 76.5 feet NGVD29) from April 15 to June 30, and 0.3 foot over the crest for the rest of the year. The Indian Orchard, Putts Bridge, and Red Bridge Projects each have an existing minimum flow gate, all of which would be adjusted to maintain the proposed minimum flows in

⁵ See EA at 22.

⁶ Both were filed with the Commission on March 27, 2000.

⁷ *EP Energy Massachusetts*, 140 FERC ¶ 62,098 (2012).

accordance with the settlement agreement (Agreement) with FWS and Massachusetts Division of Fisheries and Wildlife (Massachusetts DFW) for CRP's hydropower projects.

7. The OCMP provides a description of the refill protocol that would be followed and how the ROR operation and the bypassed reach flow releases would be provided during periods when the headponds are drawn down for dam maintenance (including flashboard replacement). The OCMP describes the means and frequency of recording data on project operations to verify proper operations and minimum flow releases, and the protocol for maintaining such data for inspection by the Commission and the state and federal fish and wildlife agencies. Finally, the OCMP provides a plan for water quality monitoring (temperature and dissolved oxygen) in the projects' bypass reaches during the first low flow period following the Commission's issuance of the amended exemptions. The filing included documentation that the FWS and Massachusetts DFW both approved the OCMP.

FPA 30(c) CONDITIONS

8. Pursuant to section 405 of Public Utility Regulatory Policies Act (PURPA),⁸ exemptions are subject to the requirements of section 30(c) of the FPA,⁹ which provides, among other things, that the Commission "shall include in any such exemption ... such terms and conditions as the Fish and Wildlife Service, National Marine Fisheries Service, and the State [fish and wildlife] agency each determine are appropriate to prevent loss of, or damage to, such resources" Article 2 of all exemptions requires compliance with the terms and conditions filed by federal and state fish and wildlife agencies to protect fish and wildlife resources.¹⁰

9. The projects have historically been operated under modified terms and conditions issued by the FWS and Massachusetts DFW dated January 27, 2000, and February 15, 2000, respectively.¹¹ The associated operating requirements were defined by the 2012 Minimum Flow and Impoundment Fluctuation Monitoring Plan.

10. On October 12, 2021, CRP entered into a settlement agreement (Agreement) with FWS and Massachusetts DFW for CRP's hydropower projects. The goal of the Agreement is to provide for the continued operation of the projects with appropriate long-term environmental protection, enhancement, and mitigation measures that would

⁸ 16 U.S.C. § 2705(b) (2018).

⁹ 16 U.S.C. § 823a(c).

¹⁰ *See* 18 C.F.R. § 4.106

¹¹ Both FWS and Massachusetts DFW filed modified terms and conditions with the Commission on March 27, 2000.

maintain a balance of non-power and power values on the Chicopee River. As a result of the Agreement, FWS and Massachusetts DFW have provided updated terms, conditions, and recommendations to be incorporated into the projects' exemptions from licensing. The amendment application included the updated terms and conditions from FWS and Massachusetts DFW dated January 3, 2022, and January 5, 2022, respectively.

11. FWS and Massachusetts DFW's updated terms and conditions are identical to each other and require modifications at each of the four projects. However, the conditions are not the same for each project. At the Dwight Project: Condition 3 requires a minimum instantaneous bypass flow; Condition 4 requires the project to operate in an instantaneous ROR mode; and Condition 5 requires the development of a revised OCMP.

12. At the Indian Orchard Project: Condition 2 requires a minimum instantaneous bypass flow; Condition 3 requires the project operate in an instantaneous run-of-river mode; and Condition 6 requires the development of a revised OCMP.

13. At the Putts Bridge Project: Condition 3 requires the exemptee to operate the project in an instantaneous run-of-river mode and Condition 6 requires the development of a revised OCMP.

14. At the Red Bridge Project: Condition 2 requires a minimum instantaneous bypass flow release at the Red Bridge Dam of 100 cfs (or inflow, if less); Condition 3 requires the project to operate in an instantaneous run-of-river mode; and Condition 6 requires the development of a revised Operations Compliance Monitoring Plan OCMP. All other conditions, at each of the projects, are to be retained in their entirety.

15. The section 30(c) conditions would be beneficial to aquatic and fishery resources and would benefit shoreline and instream stability at the projects. All of the section 30(c) conditions are set forth in Appendix A and B of this order and are incorporated into the exemptions by ordering paragraph (A).

CONCLUSION

16. The proposed amendment to include the projects' revised terms and conditions would be beneficial to aquatic and fishery resources, as well as protecting the shoreline along the Chicopee River. The proposed action would have no effect on historic properties or threatened and endangered species at the projects, nor would it result in impacts on environmental justice communities.¹² The request to amend certain Article Conditions made by the license, FWS, and Massachusetts DFW is reasonable and should be approved.

¹² See EA at 22.

17. The OCMP would provide protocols to ensure ROR operation and bypassed reach flow releases during different operation scenarios and would provide a means to verify proper operations and minimum flow releases. The OCMP also satisfies the proposed Article 2 Terms and Conditions that require the approval of an OCMP; and has already been approved by the FWS and the Massachusetts DFW. Therefore, the OCMP should be approved.

The Director orders:

(A) Central Rivers Power MA, LLC's application to amend the U.S. Fish and Wildlife Service's and Massachusetts Division of Fisheries and Wildlife's Article 2 Terms and Conditions filed, January 7, 2022, for its exemptions from licensing for the Dwight Hydroelectric Project No. 10675, Red Bridge Hydroelectric Project No. 10676, Putts Bridge Hydroelectric Project No. 10677, and the Indian Orchard Hydroelectric Project No. 10678 is approved. The exemptee must comply with the revised Terms and Conditions set forth in Appendix A and Appendix B.

(B) The Operations and Compliance Monitoring Plan filed, January 7, 2022, and supplemented on September 9, 2022, for the Dwight, Red Bridge, Putts Bridge, and the Indian Orchard Projects is approved.

(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 Federal Power Act, 16 U.S.C. § 8251, and the Commission's regulations at 18 C.F.R. § 385.713 (2022). 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.

Shana Wiseman, Chief
Environmental and Project Review Branch
Division of Hydropower Administration
and Compliance

APPENDIX A

Conditions submitted under section 30(c) of the FPA by the U.S. Fish and Wildlife Service dated January 3, 2022.

Dwight

Modify the following conditions to read:

3. The Exemptee shall provide a minimum instantaneous bypass flow release at the Dwight Dam of 258 cfs (or inflow, if less) from April 15 through June 30, and 134 cfs (or inflow, if less) the remainder of the year.
4. The Exemptee shall operate the project in an instantaneous run-of-river mode, whereby inflow equals outflow on an instantaneous basis and fluctuations of the headpond's water level are minimized. The target headpond elevation shall be no less than 77.0 feet NGVD29¹³ from April 15 through June 30 and no less than 76.8 feet NGVD29 the remainder of the year.
5. The Exemptee shall, within 3 months from the date of this letter, develop a revised Operations Compliance Monitoring Plan (OCMP). The OCMP shall be developed in consultation with, and require approval by, the Service prior to submitting it for Commission approval.

All other conditions are to be retained in their entirety.

Indian Orchard

Modify the following conditions to read:

2. The Exemptee shall provide a minimum instantaneous bypass flow release at the Indian Orchard Dam of 144 cfs (or inflow, if less) from April 1 through September 30, and 104 cfs (or inflow, if less) the remainder of the year.
3. The Exemptee shall operate the project in an instantaneous run-of-river mode, whereby inflow equals outflow on an instantaneous basis and fluctuations of the headpond's water level are minimized. The target headpond elevation shall be 161.3±0.25 feet NGVD29 when flashboards are installed and within 0.25 feet of the spillway crest when boards are out.

¹³ NGVD29 stands for National Geodetic Vertical Datum of 1929.

6. The Exemptee shall, within 3 months from the date of this letter, develop a revised Operations Compliance Monitoring Plan (OCMP). The OCMP shall be developed in consultation with, and require approval by, the Service prior to submitting it for Commission approval.

All other conditions are to be retained in their entirety.

Putts Bridge

Modify the following conditions to read:

3. The Exemptee shall operate the project in an instantaneous run-of-river mode, whereby inflow equals outflow on an instantaneous basis and fluctuations of the headpond's water level are minimized. The target headpond elevation shall be 205.3 ± 0.25 feet NGVD29 when flashboards are installed and within 0.25 feet of the spillway crest when boards are out.
6. The Exemptee shall, within 3 months from the date of this letter, develop a revised Operations Compliance Monitoring Plan (OCMP). The OCMP shall be developed in consultation with, and require approval by, the Service prior to submitting it for Commission approval.

All other conditions are to be retained in their entirety.

Red Bridge

Modify the following conditions to read:

2. The Exemptee shall provide a minimum instantaneous bypass flow release at the Red Bridge Dam of 100 cfs (or inflow, if less).
3. The Exemptee shall operate the project in an instantaneous run-of-river mode, whereby inflow equals outflow on an instantaneous basis and fluctuations of the headpond's water level are minimized. The target headpond elevation shall be 272.3 ± 0.25 feet NGVD29.
6. The Exemptee shall, within 3 months from the date of this letter, develop a revised Operations Compliance Monitoring Plan (OCMP). The OCMP shall be developed in consultation with, and require approval by, the Service prior to submitting it for Commission approval.

All other conditions are to be retained in their entirety.

APPENDIX B

Conditions submitted under section 30(c) of the FPA by the Massachusetts Division of Fisheries and Wildlife dated January 5, 2022.

Dwight

Modify the following conditions to read:

3. The Exemptee shall provide a minimum instantaneous bypass flow release at the Dwight Dam of 258 cfs (or inflow, if less) from April 15 through June 30, and 134 cfs (or inflow, if less) the remainder of the year.
4. The Exemptee shall operate the project in an instantaneous run-of-river mode, whereby inflow equals outflow on an instantaneous basis and fluctuations of the headpond's water level are minimized. The target headpond elevation shall be no less than 77.0 feet NGVD29¹⁴ from April 15 through June 30 and no less than 76.8 feet NGVD29 the remainder of the year.
5. The Exemptee shall, within 3 months from the date of this letter, develop a revised Operations Compliance Monitoring Plan (OCMP). The OCMP shall be developed in consultation with, and require approval by, the MassWildlife prior to submitting it for Commission approval.

All other conditions are to be retained in their entirety.

Indian Orchard

Modify the following conditions to read:

2. The Exemptee shall provide a minimum instantaneous bypass flow release at the Indian Orchard Dam of 144 cfs (or inflow, if less) from April 1 through September 30, and 104 cfs (or inflow, if less) the remainder of the year.
3. The Exemptee shall operate the project in an instantaneous run-of-river mode, whereby inflow equals outflow on an instantaneous basis and fluctuations of the headpond's water level are minimized. The target headpond elevation shall be 161.3±0.25 feet NGVD29 when flashboards are installed and within 0.25 feet of the spillway crest when boards are out.

¹⁴ NGVD29 stands for National Geodetic Vertical Datum of 1929.

6. The Exemptee shall, within 3 months from the date of this letter, develop a revised Operations Compliance Monitoring Plan (OCMP). The OCMP shall be developed in consultation with, and require approval by, the MassWildlife prior to submitting it for Commission approval.

All other conditions are to be retained in their entirety.

Putts Bridge

Modify the following conditions to read:

3. The Exemptee shall operate the project in an instantaneous run-of-river mode, whereby inflow equals outflow on an instantaneous basis and fluctuations of the headpond's water level are minimized. The target headpond elevation shall be 205.3±0.25 feet NGVD29 when flashboards are installed and within 0.25 feet of the spillway crest when boards are out.
6. The Exemptee shall, within 3 months from the date of this letter, develop a revised Operations Compliance Monitoring Plan (OCMP). The OCMP shall be developed in consultation with, and require approval by, the MassWildlife prior to submitting it for Commission approval.

All other conditions are to be retained in their entirety.

Red Bridge

Modify the following conditions to read:

2. The Exemptee shall provide a minimum instantaneous bypass flow release at the Red Bridge Dam of 100 cfs (or inflow, if less).
3. The Exemptee shall operate the project in an instantaneous run-of-river mode, whereby inflow equals outflow on an instantaneous basis and fluctuations of the headpond's water level are minimized. The target headpond elevation shall be 272.3±0.25 feet NGVD29.
6. The Exemptee shall, within 3 months from the date of this letter, develop a revised Operations Compliance Monitoring Plan (OCMP). The OCMP shall be developed in consultation with, and require approval by, the MassWildlife prior to submitting it for Commission approval.

All other conditions are to be retained in their entirety.