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January 2009 NHA-ILP Update)

Notice: After many years of producing this newsletter, the NHA Regulatory Affairs Committee determined to reduce its scope in order to reduce preparation time and because most of its readers have become familiar with issues involving the ILP. I will prepare it quarterly. The ILPs' still in process that had NOI's filed through 2005 will continue to be tracked in detail. The entire list of ILP's will be tracked by a table giving general milestones. Detailed information is available in FERC's e Library. As used in the table IA means held in abeyance by FERC.

CANAAN (P-7528) **1.1 MW**

NOI filed Aug. 2, 2004

FERC issued a subsequent license on January 15, 2009.

DE SABLA-CENTERVILLE (P-803) **26.6 MW**

NOI filed Oct. 4, 2004

<http://www.eurekasw.com/DC/relicensing/default.aspx>

On October 2, 2007, PG&E filed their relicense application. PG&E continues to work on a variety of studies and modeling not completed by the time of FLA filing.

Numerous comments from stakeholders and agencies were filed in June. Interventions have been received from Interior, Forest Service, NMFS, Calif DFG, and others. Interior filed lengthy comments on June 26. Numerous administrative and site specific 4(e) comments were filed on behalf of BLM. Interior reserved Section 18; however, included fish ladder and fish protection recommendations under 10(j) comments. Forest Service in a lengthy filing requested 17 administrative 4(e) conditions and 19 project specific 4(e) condition. Calif DFG's 10(j) recommendations were with their intervention. NMFS filed

a reservation of authority as a Section 18 condition and numerous section 10(j) conditions. Salmon and Steelhead were primary concerns.

7/30 PG&E requested a trial type hearing and proposed alternative conditions concerning Interior's BLM 4(e) conditions and proposed alternative conditions for Forest Service's 49e0 conditions. 7/29 NGO's proposed alternative conditions to Forest Service too. 8/14 PG&E filed reply comments to FERC.

9/4 PG&E filed with FERC what they called "errata" with their license application concerning five studies. This filing modified the relicense application.

9/10 Interior filed with FERC revised preliminary 4(e) conditions. 9/17 Interior noticed PG&E's request to withdraw PG&E's request for a trial type hearing. 10/8 Forest Service, Calif F&G, USFWS, and NOAA Fisheries filed a joint request that FERC allow a 60 day period to review the NEPA document (when issued) due to complexities of the case.

FERC's draft EA was issued 12/29/08 with a 60 day comment period. On 1/14/08 FERC issued a letter of preliminary determination of inconsistency with 10(j) to state and Federal fish and wildlife agencies. On 1/14/08 FERC also sent a letter to US F&WS requesting formal consultation under the Endangered Species Act as the project could result in the loss of elderberry habitat as a result of maintenance activities and would be likely to adversely affect the valley elderberry longhorn beetle (VELB). On 1/15/08 FERC sent a letter to NMFS requesting formal consultation. FERC said relicensing the project is likely to affect the federally listed Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU) and its designated critical habitat as well as the California Central Valley steelhead (*O. mykiss*) Distinct Population Segment. FERC also concluded that the project would not likely adversely effect the North American Green Sturgeon.

PACKWOOD LAKE (P-2244)

NOI filed Nov. 10, 2004

26 MW

<http://www.energy-northwest.com/gen/packwood/relisce.html>

Energy Northwest filed the FLA at FERC on 2/25/08.

In a FERC April 4 additional information request letter, with a sixty response period, FERC said that Energy Northwest filed some plans such as a HPMP and the existing plans that govern current management of hazardous substances and noxious weeds, the Company had not filed the plans you proposed to develop in the PLP, and continue to propose in the license application, as FERC requested. As a result, several Additional Information Requests are specific to the filing of these plans as follows:

- Tailrace Water Temperature Monitoring and Enhancement Plan;
- Avian Protection Plan;
- Integrated Weed Management Plan;

- Rare Plant Management Plan; and
- Recreation Plan.

This nine page additional information request was extremely detailed and indicative of FERC's recent policy, expressed during the NHA Conference, to insist on complete resource plans in FLA's. In a May 2 letter FERC extended the processing schedule to accommodate the sixty day AIR response time.

June 5 Energy Northwest responded to FERC April letter. June 19 FERC issued their REA notice, with comments and licensing recommendations due in 60 days and reply comments due in 105 days.

Comments were filed by Forest Service on 8/14, NOAA Fisheries on 8/18 and Wash DFW on 8/13. On 8/13 Wash DFW filed a letter saying DFW, Forest Service, USFWS, NOAA Fisheries, and Northwest Energy had drafted terms and conditions for inclusion in the new license. 10/1 Northwest Energy responded to the agencies' comments saying the terms and conditions were generally acceptable.

Lesson learned:

In the process of preparing and issuing draft study reports for review and comment by the agencies and stakeholders, Energy Northwest learned that in a summary or conclusion section there is a need to clearly state how the goals and objectives from the study plan were met. Their early reports did not call out the goal or objective, and the agencies disputed whether they were met. Later draft reports or revised draft reports clearly stated how they met the goals and objectives, and this has led to fewer or no comments on the draft report and less concern as to whether there is sufficient data to support a determination on project effects.

SMITH MOUNTAIN (P-2210)

NOI filed Oct 25, 2004

636 MW

<http://www.smithmtn.com/default.asp>

Appalachian Power Company filed the PLP November 1, 2007. Comment period ends January 31, 2008. Significant comments began to be filed in January 2008 and continue to be filed. The FLA was filed March 26, 2008 and the request for the WQC was filed with the state. FERC's tendering notice was issued April 9. Interested agencies and others filed comments during April. On May 16 FERC declined to issue an REA notice and requested additional information due within 60 days. This request asked for a number of revisions to filed plans including more specifics in a number of places. APC responded on 7/15. On 8/7 FERC issued the REA notice with comments due on 10/6. Numerous comments have been received from local citizens and the three Counties surrounding the lakes. On 11/14/08 APC replied to the agency and public comments. The local Counties responded to APC's comments on 12/11/08.

AMES (P-400), TACOMA (P-12589)

NOI filed May 20, 2005

Tacoma development: 8.1 MW

Ames development: 3.5 MW

<http://www.tacoma-ames.com/Default.htm>

Xcel Energy (licensee is Public Service Company of Colorado) filed preliminary licensing proposals with FERC on December 20 and 11, respectively, for the Tacoma and Ames Projects. Xcel also filed final recreation study reports for the Tacoma Project by letter of November 28 and final study reports covering cultural resources, recreation, land use and aesthetics resources, and water-terrestrial resources for the Ames Project by letter of January 3, 2008. Forest Service and FERC staff provided comments on the PLP during early March 2008. Forest Service requested additional studies because some of the information required by the FERC's July 30, 2007, study determination has not been provided. The May 2 summary of the April studies meeting showed that substantial discussions occurred on studies and the PLP. The FLA for Ames was filed June 26 and the FLA for Tacoma was filed June 25. The tendering notices with a procedural schedule were issued 7/8 for both applications. FERC issued an REA notice on 11/6. Forest Service submitted preliminary terms and conditions pursuant to 4(e) and 10(a) plus administrative record on 12/23-24. Interior commented on 12/31 supporting Colorado's comments and requesting formal consultation under the Endangered Species Act. On 1/5/09 the Colorado Division of Wildlife filed comments, preliminary terms and conditions, recommendations and summary of evidence pursuant to Sections 10(a) and 10(j).

Lessons learned:

- * Licensee says that the ILP process is an improvement but at the end of the day it is still relicensing. Prepare for it with that understanding.
- * Start early. They want to emphasize strongly the benefit of starting before the process begins. Get out and meet your stakeholders. See where they work and what they deal with. Give them tours of your projects so they understand what we are dealing with.
- * Document, document, document. Start putting critical data together in clear format before you start the ILP. This will help the discussion and also save money and angst trying to organize it at the last minute.
- * Be cooperative but also be firm. Don't let the agencies run your relicensing.

HENRY M. JACKSON (P-2157)

NOI filed Dec.1, 2005

112 MW

<http://www.snopud.com/WaterResources/relicensing.ashx?p=2334>

Snohomish County PUD on behalf of itself and the City of Everett have contracted with eleven consultants to conduct 21 of 23 studies over the course of 2007-2008. Two studies will be done by PUD staff. .

Drafting of the License Exhibits continues. The PUD desires to have most of their development complete before the intense process of crafting the PM&E measures in the fall of 2008.

The deadline for developing the Preliminary License Proposal is December 31, 2008. The deadline for filing the final license application is May 31, 2009. An updated PAD report was filed 10/13. The study report meeting was held 10/27. On 11/7 Sno PUD filed a meeting summary for the updated study report meeting held on October 27, 2008. On 12/31 Sno PUD filed their preliminary licensing proposal with a request for comments within 90 days. On 1/13/09 Sno PUD requested that FERC provide separated staff to assist with settlement discussions. FERC had proposed such. On 1/22 FERC issued a notice that certain staff would be non-decisional and assigned to participate in settlement discussions and provide guidance on the Commission's policies and authorities.

Lessons Learned:

PAD Development Phase

The Licensees started 2.5 years before filing the PAD. Activities included hiring strategic consultants, assembling our current license documents, and making the necessary internal arrangements to be prepared for the relicensing process as we understood it at the time. This was before the ILP was formally adopted by the FERC and consultant contract adjustments were done as the ILP was finalized.

A "Resource Summaries for Consultation Document" was developed by the licensees which consolidates the pertinent known information before going out to meet the stakeholders informally a year before the PAD was due. This forced the licensee staff to get up to speed on the project and gave the stakeholders something to digest.

Stakeholders were not given the opportunity to comment on the PAD before submission to FERC with the NOI. This saved substantial time during the crunch of getting the PAD done.

FERC staff was shown a draft of the PAD a month before submittal. They gave fast turn around and insightful feedback so the formal submittal was acceptable to them.

Study Development Phase

Stakeholder perceptions are driven by their experience, background and personality. After several initial meetings on the Proposed Study Plans, the licensees brought in additional consultants to address the issues in a context that accounted for these factors. Several subgroups were created to work on concerns about the proposed studies. Several of the Proposed Study Plans were rewritten to address stakeholder and FERC concerns.

This led to acceptance of the Revised Study Plans by the FERC with very few additional comments or changes and avoided the study dispute resolution process.

Study Implementation Phase

Selecting the best qualified consultants for each study requires more contract administration but yields excellent results which are worth the additional management effort. One example is that the ISR meeting went relatively smoothly with the consultants present to dialogue about the draft Technical Reports and process of the data gathering to date. However, some stakeholders may disagree with the results presented or the techniques used to gather the data. Accommodation for the concerns is prudent if the results will be material to the project operation or risk to the resource. When the ISRs and associated meeting occur before study data is available, it is cooperative to allow an interim review and comment on the studies by stakeholders before beginning the final study season.

Openness to studying environmental conditions and making the results available to the stakeholders for discussion of relevancy to project operations has kept the discussions on the science of the river and project effects. Removing the struggle between stakeholders and licensees over which studies to conduct, and openly discussing the process of determining PM&E measures has been appreciated by all the parties to date.

Allowing an Interim Comment Period at a time that allows for more technical results from various studies to be assembled has helped the stakeholders feel comfortable with the study data collection to inform PM&E development process.

MAHONING CREEK (P-12555)

NOI filed Dec. 27, 2005

4.4 MW (new capacity)

<http://www.advancedhydrosolutions.com/Mahoning.html>

Mahoning Creek Hydroelectric Company (agent is AHS) provided FERC responses to proposed additions to study plans. On February 11, 2008, Director OEP provided his response to requested study plan changes. FERC said “Many of the comments filed by the Corps and PA Fish & Boat that concern aquatic resources, water quality, natural resources and wetlands, and cultural resources offer additional information, clarifications or opinions about the data collected, or data interpretation. Other comments are questions about Mahoning Hydro’s proposal and potential mitigation measures. Although these comments do not constitute requests for studies, Mahoning Hydro should consider them in the preparation of their final study report, their Preliminary Licensing Proposal (PLP), and their license application.” FERC also said certain studies weren’t completed and must be by the final studies submittal. A study of the hydraulic modeling was added. April 14 filing to FERC responded to Corps’ comments and forwarded the recreational survey methodology. A new preliminary permit was issued 9/5. 11/26 MCHC submitted its Final Study Report meeting summary for the 11/18 meeting.

Project Capacity NOI/PAD File Date	Scoping Meeting	Proposed Study Plan	Study Plan Determ.	Determ. Study Disp	1 st Season Study Rev.	2 nd Season Study Rev.	Prelim. Lic. Proposal	Final Lic. Application	REA Notice	NEPA Document	License Issued
MORGAN FALLS (P-2237) 16.8 MW Jan. 15, 2004											X
MYSTIC LAKE (P-2301) 10 MW July 1, 2004											X
CANAAN (P-7528) 1.1 MW Aug. 2, 2004											X
DE SABLA-CENT (P-803) 26.6 MW Oct. 4, 2004										X	
PACKWOOD LAKE (P-2244) 26 MW Nov. 10, 2004									X		
SMITH MOUNTAIN (P-2210) 636 MW Oct 25, 2004									X		
AMES (P-400), TACOMA (P-12589) Tac., 8.1 MW; Ames , 3.5 MW May 20, 2005									X		
HENRY M. JACKSON (P-2157) 112 MW Dec.1, 2005							X				
MAHONING CREEK (P-12555) 4.4 MW (new capacity) Dec. 27, 2005						X					
CLAYTOR (P-739) 75 MW Jan. 6, 2006						X					
GREEN ISLAND (P-13) 6 MW existing, 20 MW n. c. March 1, 2006							X				
WILLOW MILL (P-2985) 460 KW April 14, 2006							X				
MASON DAM (P- 12686) 3 MW (new capacity) April 27, 2006					X						
BOUNDARY (P-2144) 1,051 MW May 5, 2006					X						
LAKE CREEK (P-2594) 4.5 MW May 31, 2006							X				
MCCLOUD-PIT (P-2106) 368 MW July 27, 2006					X						
WELLS (P-2149) 774 MW Dec. 1, 2006					X						
MASSENA GRASSE RIVER (P-12607) 2.5 MW (new capacity) December 8, 2006					X						

