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May 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 ILP's' 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. Past ILP newsletters are available in the members' section of NHA's WEB site, www.hydro.org. Your company's log in and password should be available from your primary member.

DE SABLE-CENTERVILLE (P-803)

26.6 MW

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

NOI filed Oct. 4, 2004

On October 2, 2007, PG&E filed their relicense application.

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 affect the North American Green Sturgeon.

PG&E said, on 2/26, that they had no comments on the EA. On 2/27 the F&WS after collaborating with the other bureaus of the Department of the Interior and the National Park Service), the U.S. Forest Service, State Water Resources Control Board, National Marine Fisheries Service, and the California Department of Fish and Game requested a meeting with FERC to discuss FERC's alternative F&W conditions under 10(j). Endangered species were to be considered by separate letter. Other fisheries agencies filed similar lengthy comments. On 3/25 F&WS provided their response concerning endangered species finding that the Service concurs with FERC's determination that the issuance of a new hydropower license is not likely to adversely affect the California red-legged frog. A 10(j) meeting was held on April 13.

On 4/28 FS filed a letter responding to California Sportfishing Protection Alliance's 7/30/08 request for adoption of alternative 4(e) conditions. The Alliance's two proposed conditions were not adopted, but FS did modify two conditions (streamflow and rainbow trout) based on the record. FS' final 4(e) conditions were also filed on 4/28. FERC will host a teleconference on 5/18 to discuss FS' 4(e) conditions.

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.

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.

On 2/5/09 FERC initiated formal consultation under the ESA concerning certain species of Chinook salmon, coho salmon, and steelhead and the designated Chinook salmon and steelhead critical habitat and enclosed a biological assessment. Also on 2/5 FERC noticed the availability of their EA. By letter filed 3/4/09 WDFW commented that FERC had adopted most conditions in the settlement, but WDFW had comments on two changes: (a) Ramping rates and (b) Entrainment at the Project Intakes. WDFW asked for a conference call with FERC to resolve these issues. ESA formal consultation was accepted by NMFS by letter of 3/5 stating that their biological opinion would be completed by 6/22. On 3/6 USFS filed a letter saying their preliminary 4(e) conditions remain the same except a Modified 4(e) condition was provided concerning No. 9-entrainment in project intake. The rationale justification statement was provided. The modification to 9 was reached after a 2/11/09 meeting between FS, Energy Northwest and other stakeholders where consensus was reached. 3/6 Energy Northwest commented on the DEA.

April 27, 2009, FERC held a meeting concerning the DEA and comments filed thereon in order to resolve differences under 10(j) with WDFW, facilitate the ESA processing, facilitate WDOE's water quality certificate, and discuss FS' modified 4(e) conditions.

Lessons 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.

March 27, 2009, FERC issued their DEIS with comments due on 5/11. A public meeting was also announced. 3/31 FERC wrote to F&WS saying the project is "not likely to adversely affect" the Roanoke logperch. The public meeting was held on 4/30.

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 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).

On 2/4 Xcel filed a copy of a letter to USFS which submitted proposed alternative conditions related to 4(e) conditions filed with FERC for inclusion in the new license for Project No. 12589. On 2/12 FERC wrote a letter, concerning both projects, to Xcel, regarding their settlement negotiations, saying "I suggest that you take advantage of separated Commission staff to assist you and the other stakeholders in ensuring the settlement terms are consistent with Commission policy and authorities." On 2/19, concerning p-400, Xcel filed substantial disagreements with USFS' comments, preliminary terms and summary of evidence. On that same date, Xcel responded to other agency comments. FERC issued the DEA for p-12589 on 4/28 with a 30 day comment period and for p-400 on 5/1 with a 45 comment period. On 5/4 FERC initiated formal ESA consultation with F&WS and requested a BO for both projects. On 5/5 FERC notified state and federal agencies of inconsistencies under section 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)

112 MW

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

NOI filed Dec.1, 2005

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.

On 2/17/2009 a motion to intervene, filed during the pre-filing consultation period, was dismissed by FERC. FERC said "a motion to intervene in the ILP at the *pre*-application stage is not appropriate." By letter of 3/27, in commenting on the PLP, FERC said "In some instances, however, the description and analysis of your proposal lacks sufficient detail for Commission staff to conduct its required environmental analysis." Details were attached. Comments on the PLP were filed through early April.

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 (MCHC or agent, AHS) was issued a new preliminary permit on 9/5. 11/26 MCHC submitted its Final Study Report meeting summary for the 11/18 meeting.

On 2/11/2009 MCHC filed meeting minutes of meeting with Corps. MCHC filed a draft license application on 3/27. 4/15, in response to MCHC's request that the DLA's comment period be reduced, FERC issued a letter saying "you have requested that this comment period be reduced to 45 days. Our practice is not to reduce the time allowed for comments without some evidence of consent by the participants. As no documentation of such consent has been provided in this case, your request is denied."

Special Note:

On January 15, 2009, as amended on March 13, 2009, Free Flow Power filed NOI/PADs for 55 hydrokinetic projects. Seven of those projects were chosen by FFP to use the ILP, the remainder were to use the TLP. The seven are in the following table where capacities given are what FFP calls dependable and are based on 40 kW per turbine. A total of 7,200 MWs are proposed for all 55.

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 SABLE-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				
MCCLLOUD-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						

