

166 FERC ¶ 62,044

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Upper Peninsula Power Company

Project No. 10855-300

ORDER APPROVING REQUEST FOR TEMPORARY VARIANCE FROM LICENSE
REQUIREMENTS OF ARTICLE 402

(Issued January 29, 2019)

1. On December 17, 2018, Upper Peninsula Power Company, licensee for the Dead River Hydroelectric Project No. 10855, filed a request for temporary variance from the target water surface elevation requirements of Article 402 of its license.¹ The project is located on the Dead River, in Marquette County, Michigan and consists of three separate developments: the Silver Lake, Dead River, and the McClure Storage Basins. The project does not occupy federal lands.

Background

2. Article 402 requires the licensee to operate the Dead River Project to maintain minimum storage basin water surface elevations at each of the project developments, for the protection and enhancement of water quality, recreation, aesthetics, and fishery resources in the Dead River. The license requires the licensee to act at all times to maintain the storage basin water surface elevations, as measured immediately upstream of each development's dam, as follows:

(1) Maintain the Silver Lake Storage Basin (SLSB) water surface levels at all times above the minimum seasonal target elevations and strive to operate the existing project facilities to achieve the start-of-month target elevations, as described in the license article.

(2) Maintain the Dead River Storage Basin (DRSB) at all times above the minimum elevations shown below and strive to operate the existing project facilities to achieve the start-of-month target elevations, as described in the license article, to minimize erosion due to high water levels and enhance recreational opportunities and aesthetics. If natural conditions cause the DRSB to exceed an elevation of 1,341 feet

¹ *Upper Peninsula Power Company*, 101 FERC ¶ 62,013 (2002).

National Geodetic Vertical Datum (NGVD), the licensee shall take all reasonable steps to lower the impoundment to the target elevation.

(3) Maintain the McClure Storage Basin (MSB) between elevation 1,194.8 and 1,196.4 feet NGVD, and limit fluctuation in storage basin water level to less than 1.0 foot on any day.

Storage basin water surface elevations may be temporarily modified, if required by operating emergencies beyond the control of the licensee, including but not limited to floods, ice conditions, drought, and electrical emergencies, or for short periods, upon mutual agreement among the licensee, the Michigan Department of Natural Resources (MDNR), the Michigan Department of Environmental Quality (MDEQ), and the U.S. Fish and Wildlife Service (FWS). At the MSB, water surface elevations may be temporarily modified during periods of high flow or if higher storage basin elevations are needed to pass organic debris over the spillway as required by Article 409, or to provide flushing flows as required in Article 403.

3. Article 403 requires the licensee to maintain minimum flows at each of the three Dead River Project developments for the protection and enhancement of water quality, recreation, and aquatic resources in the Dead River. The licensee proposes no change to the minimum flow requirements except for changes that may be needed as part of the “dry year” consultation process.

4. Under the approved Organic Debris Disposal Plan required by Article 409,² when reservoir elevations are above spill conditions, any debris that needs to be removed from the reservoirs is moved in such a way to either place it or have it safely pass into the stream channel downstream of the outlet and spillway. Only when necessary, is organic debris cut into smaller sections to either safely pass it over the spillway or to place it downstream.

5. On January 12, 2018, the licensee filed a Test Report covering four-years of project operations. The report satisfied the reporting requirements of the approved Operations Monitoring Plan.³ The licensee stated in its Test Report that it would file an application to amend Article 402 to be consistent with the Test Report’s recommendation to modify project operations to ensure a bankfull channel forming 150 cubic-feet-per-second (cfs) flow release for 72 consecutive hours in the spring of 2019.

² *Upper Peninsula Power Company*, 107 FERC ¶ 62,097 (2004), as amended, *Upper Peninsula Power Company*, 126 FERC ¶ 62,101 (2009).

³ *Upper Peninsula Power Company*, 130 FERC ¶ 62,214 (2010).

Licensee's Proposal

6. On December 17, 2018, the licensee filed a request to modify the target water surface elevation requirements for one year at SLSB and DRSB beginning in February 2019. The licensee's proposal is based on the four-year Test Report and consultation among the Michigan DEQ, Michigan DNR, and the FWS. The licensee proposes no change to the minimum water surface elevations at the three developments.

7. The licensee proposes to increase the SLSB start-of-month target elevations in May from 1,479.0 to 1,485.0 feet NGVD; June from 1,481.0 to 1,485.0 feet NGVD; July from 1,481.5 to 1,485.04 feet NGVD; August from 1,480.0 to 1,482.5 feet NGVD; September from 1,479.5 to 1,480.0 feet NGVD; and October from 1,479.5 to 1480.0 feet NGVD. The licensee would continue to maintain the target elevations for the remaining months as required by Article 402.

8. The licensee proposes to increase the DRSB start-of-month target elevations for May from 1,340.0 to 1,341.0 feet NGVD. The licensee would continue to maintain the target elevations for the remaining months as required by Article 402.

Consultation

9. The licensee included with its filing, documentation of consultation with the Michigan DEQ, Michigan DNR, and the FWS. The licensee held a teleconference regarding its proposed changes to the target water surface elevations with the three agencies on November 30, 2018. Based on comments received, the licensee modified its proposal to be consistent with agency concerns and sent a final draft to the agencies and requested their comments on the proposed operational changes.

10. The Michigan DEQ, Michigan DNR, and the FWS responded by letters dated December 11, 2018. The Michigan DEQ approves of the licensee proposed changes for 2019 and recommends that the licensee coordinate a meeting in May or June to provide information on current reservoir surface elevations prior to the usually dry summer months.

11. The Michigan DNR approves of the licensee's proposal provided two conditions are met. Condition 1 would require the licensee to host a meeting to determine how water stored in SLSB will be allocated in the summer for the purpose of improving downstream water quality. Michigan DNR believes that the discussion should take place as soon as possible following spring runoff.

12. Condition 2 would require the licensee to: report within 30 days, data on fish and mussel stranding associated with reservoir fluctuations and drawdowns of 0.3-0.5 foot/day or more for two or more days, as well as any time when the elevation is reduced by one foot or more within any three-day period; relocate all stranded organisms to

permanently inundated portions of the reservoirs upon discovery and notify the Michigan DNR within 24 hours if more than 20 organisms are found; continue existing water quality monitoring of all reservoirs and stream reaches; provide a report of reservoir elevation, outflows over the spillway, flows through the low-level outlet, generation and unit operation data including dates, duration, and channel forming flows; provide metrics for predicting dry year consultations; provide the extent that predicted benefits are achieved; and provide any erosion data and formal or anecdotal comments received from recreation or other affected users.

13. The FWS recommends the licensee incorporate the comments of the Michigan DEQ and Michigan DNR into the temporary variance request.

14. The Commission issued a public notice of the licensee's request on December 19, 2018. The deadline to file protests, comments, and motions to intervene was January 18, 2019. The Michigan DNR filed a motion to intervene on December 20, 2018. In its intervention the Michigan DNR notes that the licensee has incorporated the conditions outlined in its December 11, 2018 letter into the licensee's application. No other comments or protests were filed in response to the Commission's notice.

Discussion

15. The purpose of the licensee's proposal to raise start-of-month reservoir elevations is to increase the amount of storage in SLSB to better maintain start-of-month target elevations in DRSB during the summer recreation season, ensure the licensee's ability to provide the 150 cfs channel forming flows in 2019 in the reach of the Dead River downstream of SLSB, and support higher minimum flows in July and August to enhance water quality downstream of DRSB.

16. The licensee's proposed target elevation increases maximize the amount of water captured during the spring-runoff to provide for the channel forming flows and redistribution of flows during the low-flow, high temperature period typically encountered in July and August. The licensee's proposal also would enhance the licensee's ability to maintain target and minimum elevation in SLSB and DRSB in order to protect summer recreation. The licensee's temporary variance request should be approved.

The Director orders:

(A) Upper Peninsula Power Company's request filed December 17, 2018 for a temporary variance from the operating requirements of Article 402 of the license for the Dead River Hydroelectric Project No. 10855, is approved.

(B) This order constitutes final agency action. Any party may file a request for

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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 (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2018). 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.

/for/ Steve Hocking, Chief
Environmental and Project Review Branch
Division of Hydropower Administration
and Compliance

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