

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D. C. 20426

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OFFICE OF ENERGY PROJECTS

PKWD-19-079

Project No. 2244-041--Washington
Packwood Lake Hydroelectric Project
Energy Northwest

October 29, 2019

VIA FERC Service

Scott Urban
O&M/Professional Services Manager
Energy Northwest
P.O. Box 968, MD 1030
Richland, WA 99352-0968

Subject: Deviation from the instream flow requirement occurring on
August 13 and 14, 2019 - Article 401

Dear Mr. Urban:

On August 23, 2019, you filed a report with the Federal Energy Regulatory Commission (Commission) describing a planned deviation from the instream flow requirement that occurred in lower Lake Creek at the Packwood Lake Hydroelectric Project No. 2244. The reduction of flow was initiated in order to conduct safe and effective implementation of rainbow trout surveys and supplementation in accordance with U.S. Forest Service 4(e) condition 8 as set forth in Appendix B of the project license.¹

Ordering paragraph (D) of the project license states that you are subject to the Water Quality Certification (WQC) conditions submitted by the Washington Department of Ecology under section 401(a)(1) of the Clean Water Act. These conditions are set forth in Appendix A of the license. Condition 5.1 requires you to discharge various continuous minimum instream flows from the Packwood Lake drop structure, based on month of the year, for the protection of aquatic resources in Lake Creek. For the time period during which the reported deviation occurred (August 13 and 14), you were required to discharge a minimum instream flow of 15 cubic feet per

¹ Order Issuing New License (165 FERC ¶ 62,031), issued October 11, 2018.

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second (cfs) into Lake Creek.

Article 401(c) requires you to notify the Commission of both planned and unplanned deviations from the license requirements. In part, and as related to your filing, you are required to notify the Commission prior to implementing modifications to the continuous minimum instream flow requirements set forth in WQC condition 5.1 if possible, or in the event of an emergency, as soon as possible, but no later than 10 days after each such incident. You are also required to notify the Washington Department of Fish and Wildlife, Washington Department of Ecology, National Marine Fisheries Service, and U.S. Fish and Wildlife Service prior to implementing any modifications to the specified conditions identified in Article 401(c).

Your August 23, 2019 filing notified us that you initiated a planned deviation from the continuous minimum instream flow requirement on August 13 and 14, 2019. You state that the required 15 cfs instream flow was reduced to approximately 6 cfs in order to conduct rainbow trout surveys and supplementation in lower Lake Creek. The deviation occurred for approximately 19 hours. You also provided a copy of your notification to the resource agencies.

On August 13, 2019, you emailed Commission staff as a notification of the reduced instream flow. Commission staff advised you that notifications must be filed with the Commission through the eLibrary system so that they are on the project record. You then advised Commission staff that you did not intend to file the notification, as you were confident that your email had met the requirement to notify the Commission of the planned deviation. Commission staff further advised you on the requirements of the license and how you should proceed with notifications and how you should report this deviation, as the requirement to file a notification in advance of the planned deviation was ignored. Your August 23, 2019 filing includes an incomplete email record between your staff and Commission staff. Further in the email thread, but omitted from your filing, was Commission staff's clarification of the requirement of Article 401(c) to notify us of planned and unplanned deviations for specific license requirements.

In your August 23, 2019 filing, you also state that during the initial year of implementation of the new license, that certain measures (Commission staff interprets "measures" as license requirements) may need to be adjusted, further stating that this instream flow deviation is a good example of this need. You state that you will be discussing these measures with the Resource Agencies Committee at your annual Resource Coordination Meeting. You are reminded that if your adjustment of these measures results in a deviation from the license requirement, you must notify us if they are planned, and report them within 10 days if they are unplanned, as required by Article

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401. If you require permanent changes to license requirements, you should consult with the resource agencies and file an amendment request with the Commission.

Upon our review of this deviation, we find that the deviation occurred as a necessity to lower the instream flow in order to conduct safe and effective implementation of the rainbow trout survey and supplementation. It is expected that deviations from certain license requirements may be necessary to complete such tasks also required under the license. Article 401(c) requires deviations to be reported, whether they are planned or unplanned. In this case, your survey was a planned activity for which you should have filed an advance notification with the Commission. In light of not filing an advanced notification, you filed the report of the deviation within 10 days as you would have been required to do in the case of an unplanned deviation.

We will not consider the deviation from the instream flow requirement to be a violation of the project license; however, we advise you to review the license requirements so that you are aware of your obligations to notify the Commission of planned and unplanned deviations. In addition, you are reminded that similar deviations may be necessary to implement other license requirements in the future. If these are foreseeable events, you must notify the Commission by filing the notification in our eLibrary system prior to the need to deviate from the license requirement. Unplanned deviations that may occur must be reported to the Commission via an eLibrary filing within 10 days of occurrence. Failure to adequately notify or report to the Commission may be taken into consideration when determining your compliance with Article 401 and any other license requirements.

Thank you for your report. If you have any questions regarding this letter, please contact Robert Ballantine at (202) 502-6289 or at robert.ballantine@ferc.gov.

Sincerely,

Thomas J. LoVullo
Aquatic Resources Branch
Division of Hydropower Administration
and Compliance

Document Content(s)

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