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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

C.3.11.B (R)
C.3.11.B (P)
Letterbook
Licensing (eFile)

PKWD-20-058

Energy Northwest

P-2244-044

ORDER MODIFYING AND APPROVING RESOURCE COORDINATION PLAN

(August 31, 2020)

1. On July 16, 2019, Energy Northwest, licensee for the Packwood Lake Hydroelectric Project No. 2244, filed a Resource Coordination Plan, pursuant to U.S. Forest Service (Forest Service) 4(e) Condition 2 of the project license and Condition 6.7 of the Biological Opinion issued on March 22, 2018 by the National Marine Fisheries Service (NMFS).¹ The project is located on Lake Creek, a tributary to the Cowlitz River, in Lewis County, southwestern Washington near the unincorporated town of Packwood. The project occupies, in part, federal lands within the Gifford Pinchot National Forest and Goat Rocks Wilderness administered by the U.S. Department of Agriculture, Forest Service.

I. Background

2. The license for the Packwood Lake Project includes, in Appendix B, Forest Service 4(e) Condition 2 which requires the licensee to develop a Resource Coordination Plan (Plan) within one year of license issuance. Condition 6.7 of the Biological Opinion, included in Appendix D of the license, also requires the development of the Plan. The licensee is required to develop the Plan in coordination and consultation with the Forest Service and the U.S. Fish and Wildlife Service (FWS), NMFS, the Washington Department of Fish and Wildlife (Washington DFW), the Washington Department of Ecology (Washington Ecology), the Cowlitz Indian Tribe, and the Yakama Nation (herein-after referred to as the Parties). The Plan must be approved by the Forest Service and filed for Federal Energy Regulatory Commission (Commission) approval. The Plan must establish a process for information exchange and to coordinate efforts for implementation of license conditions and ongoing project operations and maintenance activities impacting Forest Service lands affected by the project including: recreation resource management; cultural resource management; integrated weed management; road

¹ *Energy Northwest*, 165 FERC ¶ 62,031 (2018). Appendix B and D of the license include the Forest Service 4(e) conditions and NMFS Biological Opinion terms and conditions, respectively. Ordering paragraphs E and G of the license require the licensee to implement the conditions in Appendix B and D, respectively.

management; threatened, endangered, and sensitive species management; facilities monitoring; erosion control; and other resource protection plans.

3. The licensee must develop a Resource Coordination Plan to: 1) provide for coordination and consultation with the Forest Service and other Parties in the form of an Annual Resource Coordination meeting each year at least 60 days preceding the anniversary of the license; 2) provide to the Forest Service and other Parties a 3-Year Annual Report/Work Plan to consist of: a) an Annual Report which documents the previous calendar year's management activities, monitoring results, and compliance with the license terms and conditions; b) a Final Current Year Work Plan which describes planned activities underway or to be implemented in the current year; c) a Draft Out-Year Work Plan which describes the activities planned for the following year; and d) a Consultation Summary which documents annual consultation with the Forest Service and other Parties; 3) document the requirements, tasks, methods, and reports related to protection, mitigation, and enhancement (PME) measures required by the Forest Service 4(e) conditions; 4) provide a mechanism for revising implementation strategies and methods; 5) provide a mechanism to adapt project PME measures for each resource plan developed for the project when needed; 6) identify practices for record keeping; 7) include provisions for documenting and reporting any deviations from the approved plans or terms and conditions and to document deviations in the Annual Report; 8) include provisions for the routine updating of the Plan, including incorporation of monitoring measures identified in site-specific plans prepared under the requirements of Forest Service 4(e) Condition No. 1 (Implementation of Activities on Forest Service lands); 9) develop a field manual or project procedures that identify standard operating protocols, including cultural resource identification and reporting methods that the licensee and its contractors must follow while conducting activities on Forest Service lands; 10) develop a process to resolve disagreements regarding the implementation of the Plan; and 11) designate an Environmental Coordinator to coordinate the implementation of the Plan and licensee activities with the Forest Service.

4. A draft of the Rolling 3-Year Annual Report/Work Plan must be completed by the licensee and be submitted to the Forest Service and other Parties at least 30 days prior to the planned Annual Resource Coordination Meeting. The Forest Service and other Parties would review the draft Rolling 3-Year Annual Report/Work Plan, with the objectives of: providing comments to clarify material in the Annual Report; discussing and approving any revisions to the Current Year Work Plan, as suggested by the licensee based on monitoring results; and discussing and tentatively approving the Out-Year Work Plan.

5. For the Final Rolling 3-Year Report/Work Plan, the licensee is required to provide the Forest Service and other Parties a 30-day review of the Final Rolling 3-Year

Report/Work Plan. The licensee must send copies to the Commission, the Forest Service and other Parties within 60 days following the Annual Resource Coordination Meeting.

II. The Plan

6. The Plan filed by the licensee on July 16, 2019 includes the eleven elements discussed above. It establishes a process for the licensee to exchange information and coordinate its efforts to implement conditions, various resource plans, and ongoing operations and maintenance activities at the Packwood Project through a Resource Agencies Committee. Although the licensee discusses membership in a Resource Agencies Committee in the Plan, Energy Northwest is not clear in defining the members throughout the document. While the licensee includes itself and the Forest Service as members, it describes other entities' involvement as optional and may include: Cowlitz Indian Tribe, the Commission, National Park Service, NMFS, United State Army Corps of Engineers, FWS, Washington State Department of Archaeology and Historic Preservation, Washington Ecology, Washington DFW, Yakama Nation, consulting biologists, and the licensee's subject matter experts. The Plan describes how and when the licensee would communicate with the Resource Agencies Committee on an annual cycle of data submittals, review meetings, field work, future planning, and report preparation. A dispute resolution process to resolve disagreements associated with the implementation of license conditions is also included.

7. The Plan notes the many individual resource management plans that will be reviewed during the annual meeting, to be modified as necessary. These plans and associated license conditions include:

- Resource Coordination Plan [(Forest Service 4(e) Condition No. 2; NMFS Biological Opinion Reasonable and Prudent Measure (RPM) #6]
- Fire Prevention Plan (Forest Service 4(e) Condition No. 3)
- Lake Creek Instream Flow and Ramping Rate Monitoring Plan (Forest Service 4(e) Condition No.5, Washington Ecology Water Quality Certificate (WQC) Condition 5.0; NMFS RPM #6)
- Lower Lake Creek Stream Restoration, Enhancement, and Monitoring Plan (Forest Service 4(e) Condition No. 7; NMFS RPM #2)
- Intake Fish Entrainment Monitoring Plan (Forest Service 4(e) Condition No. 9)
- Snyder Creek Restoration, Enhancement, and Monitoring Plan (Forest Service 4(e) Condition No.10; NMFS RPM #2)

- Threatened, Endangered and Sensitive Species Plan (Forest Service 4(e) Condition No.12; NMFS RPM #6)
- Rare Plant Management Plan (Forest Service 4(e) Condition No. 12)
- Recreation Management Plan (Forest Service 4(e) Condition No. 14)
- Pipeline, Surge Tank and Penstock Monitoring Plan (Forest Service 4(e) Condition No. 15)
- Integrated Weed Management Plan (Forest Service 4(e) Condition No. 16)
- Avian Protection Plan (Forest Service 4(e) Condition No. 17)
- Historic Properties Management Plan (Forest Service 4(e) Condition No. 18)
- Water Quality Protection Plan (Washington Ecology WQC Condition 5.4)
- Stream Gage Installation and Temperature Monitoring (NMFS RPM #6)
- Fall-Run Chinook Monitoring Plan (NMFS RPM #7)
- Tailrace Water Temperature Monitoring and Enhancement Plan (NMFS RPM #8; WQC)

8. As discussed in the Plan, many individual resource management plans contain specific requirements that stem from various license conditions. The purpose of the Resource Coordination Plan is to review the individual resource management plans which discuss work efforts for the year, gain consensus on approaches to management, and resolve disputes with the implementation of those plans as needed.

III. Consultation

9. In March and June of 2019, the licensee provided the Parties with drafts of the Plan for comment.

10. On July 12, 2019, NMFS staff provided comments to the licensee noting that its comments on a March 2019 version of the Plan were addressed, but it requested further clarification that the licensee should notify NMFS as soon as practical of any fish kills or events that caused injury to fish listed under the Endangered Species Act. The licensee included provisions in the Plan for expedited notification to address this concern.

11. On April 17 and 18, 2019, Forest Service staff provided comments on an early version of the Plan. Among the comments, Forest Service staff requested that all

elements from Forest Service 4 (e) Condition 2 were included in the Plan and for the licensee to work on the dispute resolution language. Forest Service staff provided the licensee with some language used for similar circumstances, which the licensee incorporated into the final version of the Plan. On June 25, 2019, Forest Service staff provided a statement that it did not have concerns with the final Plan or the associated revised dispute resolution language included in it.

12. On July 11, 2019, Washington DFW provided comments on the Plan. Washington DFW requested a clarification in the dispute resolution section of the Plan. The licensee added clarifying language to the final Plan on how the dispute resolution process would be used for resolving disagreements regarding the implementation of the various resource management plans. Washington DFW also requested that the Plan include responsibility of the licensee to take meeting notes during the annual Resource Coordination Meeting and send these notes to members for review. The licensee added this item to the final Plan.

13. Washington Ecology provided comments on an early version of the Plan on March 21, 2019, but did not provide comments on the final Plan. The licensee addressed the early comments in the final Plan filed with the Commission.

14. The Cowlitz Indian Tribe and Yakama Nation did not provide comments on the Plan.

15. The licensee held a March 18, 2020 meeting with the Parties and other entities. On May 4, 2020, the licensee filed an annual report with the Commission regarding the Plan.

IV. Discussion

16. The licensee's Resource Coordination Plan includes the items required by Forest Service 4(e) Condition 2 and Condition 6.7 of the Biological Opinion included in the project license. The licensee provided documentation that the Forest Service approved the Plan as required by the license.

17. The Plan is not entirely consistent as to who the members of the Resource Agencies Committee are. The licensee addresses this matter in separate locations in the document. The cover letter to the Plan defines the Resource Agencies Committee as being composed of the Parties (i.e. Forest Service, FWS, NMFS, Washington DFW, Washington Ecology, the Cowlitz Indian Tribe, and the Yakama Nation). Section 1.2 mentions "agencies" as the committee's members, but the members are not explicitly stated. An additional description of the Resource Agencies Committee is provided in section 2.2.1.2 of the Plan. In this section, the licensee includes itself as a member and the Forest Service with other entities' involvement being optional and may include

Cowlitz Indian Tribe, the Commission, National Park Service, NMFS, United States Army Corps of Engineers, FWS, Washington State Department of Archaeology and Historic Preservation, Washington Ecology, Washington DFW, Yakama Nation, consulting biologists, and the licensee's subject matter experts. An annual report filed with the Commission on May 4, 2020 defined the Resource Agencies Committee as also including the Lewis County Noxious Weed Control Board.

18. While consulting biologists and the licensee's subject matter experts could contribute to the collaborative process, these consultants would most likely be associated with one or more of the Parties. Other local, state, or federal agencies may want to participate in meetings, but it should be clear if they are participants of a meeting or members of the Resource Agencies Committee. The Commission, for example, should not be considered a member of the Resource Agencies Committee but would monitor compliance with the implementation of the approved Plan. As the licensee seems to propose in the Plan, Energy Northwest and Forest Service would be the only two mandatory members of the Resource Agencies Committee with other agencies' and Tribes' participation being optional. However, it would be important to clarify the membership structure of the Resource Agencies Committee, particularly if any disputes arise, to assist the resolution process. Forest Service 4(e) Condition 2 requires the licensee to also consult with NMFS, FWS, Washington Ecology, Washington DFW, Yakama Nation, and the Cowlitz Indian Tribe on the development of the Plan and so they should be considered mandatory members. Additionally, given that the requirement to form such a committee also comes from the Biological Opinion issued by NMFS, this resource agency should be a mandatory member.

19. To clarify the membership structure of the Resource Agencies Committee in the Plan, Commission staff recommends defining the Resources Agency Committee as being composed of the specific entities Forest Service Condition No. 2 requires as consulting parties to the development of the Plan. The Resource Agencies Committee should therefore include the licensee and Forest Service as well as NMFS, FWS, Washington Ecology, Washington DFW, Yakama Nation, and the Cowlitz Indian Tribe.

20. As the Plan notes, and we highlight here, the Plan's purpose is to review the individual resource management plans which discuss work efforts for the year, gain consensus on approaches to management, and resolve disputes with the implementation of those plans as needed. However, the individual resource management plans have their own requirements including appropriate consultation, reporting, and could require approvals by specific resource agencies which may or may not be members of the Resource Agencies Committee. The Plan does not alter the requirements of other resource management plans.

21. The Resource Coordination Plan includes the provisions required in Forest Service 4(e) Condition 2 of the project license and Condition 6.7 of the Biological Opinion and

should be approved, with the modification noted above clarifying members of the Resource Agencies Committee.

The Director orders:

(A) Energy Northwest's Resource Coordination Plan, filed July 16, 2019 pursuant to U.S. Forest Service 4(e) Condition 2, and Condition 6.7 of the Biological Opinion issued on March 22, 2018 by the National Marine Fisheries Service, of the license for the Packwood Lake Hydroelectric Project No. 2244, is approved, as modified by ordering paragraph (B).

(B) The Resource Coordination Plan is modified to clarify that the Resource Agencies Committee is composed of representatives from Energy Northwest, the U.S. Forest Service, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Washington Department of Ecology, Washington Department of Fish and Wildlife, Yakama Nation, and the Cowlitz Indian Tribe.

(C) Energy Northwest must file with the Commission for review, annually by June 1, a report pursuant to the Resource Coordination Plan.

(D) 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 (2018), and the Commission's regulations at 18 C.F.R. § 385.713 (2019). 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.

Kim A. Nguyen, Chief
Environmental and Project Review Branch
Division of Hydropower Administration
and Compliance