

147 FERC ¶ 61,056
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Idaho Power Company

Project No. 18-095

ORDER DENYING REQUEST TO AMEND
LICENSE ARTICLE 410

(Issued April 17, 2014)

1. On July 12, 2011, as supplemented on September 25, 2013, Idaho Power Company (Idaho Power or licensee) filed an application to amend license Article 410 for the Twin Falls Project No. 18, which requires the licensee to provide aesthetic flows over the Twin Falls waterfall. The project is located on the Snake River in Jerome and Twin Falls Counties, Idaho, and partially on lands administered by the Bureau of Land Management.
2. As discussed below, this order denies the amendment application.

Background

3. Twin Falls, at 130 feet tall, is one of the three largest waterfalls on the Snake River, along with Shoshone Falls and American Falls. Natural river flows over Twin Falls are seasonal, with the highest average flows in April, May, and June, and the lowest in July, August, and September.¹
4. Before 1935, all river flows plummeted over Twin Falls, consisting of a north and south falls divided by a large bedrock outcropping. In 1935, however, Idaho Power

¹ Flow records for the water years 1924 – 2013 from the U.S. Geological Survey's (USGS) Kimberly gage (USGS No. 13090000), located about 1,500 feet downstream of the project, indicate that the mean monthly flows for April, May, and June were 4,892; 4,252; and 4,115 cubic feet per second (cfs), respectively, and the mean monthly flows for July, August, and September were 1,410; 937; and 999 cfs, respectively.

began operating the Twin Falls Project.² The run-of-river project diverted water that would have flowed over the south falls into a powerhouse, located at the base of the south falls, and through a generating unit with an installed capacity of 9 megawatts (MW) and hydraulic capacity of 960 cubic feet per second (cfs). Thereafter, flows over the south falls reduced to a trickle, and the north falls became “the Twins” as two streams, split by a separate natural rock weir, cascaded down the north falls during moderate to high flows.

5. Despite the altered character of the falls, sightseers still came to view the falls from a developed viewpoint located along a paved road in a 10-acre park.³ Chain link fencing bordering the developed viewpoint, however, partially obstructed viewing opportunities.

6. In 1983, Idaho Power filed a relicense application to continue to operate the Twin Falls Project. The application also requested authorization to construct a second powerhouse, at the base of the south falls, to house a new 42-MW generating unit. The company proposed to expand generating capacity from 9 MW to 51 MW; raise annual generation from 60,000 megawatt hours (MWh) to approximately 189,000 MWh; and increase hydraulic capacity from 960 cfs to 4,960 cfs. Most of the flows that had been passing over the north falls were to be diverted through the new powerhouse. In addition, to mitigate aesthetic and recreational impacts of the second powerhouse, Idaho Power proposed to release 140-cfs aesthetic flows over the north falls during daylight hours on the weekends and holidays year-round and daily from April through August.

7. Commission staff evaluated the aesthetic and recreational impacts of the relicense proposal.⁴ Staff examined the licensee’s proposed 140-cfs aesthetic flows and concluded that 140 cfs would not be sufficient because it would appear out of scale with the

² In 1934, the Commission’s predecessor, the Federal Power Commission, issued Idaho Power a license to construct and operate the Twin Falls Project. *See Fourteenth Annual Report of the Federal Power Commission, 1934*, at 138.

³ The 10-acre park is a project facility located on the bluffs on the south side of the project reservoir.

⁴ *See* Final Environmental Impact Statement (FEIS), Federal Energy Regulatory Commission, Office of Hydropower Licensing, July 1990. The FEIS evaluated the environmental impacts of the Twin Falls relicense proposal and three other license proposals (Milner Project No. 2899, Auger Falls Project No. 4797, and Star Falls Project No. 5797).

geological structure of the falls and the surrounding landscape.⁵ Instead, staff recommended that the Commission require the licensee to release 300-cfs aesthetic flows to create whitewater falls on both sides of the north falls' natural stone weir.⁶

8. On January 18, 1991, the Commission issued a new 50-year license to Idaho Power and approved the construction of a second powerhouse and increase in generating capacity (1991 license order). Adopting Commission staff's recommendation, the 1991 license order included Article 410, requiring Idaho Power:

[to] maintain flows that average 300 cubic feet per second (cfs) over Twin Falls from 8 a.m. to 30 minutes after sunset each day, 7 days a week, April 1 through August 31, and 8 a.m. to 30 minutes after sunset every Saturday and Sunday and on all holidays, September 1 through March 31 (peak viewing times). At no time during these peak viewing times shall the flow over Twin Falls fall below 270 cfs or inflow, whichever is less.⁷

9. Because the required 300-cfs aesthetic flows⁸ would reduce annual power generation by only about 2 GWh, or 1.5 percent of the project's total output, the 1991 license order concluded that Article 410 would provide aesthetic and recreational benefits without excessive loss in power generation.⁹ To provide unobstructed views of the falls, the 1991 license order also required the licensee to replace the existing chain link fencing at the overlook with a stone and wood rail system.¹⁰

⁵ FEIS at 3-80.

⁶ *Id.*

⁷ *Idaho Power Company*, 54 FERC ¶ 62,034, at 63,064 (1991).

⁸ Although the aesthetic flows at times may be as low as 270 cfs (or inflow, whichever is less), Article 410 requires an average flow of 300 cfs. This order's references to a 300-cfs flow requirement mean an average flow of 300 cfs.

⁹ *Idaho Power Company*, 54 FERC at 63,069.

¹⁰ *Id.* 63,064 (Article 411).

10. Idaho Power completed the new powerhouse in 1995, at which time Idaho Power began releasing the required 300-cfs aesthetic flows.¹¹ Subsequently, the Commission approved Idaho Power's filed as-built exhibits and amended the license to reflect the project's actual total installed capacity of 42.2 MW and annual generation of 127,000 MWh.¹² In 1996, Idaho Power completed construction of the Twin Falls Overlook, a scenic overlook with an unobstructed view located in the 10-acre park.¹³

Proposed Amendment

11. In its July 12, 2011 amendment application, Idaho Power requests that the Commission revise the definition of "peak viewing times" in Article 410 to eliminate required aesthetic flows: (1) from September 1 through March 31 (i.e., on weekend days and holidays), and (2) in the mornings and evenings every day from April 1 through August 31 (i.e., from 8:00 to 10:00 a.m. and 8:00 p.m. to 30 minutes after sunset). Idaho Power argues that a majority of visitors do not view the falls during these times, and thus, the aesthetic flows released during these times do not justify the lost power generation cost.

12. In support of its proposal, Idaho Power provides data from a six-year study (2005 through 2010) that it conducted, which shows average visitation to the Twin Falls Overlook.¹⁴ Idaho Power's study also estimates lost power generation costs during the aesthetic flow periods that Idaho Power proposes to eliminate.

13. Idaho Power's study includes two tables, as provided in Appendix A attached to this order. Table 1 shows for September 1 through March 31 (which it refers to as the low visitation season) average daily visitation during the required weekend¹⁵ flow releases and during weekdays when no aesthetic flows are being released. The table also provides visitation data for April 1 through August 31 (which it refers to as the high

¹¹ In December 1991, Idaho Power requested, and the Commission agreed, to delay releasing the required aesthetic flows until the licensee completed the new powerhouse. *Idaho Power Company*, 59 FERC ¶ 62,199 (1992).

¹² *Idaho Power Company*, 74 FERC ¶ 62,031 (1996).

¹³ Visitors can only view the falls from the Twin Falls Overlook.

¹⁴ Idaho Power obtained the visitation data using a trail counter.

¹⁵ Weekend numbers include holidays.

visitation season),¹⁶ showing visitation on weekdays and on weekends. Table 2 provides annual data on the average hourly visitation during the high season for each hour between 8:00 and 10:00 a.m., and 8:00 and 10:00 p.m.,¹⁷ and converts that average hourly visitation data into a percentage of daily visitation. Idaho Power did not provide hourly data for the low season.

14. In its analysis of the low season, Idaho Power explains that Table 1 shows the average number of visitors to the overlook on weekend days and holidays, when Idaho Power released aesthetic flows, ranged from a low of 29 in 2005 to a high of 63 in 2009. Idaho Power states that maintaining the required aesthetic flows during the low season cost it approximately \$145,000 (2010 dollars) annually in lost power generation.¹⁸

15. In its analysis of the high season, Idaho Power explains that Table 1 shows the average number of daily visitors on weekdays ranged from a low of 53 in 2007 to a high of 212 in 2009, and on weekend days and holidays from a low of 106 in 2007 to a high of 464 in 2009.¹⁹ Further, Idaho Power explains that Table 2 shows that on high season weekdays the average visitation for the four-hour period between 8:00 and 10:00 a.m. and 8:00 and 10:00 p.m. was about 12 percent of the total average high season weekday visitation for all six study years. And on high season weekends for the same four-hour period the average visitation was about 9 percent of the total average high season weekend visitation for all six study years. The licensee therefore concludes that roughly 88 percent of visitors on weekdays, and roughly 91 percent of visitors on weekends, viewed the falls between 10:00 a.m. and 8:00 p.m. during the high season. Idaho Power

¹⁶ This order uses the terms “low season” and “high season.”

¹⁷ The licensee used 10:00 p.m. instead of “30 minutes after sunset” as stated in Article 410.

¹⁸ The average annual loss in power generation for the low season is 2,288 MWh. *See* Idaho Power September 25, 2013 Supplemental Filing at 1.

¹⁹ Based on mean monthly river flow data (1924-2013) from the USGS Kimberly gage located just upstream of the project, the monthly mean flows during 2006 and 2009 were well above the average monthly mean flows for at least three months between April and July. It is expected that these very large river flow levels during the spring/summer months contributed to the higher visitation levels in 2006 and 2009.

states that providing aesthetic flows for those selected four hours during the high season cost it just over \$61,000 (2010 dollars) annually in lost power generation.²⁰

16. Further in support of its proposal, Idaho Power states that visitors can view 300-cfs aesthetic flows over Shoshone Falls, a 212-foot tall waterfall located roughly two miles downstream from Twin Falls.²¹ Idaho Power contends that there are more visitors at Shoshone Falls than at Twin Falls but does not provide comparable visitation data.

Agency Consultation and Public Notice

17. The licensee circulated a draft amendment application to the Bureau of Land Management (BLM), Idaho Department of Parks and Recreation (Idaho DPR), and Idaho State Historic Preservation Officer (SHPO). Idaho Power received no response from BLM. Idaho DPR by letter dated June 17, 2011, objected to the proposed amendment and provided comments stating that Idaho Power's proposal would eliminate morning and evening photography opportunities and would not meet the anticipated recreational demand over the license term.²² The licensee responded to Idaho DPR by letter dated July 7, 2011. The SHPO by letter dated June 22, 2011, stated that the changes in the flows will not cause new effects or increase any known effects on historic properties. Idaho Power included these letters in its license amendment application.

18. On August 11, 2011, the Commission issued a public notice of the licensee's application, soliciting comments, protests, and motions to intervene. In response, the U.S. Department of the Interior's Office of Environmental Policy and Compliance filed a letter stating it has no comments. American Rivers and Idaho Rivers United (American Rivers) jointly filed a timely, unopposed motion to intervene and comments.²³ American Rivers opposes the amendment application, asserting that Idaho Power's proposal would

²⁰ The average annual loss in power generation for the high season is 2,160 MWh. See Idaho Power September 25, 2013 Supplemental Filing at 1.

²¹ *Idaho Power Company*, 108 FERC ¶ 61,125 (2004).

²² See Idaho DPR June 17, 2011 Letter in Application at 33-34.

²³ Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2013).

eliminate the unique photography and viewing opportunities as well as reduce the number of visitors spending money in the local area.²⁴

19. The Commission has fully considered the record in this proceeding in determining whether, or under what conditions, to approve the license amendment.

Discussion

A. Effects on Aesthetic Viewing Opportunities

20. The comprehensive development standard of section 10(a) of the Federal Power Act²⁵ requires the Commission to balance public interest considerations of the project, including the project's aesthetic, recreational, and power production values. The 1991 license order recognized Twin Falls as a unique scenic attraction and acknowledged that the proposed second powerhouse would significantly reduce flows over the falls, seriously affecting the falls' aesthetic quality. In requiring the licensee to release an average of 300 cfs for aesthetics during "peak viewing times," the order considered the importance of releasing aesthetic flows at the project, the impact of this mitigation on power generation, and the need to appropriately balance power production benefits with aesthetic and recreational benefits. Now Idaho Power asks that we redefine "peak viewing times" to be between 10:00 a.m. and 8:00 p.m. from April 1 through August 31.

1. Low Season (September 1 through March 31)

21. Currently, Idaho Power provides aesthetic flow releases for 65 days (weekend days and holidays) during the low season.²⁶ Based on our review of Table 1, we estimate that an average of 44 visitors viewed the falls each weekend day during the low season and an average of 136 visitors viewed the falls each day during the high season.²⁷

²⁴ See American Rivers September 12, 2011 Motion to Intervene at 4-5.

²⁵ 16 U.S.C. § 803(a)(1) (2012).

²⁶ We calculated the number of days that the licensee releases aesthetic flows during the low season using data from Idaho Power's September 25, 2013 Supplemental Filing (Accession No. 20130925-5100).

²⁷ Commission staff's calculations based on Table 1 are shown in Appendix B attached to this order.

22. Although average daily visitation during the low season is less than during the high season, Idaho Power's data do not support eliminating aesthetic flow releases during the low season. Eliminating these flows would deprive on average about 2,800 visitors a year from viewing water flowing over the falls. Further, as noted by Idaho DPR, during relicensing the Commission anticipated low visitation from September 1 through March 31, and as a result, the 1991 license order only required the licensee to release the required average 300-cfs aesthetic flows on weekend days and holidays during those months.²⁸ In fact, the licensee proposed in its relicense application to release aesthetic flows on weekend days and holidays from September 1 through March 31.²⁹ Given the unique nature of Twin Falls, we decline to grant Idaho Power's request to eliminate all required aesthetic flows from September 1 to March 31.

2. High Season (April 1 through August 31)

23. Currently, Idaho Power provides aesthetic flow releases for 153 days (109 weekdays and 44 weekend days) during the high season. Based on our review of Table 1, we estimate that an average of 136 visitors viewed the falls each day during the high season, or about 20,800 visitors a year. To assess Idaho Power's proposal to eliminate the aesthetic flows from 8:00 to 10:00 a.m. and 8:00 p.m. to 30 minutes after sunset each day during the high season, Commission staff used the data in Table 2 to calculate the average number of visitors that arrive each hour. From there, Commission staff converted the calculated average number of arriving visitors for each selected hour into a percentage of average daily visitation.³⁰

24. Commission staff's analysis of Idaho Power's data indicates that in the early morning hours between 8:00 and 10:00 a.m. and the late-day hours from 8:00 p.m. to 30 minutes after sunset, almost eleven percent of the day's visitors arrive, or about 2,215 visitors a year. Idaho Power's proposal to eliminate the required aesthetic flows

²⁸ See Idaho DPR June 17, 2011 Letter in Application at 33.

²⁹ See FEIS at 4-59.

³⁰ Commission staff's calculations based on Table 2 are shown in Appendix C attached to this order. Staff calculated the following percent of average daily visitation for all six study years:

8:00 to 9:00 a.m.:	1.25 percent
9:00 to 10:00 a.m.:	2.91 percent
8:00 to 9:00 p.m.:	5 percent
9:00 to 10:00 p.m.:	1.49 percent

during these hours would only increase the monetary value of the project's annual power generation by approximately \$50,000 (2010 dollars).³¹ Moreover, the falls, facing the western sky, are lit by the sunset, providing unique lighting on the falls for photographers, artists, and visitors.³² Eliminating the required aesthetic flows for the evening hours would eliminate unique photography and viewing opportunities. Accordingly, we believe that the monetary benefit to Idaho Power does not outweigh the cost of lost aesthetic and recreational opportunities.

25. In addition, we agree with American Rivers and Idaho DPR that viewing opportunities at Shoshone Falls have no bearing on the aesthetic flows at Twin Falls.³³ In relicensing the Twin Falls Project, the Commission was aware of aesthetic values and opportunities at Shoshone Falls but nonetheless included Article 410 in the new license to mitigate lost viewing opportunities as a result of the second powerhouse.³⁴ Nor does Shoshone Falls provide the same viewing experience as Twin Falls, and it thus is not a substitute for the viewing opportunities afforded by the Twin Falls Project.

26. For the above reasons, we deny the licensee's request to eliminate aesthetic flows from 8:00 to 10:00 a.m. and from 8:00 p.m. to 30 minutes after sunset from April 1 through August 31.

The Commission orders:

(A) Idaho Power Company's request to amend its license pursuant to Article 410 for the Twin Falls Project No. 18, filed on July 12, 2011, as supplemented on September 25, 2013, is denied.

³¹ Eliminating the required aesthetic flows during these hours would only increase the project's annual generation by about 1,668 MWh, or approximately 1.4 percent.

³² See American Rivers September 12, 2011 Motion to Intervene at 5; Idaho DPR June 17, 2011 Letter in Application at 34.

³³ See American Rivers September 12, 2011 Motion to Intervene at 5; Idaho DPR June 17, 2011 Letter in Application at 34.

³⁴ See FEIS at 3-74.

(B) 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 (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2013). 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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX A

Table 1
Average Daily Visitation* - Twin Falls Overlook
High and Low Visitation Seasons (2005-2010)

Viewing Season	2005	2006	2007	2008	2009	2010
High – weekdays	72	147	53	59	212	73
High – weekend days	143	338	106	119	464	136
Low – weekdays	19	22	18	18	35	20
Low – weekend days³⁵	29	53	39	33**	63	46

* Rounded to the nearest whole number

** Twelve sample days were lost in February-March 2008 due to trail counter failure

³⁵ In its visitation data during the low season, Idaho Power includes holidays with weekend days.

Table 2
Average Visitation for Given Hours at Twin Falls Overlook
April 1 - August 31 (High Visitation Season)

Weekdays												
Time Period	2005	%DV*	2006	%DV	2007	%DV	2008	%DV	2009	%DV	2010	%DV
8:00 - 9:00 a.m.	1.3	1.8%	1.4	1.0%	0.8	1.5%	0.5	0.8%	2.6	1.2%	1.03	1.4%
9:00 - 10:00 a.m.	3.4	4.7%	3.1	3.1%	2	3.8%	1.6	2.7%	7.28	3.4%	2.71	3.7%
8:00 - 9:00 p.m.	4.46	6.1%	8.7	5.9%	3.65	6.9%	3.13	5.3%	12.52	2.7%	3.62	5.0%
9:00 - 10:00 p.m.	1.56	2.2%	2.32	1.6 %	1.23	2.3%	1.46	2.5%	3.35	1.6%	1.16	1.6%
Weekend Days												
Time Period	2005	%DV	2006	%DV	2007	%DV	2008	%DV	2009	%DV	2010	%DV
8:00 - 9:00 a.m.	1.3	0.9%	6	1.8%	0.8	0.8%	0.7	0.6%	6.26	1.3%	1.56	1.1%
9:00 - 10:00 a.m.	3.6	2.5%	10	3.0%	2.4	2.3%	3.2	2.7%	9.3	2.0%	4.28	3.1%
8:00 - 9:00 p.m.	6.77	4.7%	11.92	3.5%	4.52	4.3%	4.77	4.0%	19.56	4.2%	4.93	3.6%
9:00 - 10:00 p.m.	1.79	1.3%	3.66	1.1%	1.65	1.6%	2.34	2.0%	4.43	1.0%	0.98	0.7%

* Daily Visitation

APPENDIX B

**Commission Staff's Calculations
Average Daily Visitors per Year - Twin Falls Overlook
High Season (2005-2010)**

Year	Weekdays		Weekend Days		Total/year	Average/day (total/year ÷ 153)
	Average/day (wk)	Total weekday visitors (wk*109)³⁶	Average/day (wkd)	Total weekend day visitors (wkd*44)		
2005	72	7,848	143	6,292	14,140	92.42
2006	147	16,023	338	14,872	30,895	201.93
2007	53	5,777	106	4,664	10,441	68.24
2008	59	6,431	119	5,236	11,667	76.25
2009	212	23,108	464	20,416	43,524	284.47
2010	73	7,957	136	5,984	13,941	91.12
Average daily visitors					20,768	135.74

³⁶ As noted earlier in the order (at P 23), Idaho Power provides aesthetic flow releases for 153 days (109 weekdays and 44 weekend days) during the high season.

APPENDIX C

Commission Staff's Calculations
Average Visitors that Arrive During Given Hours at Twin Falls Overlook
April 1 - August 31 (High Season)

Hour	Weekdays (wk)		Weekend Days (wkd)		Average/h ((wk total/h + wkd total/h) ÷ 153)	Average % of daily visitation ((average/h ÷ 136)*100) ³⁸
	Average/h	Total/h each high visitation season (average/h *109) ³⁷	Average/h	Total/h each high visitation season (average/h *44)		
8 to 9 a.m.	1.27	138.61	2.77	121.88	1.70	1.25
9 to 10 a.m.	3.35	364.97	5.46	240.39	4.0	2.91
8 to 9 p.m.	6.01	655.45	8.75	384.78	6.80	5
9 to 10 p.m.	1.85	201.29	2.48	108.90	2.03	1.49

³⁷ As noted earlier in the order (at P 23), Idaho Power provides aesthetic flow releases for 153 days (109 weekdays and 44 weekend days) during the high season.

³⁸ As shown in Appendix B, on average roughly 136 visitors per day view the falls from the Twin Falls Overlook.