

160 FERC ¶ 61,095
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

City of Nashua, Iowa

Project No. 12628-013

ORDER GRANTING REHEARING

(Issued September 20, 2017)

1. On February 21, 2017, the City of Nashua, Iowa (City) filed a request for rehearing of Commission staff's January 24, 2017 order denying the City's request to amend the Operations Compliance Monitoring Plan and Water Quality Monitoring Plan for the Cedar Lake Hydroelectric Project (project) No. 12628. As discussed below, we grant rehearing.

I. Background

2. In 2010, the Commission issued an original minor license to the City for the operation of an 800-kilowatt (kW) project on the Cedar River in Chickasaw County, Iowa.¹ Article 402 of the project license requires the licensee to implement an Operations Compliance Monitoring Plan (Operations Plan)² to ensure compliance with run-of-river operation, minimum flow releases, and turbine shutdown procedures. The plan describes how the licensee would operate to ensure compliance with all license requirements by monitoring variables, such as reservoir level and dissolved oxygen (DO) concentration, and adjusting operations as needed. In part, the Operations Plan describes how operational shutdowns would occur if DO concentrations fall below 5 milligrams per liter (mg/L). Such shutdowns are required by Article 401 of the project license in order to raise DO concentrations for the protection of aquatic resources in the tailrace. The Operations Plan, as amended,³ also requires the City to file operation reports with the

¹ *City of Nashua, Iowa*, 133 FERC ¶ 62,089 (2010).

² *City of Nashua, Iowa, Order Modifying and Approving Operations Compliance Monitoring Plan Pursuant to Article 402*, 142 FERC ¶ 62,185 (2013).

³ *City of Nashua, Iowa, Order Amending Operations Compliance Monitoring Plan Reporting Deadline Pursuant to Article 402*, 152 FERC ¶ 62,023 (2015).

Commission by June 1 annually, after consultation with the U.S. Fish and Wildlife Service (FWS) and the Iowa Department of Natural Resources (Iowa DNR).

3. Article 403, as amended,⁴ requires the licensee to implement a Water Quality Monitoring Plan (Water Quality Plan) to demonstrate that the licensee can maintain DO concentrations above 5 mg/L, water temperature below 89.6 degrees Fahrenheit, and pH within the range of 6.5 to 9.0 while operating. Pursuant to the Water Quality Plan, after implementing the plan for three years, the licensee could seek to modify water quality monitoring measures after consultation with FWS and Iowa DNR.

4. The City filed its 2015 Operations Plan report and three-year Water Quality Plan review on June 14, 2016 and supplemented the reports on June 20 and July 21, 2016. The City largely complied with license requirements, including the DO requirements, and asserted that no additional water quality monitoring should be required.

5. The City included comments from Iowa DNR, which, upon reviewing the 2015 Operations Plan and Water Quality Plan, expressed concerns over DO concentrations and opposed the total cessation of water quality monitoring.⁵ Citing Article 401 of the project license, which requires operational shutdowns during low DO events, regardless of Operations Plan and Water Quality Plan requirements, Iowa DNR asked that the City continue to monitor DO concentrations from May 1 through September 30 annually. Iowa DNR stated that discontinuing October 1 through April 30 monitoring may be acceptable provided that other flow requirements are strictly adhered to, but stressed that these requirements exist to provide adequate habitat to support mussel and fish populations throughout the project tailrace.

6. On July 26, 2016, Commission staff issued a letter approving the termination of water temperature monitoring and permitting the City to reduce the duration of DO concentration monitoring to operational periods only. Based on the three years of monitoring data provided, Commission staff concurred that water quality monitoring efforts could be reduced under the existing Water Quality Plan, but staff did not agree that all water quality monitoring should be terminated. Because the City did not submit any operational data with its request to amend, Commission staff could not determine whether the compliant DO concentrations occurred naturally or resulted from preventative operational changes based on monitoring results. For that reason, and

⁴ *City of Nashua, Iowa, Order Amending Article 403 of the License and Modifying and Approving Water Quality Monitoring Plan Pursuant to Article 403*, 142 FERC ¶ 62,196 (2013).

⁵ See City's July 21, 2016 filing. The City also noted that FWS was sent the 2015 Operations Plan report and three-year Water Quality Plan on June 19, 2016, but did not respond with comments.

considering Iowa DNR's concerns, the Commission staff retained the DO monitoring requirement during operational periods. The City was instructed to provide a comparison of DO concentrations during operational and nonoperational periods, a summary of any instances when operations had been modified to prevent low DO concentrations, and documentation of consultation with the FWS and Iowa DNR with future amendment requests aimed at further reducing water quality monitoring.

7. On December 16, 2016, the City filed a request to amend its Operations Plan and Water Quality Plan for Commission approval. It stated that monitoring the DO, temperature, and saturation is no longer necessary and asked that DO monitoring requirements be terminated. The City's request noted that its data and conclusions were provided to the FWS and Iowa DNR; however, it did not include any of the other information requested in Commission staff's July 26 letter.

8. On January 24, 2017, Commission staff issued an order denying the amendment request.⁶ The order noted that the City did not submit specific information comparing DO concentrations during operational and nonoperational periods, nor did it summarize operational shutdowns associated with low DO levels. Without this information Commission staff could not decisively dismiss the Iowa DNR's concerns. Accordingly, staff required continued DO monitoring during operational periods to ensure compliance with the Operations Plan.

9. The City filed a timely request for rehearing of the denial.

II. Discussion

10. On rehearing, the City states that the project operated during 99.5 percent of the data collection period. Because DO concentrations always remained above 5 mg/L, the project never had to shut down to maintain adequate DO concentrations.⁷ The City explains that because it has very little non-operational DO data to compare to the operational data, it has to assess differences between headwater and tailwater DO concentrations.⁸ The tailwater concentrations were consistently higher, by as much as 1.5 mg/L.⁹

⁶ *City of Nashua, Iowa, Order Denying Amendment Request*, 158 FERC ¶ 62,045 (2017).

⁷ City's Rehearing Request at 1.

⁸ *Id.* at 2.

⁹ *Id.* at 1-2.

11. The City's rehearing request includes data to demonstrate its compliance with DO standards for 2013 through 2016. A review of this monitoring data shows that project operations are not adversely affecting DO concentrations in project waters and that the City has complied with water quality requirements without having to shut down project operations to prevent low DO levels.

12. The Commission recognizes Iowa DNR's concerns regarding the proposed amendment request; however, the operational information and water quality data provided by the City on February 21, 2017 support the City's conclusions. The project does not appear to adversely affect DO concentrations. We find that additional monitoring is not necessary at this time and that the amendment request should be approved. The Operations Plan annual report, required by Article 402, will no longer be required to include the saturation of DO in the headwater and tailwater.

13. The Commission reserves the right to reinstate DO monitoring or require further water quality enhancement measures in the future.

The Commission orders:

(A) The City of Nashua, Iowa's request for rehearing of the January 24, 2017 Order denying the request to amend the Operations Compliance Monitoring Plan and Water Quality Monitoring Plan for the Cedar Lake Hydroelectric Project is granted.

(B) Article 403 of the license for project No. 12628 is deleted.

(C) The City of Nashua, Iowa's Operations Compliance Monitoring Report, due to the Commission by June 1 annually, required by License Article 402, and the Commission's orders of March 5, 2013 and July 10, 2015, is no longer required to include headwater and tailwater dissolved oxygen saturation data.

(D) The Commission reserves the right to require further actions regarding dissolved oxygen monitoring or water quality enhancement measures in the future.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.