

145 FERC ¶ 62,068
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Central Nebraska Public Power and Irrigation District

Project No. 1417-256

ORDER APPROVING TEMPORARY PARTIAL WAIVER OF
NON-IRRIGATION SEASON RELEASES UNDER ARTICLE 405

(Issued October 29, 2013)

1. On September 19, 2013, the Central Nebraska Public Power and Irrigation District (licensee) filed a request for a temporary partial waiver from the non-irrigation flow release requirements of Article 405 of the license for the Kingsley Dam Project.¹ The project is located on the North Platte and Platte Rivers in Garden, Keith, Lincoln, Dawson, and Gosper Counties, Nebraska.

BACKGROUND

2. The Kingsley Dam Project consists of a number of dams, reservoirs, canals, and power plants. These include the project's Kingsley Dam on the North Platte River, which impounds Lake McConaughy, which has a maximum allowable storage capacity of 1,790,000 acre-feet (af). The project's Kingsley Hydroelectric facility abuts Kingsley Dam and discharges to Lake Ogallala. The majority of Lake Ogallala is part of a different hydroelectric project, the North Platte/Keystone Diversion Dam Project, FERC No. 1835, licensed to Nebraska Public Power District (NPP District), although releases at that project's Keystone Diversion Dam are governed by the Kingsley Dam Project license. The Kingsley Dam Project's Central Diversion Dam, located 50 miles downstream of Kingsley Dam at the confluence of the North and South Platte Rivers, diverts Platte River flow into a 75-mile-long supply canal which incorporates a series of 27 dams and impoundments and three additional hydroelectric plants.

3. Article 405 of the Kingsley Dam Project license requires the licensee to operate the project in accordance with the rules set forth in Section III of Exhibit X, *An Environmental Account for Storage Reservoirs on the Platte River System in Nebraska* (Environmental Account document). The Environmental Account is an annual account of water in Lake McConaughy to be released for wildlife purposes at the discretion of an Account Manager designated by the U.S. Fish and Wildlife Service (FWS).

¹ Order Issuing New License, issued July 29, 1998 (84 FERC ¶ 61,079).

4. Section III of the Environmental Account document contains operating requirements and associated releases for various locations under different hydrologic conditions (very wet, wet, dry, and very dry). Section III.E specifically addresses flow releases under dry conditions, defined as when either the total Lake McConaughy contents, including water in the Environmental Account, as of October 1 plus the predicted storable natural inflows from October 1 to March 31, is less than 1.55 million af, or the October 1 total Lake McConaughy content is less than 800,000 af. Section III.E.3 requires the release of certain flows, during such dry conditions, from Lake McConaughy during the non-irrigation season (October through April) to supplement river flows in order to maintain minimum and average diversion rates at the downstream Central Diversion Dam. Section III.E.6 allows the average flows to be reduced, but not the minimum flows, if necessary, so that water storage can be reduced to between 250,000 and 550,000 af in the non-irrigation season.

LICENSEE'S REQUEST

5. In its request filed September 19, 2013, the licensee asks for a temporary partial waiver of Article 405 as it pertains to Section III.E.3 of the Environmental Account document. The waiver would only affect flow releases at the Central Diversion Dam, and not Keystone Diversion Dam.

6. The licensee requests that the waiver be made effective immediately and run through September 30, 2014 (the end of water year 2014), except for the period of March 1, 2014 through May 10, 2014. The licensee indicates that, under the waiver, it would: (1) set an allocation of nine inches or less per contract acre for its irrigation customers for the 2014 irrigation season; and (2) not divert water into Elwood Reservoir for irrigation purposes during the 2014 water year.²

7. The licensee supports its request by noting that the requirements in the Environmental Account document were based on an expectation that flows available from upstream would not change. However, since the issuance of the license, median inflows stored in Lake McConaughy to cover non-irrigation season flow requirements have dropped from approximately 1,400 cubic feet per second (cfs) to approximately 1,000 cfs, a nearly 30-percent reduction. The licensee indicates that, currently, reduced inflows have contributed to a rapid drawdown of Lake McConaughy, and the lake had dropped to 54 percent of its full capacity by the end of the 2012 water year. Based on

² The normal contracted amount for irrigation customers is 18 inches per contract acre. Elwood Reservoir is not part of the Kingsley Dam Project.

current inflows, the licensee would only be able to impound approximately 120,000 af of water, well below the lower target of 250,000 af target provided in Section III.E.6.

CONSULTATION

8. The licensee consulted with the Nebraska Game and Parks Commission (Nebraska GPC), FWS, and the NPP District in developing its request for a temporary partial waiver. The licensee indicated that the Nebraska GPC had no objection to the waiver, but the agency did not provide the licensee with written comments. The FWS and the NPP District provided written comments, which the licensee included with its filed request.

9. The FWS, in a letter dated September 16, 2013, indicated that it supports the licensee's request, with four conditions: (1) that the waiver not apply during the period of March 1, 2014 to May 10, 2014, because water is needed in the Platte River to support migratory birds, including federally-listed endangered whooping crane, in the spring; (2) that the waiver not apply to the flow requirements at Keystone Diversion Dam; (3) that the licensee set an allocation of nine inches or less per contract acre for its irrigation customers for the 2014 irrigation season; and (4) that there be no diversion of water into Elwood Reservoir for irrigation purposes during the 2014 irrigation season. The licensee's request as filed with the Commission includes these conditions. The NPP District commented, via email dated September 13, 2013, that it supports the request.

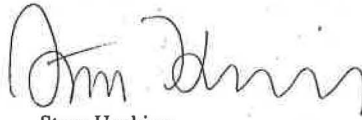
DISCUSSION AND CONCLUSION

10. Based on the information provided by the licensee, including current and predicted project inflows and storage, we conclude that the licensee's request for a temporary partial waiver of non-irrigation release requirements of Article 405, as it pertains to Section III.E.3 of the Environmental Account document, from the date of this order until September 30, 2014, is justified, and should be approved. The period of March 1, 2014 to May 10, 2014 is not included in this variance, as requested by the FWS and included in the licensee's request.

The Director Orders:

(A) Central Nebraska Public Power and Irrigation District's September 19, 2013 request for a temporary partial waiver of non-irrigation flow release requirements of Article 405 of the license for the Kingsley Dam Project, as it pertains to Section III.E.3 of Exhibit X, is approved.

(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 (2006), 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.

A handwritten signature in dark ink, appearing to read "Steve Hocking", is positioned above the printed name and title.

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