

133 FERC ¶ 62,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Alabama Power Company

Project No. 2165-033

ORDER APPROVING IN PART
FISH HABITAT ENHANCEMENT PLAN
FOR THE SMITH DEVELOPMENT – ARTICLE 412

(Issued October 05, 2010)

1. On July 28, 2010, Alabama Power Company (licensee) filed a Fish Habitat Enhancement Plan for the Smith Development of the Warrior River Hydroelectric Project (FERC Project No. 2165). The licensee filed its plan pursuant to Article 412 of the project license.¹ The Warrior Project is located in north central Alabama on the Black Warrior River, and on the Sipsey Fork in Cullman, Walker, and Winston Counties; and in west central Alabama on the Black Warrior River in Tuscaloosa, Alabama. The project consists of two developments: the Lewis Smith (Smith) Development located on the Sipsey Fork of the Black Warrior River; and the John Hollis Bankhead Development located 78.5 miles downstream on the Army Corps of Engineer's Bankhead Lock and Dam No. 17.

LICENSE REQUIREMENTS

2. Article 412 of the project license requires the licensee to develop a fish habitat enhancement plan for the Smith Development. The purpose of the plan is to enhance fish habitat in Smith Lake and in project water downstream of Smith Dam. In Smith Lake the enhancements should include, but not be limited to: (1) introducing substrates to Smith Lake to enhance spawning and cover for fish and to provide substrate for invertebrates; (2) measures to stabilize the shoreline and banks of Smith Lake to improve water quality, control sedimentation, and provide cover for fish; and (3) providing woody debris in Smith Lake to provide cover for, concentrate fish, and to enhance angling opportunities in project waters.

3. The enhancement measures downstream of Smith Dam should include, but not be limited to, placing structures or making streambank modifications to provide cover and habitat beneficial to resident fish, aquatic biota, and trout upstream of the highway 69

¹ See Order Issuing New License 130 FERC ¶ 62,271 (issued March 31, 2010).

bridge. The plan should include provisions to implement the measures downstream of Smith Dam within 60 days from the date of the first minimum flow release required by Article 407 and to determine the exact locations of enhancement measures after observing the effects of the minimum flow patterns in the river.

4. In order to evaluate the permanence and effectiveness of the implemented measures, the plan shall also include a provision for filing a report with the Commission every six years. Article 412 includes specific information that must be included in the six year reports.

5. The licensee must consult with the Alabama Department of Conservation and Natural Resources (ADCNR) and the U.S. Fish and Wildlife Service (FWS) in developing the plan. The licensee shall include with the plan documentation of agency consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the resource agencies, and specific descriptions of how the agencies' comments are accommodated in the plan. The licensee shall allow a minimum of 30 days for the agencies to comment before filing the plan with the Commission. If the licensee does not adopt an agency recommendation, the filing shall include the licensee's reasons, based on site specific information.

LICENSEE'S PLAN

Smith Tailrace Habitat Enhancements

6. The licensee's plan for habitat enhancements in the Smith tailrace includes introducing enhancement measures at two locations upstream of the Highway 69 Bridge. The enhancement measures will be implemented at one site upstream and one site downstream of the Birmingham Water Works pumping station (BWW).

7. Upstream of the BWW, the type of enhancements that would be introduced include: anchoring of logs along the stream bank to create velocity refugia, instream cover, and woody debris habitat; placement of boulders in the stream to create high velocity refugia; and placement of rock-filled gabions to modify stream bottom habitat and create runs/shoals/pools and high velocity refugia. The final locations, number, and type of enhancements will be determined in consultation with the ADCNR and FWS. The licensee proposes to evaluate the condition and performance of the structures every two years to determine if the existing structures need repair or if additional enhancements are necessary.

8. Downstream of the BWW, the licensee proposes to install fish attraction devices to increase the amount and complexity of cover and structure in the stream. The fish attraction devices would be made of concrete and PVC and would be located near the recreational fishing access sites which may be required under Article 420. Between five and ten fish attraction devices would be installed at each fishing area. The final number

and design of the fish attraction devices will be determined in consultation with ADCNR. The licensee states that it will inspect the devices and supplement or replace them as necessary.

Smith Lake Habitat Enhancements

9. The proposed plan states that the licensee has entered into an agreement with ADCNR to receive assistance from ADCNR to comply with the obligations of Article 412 with respect to habitat enhancements in Smith Lake. The licensee states that it will meet annually with ADCNR in order to identify methods and techniques for improving fish habitat that are most appropriate for Smith Lake. The plan includes a list of potential enhancement activities that may be used in Smith Lake.

Reporting

10. The proposed plan includes a provision to file a report with the Commission every six years which will include, but not be limited to: documentation of consultation with ADCNR and FWS; a detailed description of the types of enhancements implemented in the tailrace and lake including observations of their permanence and effectiveness; a description of alternative measures, devices, or techniques that were or will be used to replace any of the enhancement measures that are unsuccessful; and a discussion as to the adequacy of the method and time frame for evaluating the success of the enhancement structures.

CONSULTATION

11. The licensee included documentation of its consultation with the ADCNR and FWS regarding the proposed plan. By letter dated July 16, 2010, the FWS provided written concurrence on the plan. By email dated June 30, 2010, the ADCNR provided comments on the plan. All comments were addressed in the final plan.

DISCUSSION

12. The licensee's plan includes a description of the locations and types of enhancement measures that will be implemented in the Smith tailrace. While some of the details will be finalized and refined in consultation with the resource agencies and based on in-field observations, the plan provides sufficient information on the planned habitat enhancements and should be approved.

13. However, the licensee does not include any detail as to the type or location of habitat enhancement measures that will be implemented in Smith Lake. The licensee's plan states that the location and types of enhancement measures will be determined in consultation with ADCNR. The plan does not address the requirements of Article 412 for Smith Lake habitat enhancements, and cannot be approved at this time. The licensee, in consultation with ADCNR and FWS should develop a fish habitat enhancement plan

for Smith Lake that includes the specific measures identified in Article 412. The resource agencies should be allowed a minimum of 30 days to review and comment on the plan before filing the final plan for Commission approval. The plan should be filed with the Commission no later than March 1, 2011.

14. The licensee's proposed plan includes a provision for filing a report with the Commission every six years as required by Article 412. However, the proposed plan does not include a provision for allowing the resource agencies to review and comment on the six year reports. So that the Commission can consider the resource agencies comments during its review of the six year reports, the licensee should submit the reports to the ADCNR and FWS and allow the resources agencies a minimum of 30 days to review and comment on the reports prior to filing the final reports with the Commission. The final reports should include copies of the resource agencies' comments, if any, and the licensee's response to those comments. If the licensee does not adopt a recommendation from the resource agencies, the filing should include the licensee's reasons based on project specific information.

15. In addition, the licensee's plan does not include a date for filing the reports with the Commission. The six year reporting period should commence with the installation of the enhancement measures and the start of the minimum flow releases from the project. The release of the minimum flow requirement of the new license is scheduled to begin on January 1, 2011. The installation of the habitat enhancements in the Smith tailrace is expected to occur within 60 days of the start of the minimum flow release (by March 1, 2011). Therefore, the first reporting period should end on March 1, 2017. In order to allow the licensee time to compile the report and receive agency comments, the licensee should file the reports by June 1 of each year starting in 2017 and continuing every six years for the term of the license.

16. It is anticipated that, following Commission approval of the Smith Lake habitat enhancement plan, the six year reports will also include the results and progress of the enhancement measures implemented in the lake. A separate report would duplicate the consultation and review process and would be unnecessary.

17. The licensee's fish habitat enhancement plan would enhance fish habitat in project waters downstream of Smith Dam. The plan, as modified by staff, meets the requirements of Article 412, in part, and should, therefore, be approved.

The Director orders:

(A) Alabama Power Company's Fish Habitat Enhancement Plan for the Smith Development, filed July 28, 2010, under Article 412 of the license for the Warrior River Hydroelectric Project (FERC No. 2165), as modified in paragraphs (B) and (C), is approved.

(B) The licensee, in consultation with the Alabama Department of Conservation and Natural Resources and the U.S. Fish and Wildlife Service shall develop a fish habitat enhancement plan for Smith Lake that includes the specific measures identified in Article 412. The resource agencies shall be allowed a minimum of 30 days to review and comment on the plan before filing the final plan for Commission approval. The plan shall include copies of the resource agencies' comments, if any, and the licensee's response to those comments. If the licensee does not adopt a recommendation from the resource agencies, the filing shall include the licensee's reasons based on project specific information. The plan shall be filed with the Commission no later than March 1, 2011.

(C) The licensee shall file reports regarding the implementation of the plan by June 1 starting in 2017 and continuing every six years for the term of the license. Prior to filing the final reports with the Commission, the licensee shall submit the six year reports to the Alabama Department of Conservation and Natural Resources and the U.S. Fish and Wildlife Service and allow them a minimum of 30 days to review and comment on the reports. The final reports shall include copies of the resource agencies' comments, if any, and the licensee's response to those comments. If the licensee does not adopt a recommendation from the resource agencies, the filings shall include the licensee's reasons based on project specific information.

(D) The licensee shall file any document required by this order with the Secretary of the Commission. Filings may be submitted electronically via the Internet, see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link. The Commission strongly encourages electronic filings. In lieu of electronic filing, an original and eight copies of all documents may be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, Mail Code: DHAC, PJ-12.3, 888 First Street, N.E., Washington, D.C. 20426.

(E) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR § 385.713.

Steve Hocking
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and Compliance