



west virginia department of environmental protection

Division of Water and Waste Management
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Charleston, WV 25304
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
dep.wv.gov

December 6, 2013

Mr. Frank M. Simms
Appalachian Power Company
P.O. Box 2021
Roanoke, Virginia 24022-2121

Re: State 401 Water Quality Certification,
Appalachian Power Company (APC),
London/Marmet Hydropower Project,
P-1175-015 on the Kanawha River, in
Kanawha County, West Virginia: WQC
120017.

Dear Mr. Simms:

The West Virginia Department of Environmental Protection-Division of Water and Waste Management (WVDEP-DWWM), received a letter from you, dated August 16, 2013 in response to the State 401 Water Quality Certification referenced above. The letter states that you are appealing certain portions of the Certification in accordance with Title 47, Series 5A, Section 7 of the Code of State Regulations for West Virginia.

WVDEP wishes to respond to each of the issues that you presented in the appeal letter. Should the combination of our responses and changes described herein not resolve your concerns, we will move forward with a hearing. If our response is satisfactory, we will issue a modified Certification.

DATE OF RECEIPT OF CERTIFICATION

Comment No. 1.

Appalachian has not received directly the letter sent from your office dated July 30, 2013 regarding the subject Certification. We had no knowledge of the letter being sent until a review of the Federal Energy Regulatory (FERC) docket for the project was reviewed by

Promoting a healthy environment.

Appalachian staff. According to the docket, the letter was not submitted to the FERC until August 9, 2013 and was recorded as being filed the same day.

Under the Code of Regulations for the State of West Virginia referenced previously, Appalachian has fifteen days from date of notification of certification from WVDEP to respond. Since Appalachian never received the letter of notification, we believe that no actual date for response from Appalachian has been established. However, acknowledging the date the letter was filed with the FERC, Appalachian is submitting this response within fifteen days of that date, August 9.

Response No. 1.

The Certification letter was prepared July 30, 2013, however due to the internal process Certifications must go through, the letter was not postmarked until August 7, 2013, and filed with the Federal Energy Regulatory Commission (FERC) on August 9, 2013. We certainly apologize for the length of time the process takes, and do not object to APC's request to use the date the Certification was filed with FERC (August 9, 2013) as the date the applicant acknowledged the Certification. Therefore, we accept your letter responding to the Certification.

The original Certification letter was mailed to Appalachian Power Company at the address that the applicant provided in the application for 401 Certification. The letter was returned to WVDEP on August 19, 2013. It is the applicant's responsibility to provide WVDEP with a correct mailing address and to notify WVDEP of any changes to the name of the company. The return address on your letter of appeal is American Electric Power, 40 Franklin Road SW, Roanoke, Virginia 24022-2121. On August 20, 2013, you were notified by email that a correct address was needed. On August 23, 2013, a representative of APC, per telephone, advised that correspondence should be mailed to Appalachian Power, P.O. Box 2021, Roanoke, Virginia 24022-2121. At that time, the Certification letter was mailed to you again.

EFFECTIVE DATE OF CERTIFICATON

Comment No. 2.

The Certification notes that the effective date is fifteen days after receipt of notification by WVDEP. As explained above, since Appalachian has not received appropriate notification of the Certification for the Winfield¹ hydropower project, we believe that a certain date that the Certification is considered effective cannot be determined.

Even if a certain date of effectiveness could be established, we believe that it is more appropriate that the date the Certification should be considered effective is the date of issuance of the license for the London/Marmet project by the FERC. This is normal for projects licensed by the FERC and would result in conditions of the new license and the Certification running concurrently. Proclaiming that the Certification is effective prior to

¹ WVDEP assumes London/Marmet was intended here

issuance of the new license would result in Appalachian attempting to meet the requirements of the newly issued Certification as well as continuing to operate the project in accordance with the conditions of the existing license. That could be problematic.

Appalachian firmly believes that the effective date of the Certification for the London/Marmet hydropower project should be concurrent with the effective date of the license to be issued by the FERC for the project.

Response No. 2

This 401 Certification was issued for the new license, and was intended to practically become effective, if and when FERC issues the new license. The existing license expires January 31, 2014. Paragraph two of page one, of the Certification letter states that the Certification is required for the license. In accordance with, 47CSR5A Section 4.1.b.3, if the new license would not be issued, there would be no need for the certification and it would be rendered moot and unnecessary.

Section 401 of the Clean Water Act requires that any applicant for a federal license or permit to conduct any activity that will or may discharge into waters of the United States (as defined in the Clean Water Act) must present the federal authority with a certification from the appropriate state agency. Therefore, the Certification is issued in advance because the FERC license cannot be issued without a State 401 Certification.

In recognition of your comment, future 401 Water Quality Certifications will include language specifying the Certification will become effective when the FERC license is issued, but for administrative appeal purposes, you would have 15 days from receipt to appeal.

SPECIAL CONDITIONS – WATER QUALITY MONITORING

Comment No. 3.

Under Special Condition No. 1 addressing water quality monitoring, WVDEP is requiring that Appalachian monitor water entering the intakes and downstream of the project after mixing. Appalachian believes that the requirement is without substantiation and should be deleted from the Certification for the Winfield² project.

As stated in Notice of Availability of Environmental Assessment issued December 4, 2012, FERC staff concluded:

"Run-of-release operation would also ensure that downstream water quality standards (i.e., temperature, pH, and dissolved oxygen) are not affected by the projects operations."

² WVDEP assumes London/Marmet was intended here

As part of the Application for New License for the subject projects, Appalachian had water quality studies completed that included: (1) reviews of existing water quality data; (2) characterization of DO and temperature within and downstream of the impoundment; (3) collection of additional data during low flow/high temperature conditions; and (4) identification of project operation impacts on water quality. The WVDEP participated in the development of the studies and reviewed the results as the studies progressed. The WVDEP had multiple opportunities to recommend long-term water quality monitoring, but remained silent as the record shows.

The Environmental Assessment (EA) issued by the FERC under the December 4, 2012 Notice of Availability concluded on Page 31:

"Appalachian's water quality study concluded that the projects' operations have little effect on DO or temperature in the system. The current allowable project-related fluctuations are a fraction of those that occur during run-off events. Observed increases in temperatures from upstream to downstream through the study area appear to be caused by waste water and tributary discharges rather than the projects' operations. Occasional increases in temperature immediately above one or more of the Corps' dams were most likely due to the time of day samples were collected or from the Corps impoundments rather than due to project-related effects.

Maintaining run-of-release operation at the projects with minimal fluctuations in the Corps' impoundments would minimize the residence time of the water in this portion of the system and increase the dilution of waste discharges which would continue to benefit aquatic habitat for fisheries and mussel communities. Therefore, continued operation of the projects would not affect water quality in the Kanawha River."

The West Virginia Department of Natural Resources (WVDNR) reviewed the Final License Application for the London/Marmet project filed by Appalachian on January 31, 2012 with the FERC. In its response dated August 7, 2012, the WVDNR did not address any water quality concerns. In fact, the Certification submitted by WVDEP on July 30, 2013 is the first time that the issue has been raised and recommendation for monitoring made by any agency.

Based upon the information provided above as well as the results of the related water quality studies, we firmly believe that Special Condition No. 1 of the Certification (WQC 120017) for the London/Marmet project is inappropriate and without foundation and should be stricken from the requirements.

Response No. 3.

After taking in to further consideration, the water quality studies conducted at the London/Marmet Hydroelectric Project, WVDEP has concluded that at this time the provisions of Special Condition No. 1 are not necessary. In a modified certification, monitoring will not be required.

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ADMINISTRATIVE MODIFICATIONS

Comment No. 4

On page 1 of the Certification for the London/Marmet project, it is stated that the London development is located in Fayette County, West Virginia. The development is actually located in Kanawha County, West Virginia. Therefore, an administrative modification is requested.

Response No. 4

Specific to your comment, we will remove the reference to Fayette County in the modified London/Marmet Certification.

Comment No. 5

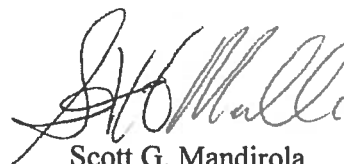
The Certification for the London/Marmet project incorrectly references the Winfield facility in Special Condition No. 2. Appalachian requests that an administrative modification be made to correct the reference.

Response No. 5

As the Recreation Assessment and Angler Use Study was performed in 2010 for both the Marmet and Winfield sites, we included reference to the Winfield facility in Special Condition No. 2. Results indicated that restrooms and trash receptacles were the most suggested improvements at both the Marmet and Winfield angling sites. The London Angling site was not evaluated in the study due to lack of access and angling facility closure. Specific to your comment, we will remove the reference to Winfield in the modified London/Marmet Certification.

As stated previously, if the responses are satisfactory, we will move forward with a modified Certification. If they are not, we will move forward with appeal proceedings. Please notify Wilma Reip at Wilma.reip@wv.gov or (304) 926-0499 X1599 of your decision by January 6, 2014 so that we know which way to proceed.

Sincerely,



Scott G. Mandirola
Director

SGM/wir

cc: WVDNR-Wildlife Resources Section, Elkins - Roger Anderson
Secretary FERC