

137 FERC ¶ 62,131  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Carolinas, LLC

Project No. 2331-043

ORDER AMENDING LICENSE ARTICLE 402

(Issued November 15, 2011)

1. On October 12, 2011, Duke Energy Carolinas, LLC (licensee) filed a request with the Federal Energy Regulatory Commission (Commission) to amend article 402 of its license<sup>1</sup> for the Ninety-Nine Islands Project FERC No. 2331. The project is located on the Broad River in Cherokee County, South Carolina.

ARTICLE 402

2. License article 402 requires, in part, that the license provide various minimum flows to the Broad River based on time of year and project inflow. Specifically, article 402 states that the licensee is required to release a minimum flow of: 966 cubic feet per second (cfs) from January through April; 725 cfs in May, June, and December; and 483 cfs from July through November, as measured below the project, or inflow, whichever is less, for the protection of fish resources below the project. Article 402 also states that during the December through June period, when inflow is less than the required minimum flows, a continuous flow of 483 cfs shall be released as a drought contingency flow. If inflow is less than 483 cfs during any period, the licensee shall shut down all units when the pond elevation drops to the seasonal maximum drawdown limit required by article 401 (one foot below full pool during March, April, and May, and two feet below full pool June through February), and shall operate one unit at its minimum hydraulic output for that portion of every hour which is necessary to discharge the approximate accumulated inflow. Alternatively, during low flow periods, the licensee may elect to open the trash gate or, otherwise spill water to release inflow.

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<sup>1</sup> See 75 FERC ¶ 61,307. Order Issuing New License (issued June 17, 1996).

## LICENSEE'S PROPOSED AMENDMENT

3. The licensee states that the text of article 402 differs slightly from that outlined in a July 25, 1994 settlement agreement<sup>2</sup> and includes conflicting requirements. The licensee states the text "or natural inflow" was inadvertently added to the monthly minimum flow release requirements of the project license, and was not included as part of the original settlement agreement. The licensee also states that the additional language in the license article contradicts the monthly minimum flow requirements of the settlement agreement and the two exemptions to it. In particular, the licensee explained, under the current article 402 flow requirements, if project inflows during December through June were to drop below the monthly discharge requirement, the licensee would be required to release project inflow, which differs from the contingency requirement of 483 cfs set forth in the settlement agreement. The text addition found in the current article 402 also requires that the licensee release project inflow under these circumstances, instead of shutting down all units, and then operating one unit at its minimum output for that portion of every hour which is necessary to discharge the approximate accumulated inflow, as originally set forth in the settlement agreement.

4. Therefore, the licensee seeks to modify the language of article 402 to delete the statement requiring the release of natural inflow during times when inflow is below each respective monthly discharge requirement. The licensee also proposes to add a few minor clerical corrections to the text of the article for clarity. The licensee proposes that the corrected article 402 state the following [note: *italics* added for insertions and strikethrough for deletions]:

Article 402. Within 60 days from the date the Commission approves the gaging plan required in Article 403, *except when inflow is less than the required minimum flow for a specific month*, the licensee shall release from the Ninety-Nine Islands Project into the Broad River a *continuous* minimum flow of 966 cubic feet per second (cfs) (January through April), 725 cfs (May, June, and December), and 483 cfs (July through November) as measured below the project, ~~or inflow, whichever is less,~~ for the protection of fish resources below the project in the Broad River. During the December through June period, when inflow is less than the above required minimum flows, a continuous flow of 483 cfs

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<sup>2</sup> The U.S. Fish and Wildlife Service (FWS), the South Carolina Department of Natural Resources and the licensee entered into a settlement agreement on July 25, 1994, regarding minimum flows releases at the project. The FWS filed a copy of the agreement with the Commission on August 11, 1994 and the licensee included a copy as an attachment to a filing it made on September 16, 1994.

shall be released as a drought contingency flow. If inflow is less than 483 cfs during any period, the licensee shall shut down all units when the pond elevation drops to the seasonal maximum drawdown limit required by Article 401 and shall operate one unit at its minimum hydraulic output for that portion of every hour which is necessary to discharge the approximate accumulated inflow. Alternatively, during low flow periods, the licensee may elect to open the trash gate or, otherwise spill water to release inflow. These minimum flow requirements may be temporarily modified if required by operational emergencies beyond the control of the licensee, and for short periods upon agreement between the licensee, the South Carolina Department of Natural Resources, and the U.S. Fish and Wildlife Service. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

## RESOURCE AGENCY CONSULTATION

5. The licensee petitioned the South Carolina Department of Natural Resources (SCDNR) and the U.S. Fish and Wildlife Service (FWS) for concurrence on the proposed revisions to license article 402. By letters dated October 6, 2011, the SCDNR and FWS concurred with the licensee's proposal.

## DISCUSSION AND CONCLUSION

6. The licensee is proposing revisions to license article 402 to clarify discrepancies between the language found in article 402 and the provisions stated in the settlement agreement that describe the project's minimum flow releases. The settlement agreement identifies specific minimum flows to be released from the project based on inflow to the reservoir. At the time of licensing, it would appear that additional language was added to the settlement agreement language that, without explanation, modified the specifications of the settlement agreement. The licensee in its October 12, 2011 filing is requesting that the Commission amend article 402 to reflect the specific requirements of the settlement agreement as reached with the FWS and SCDNR.

7. The added language in license article 402, "or inflow, whichever is less" does not appear consistent with the recommendations made at the time of relicensing by the FWS and SCDNR under section 10(j) of the Federal Power Act,<sup>3</sup> Moreover, it is not contained in the settlement agreement that was filed with the Commission prior to relicensing. The proposed revisions are supported by the resource agencies and the language modification will not change the manner in which the project is operated. Accordingly, the licensee's proposed amendment of article 402 should be approved.

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<sup>3</sup> See 16 U.S.C. §803(j)(1).

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The Director orders:

(A) Article 402 of the project license for Duke Energy Carolina, LLC's (licensee) Ninety-Nine Islands Project (FERC No. 2331) is hereby amended, as follows:

Article 402. Within 60 days from the date the Federal Energy Regulatory Commission (Commission) approves the gaging plan required in Article 403, except when inflow is less than the required minimum flow for a specific month, the licensee shall release from the Ninety-Nine Islands Project into the Broad River a continuous minimum flow of 966 cubic feet per second (cfs) (January through April), 725 cfs (May, June, and December), and 483 cfs (July through November) as measured below the project for the protection of fish resources below the project in the Broad River. During the December through June period, when inflow is less than the above required minimum flows, a continuous flow of 483 cfs shall be released as a drought contingency flow. If inflow is less than 483 cfs during any period, the licensee shall shut down all units when the pond elevation drops to the seasonal maximum drawdown limit required by Article 401 and shall operate one unit at its minimum hydraulic output for that portion of every hour which is necessary to discharge the approximate accumulated inflow. Alternatively, during low flow periods, the licensee may elect to open the trash gate or, otherwise spill water to release inflow. These minimum flow requirements may be temporarily modified if required by operational emergencies beyond the control of the licensee, and for short periods upon agreement between the licensee, the South Carolina Department of Natural Resources, and the U.S. Fish and Wildlife Service. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

(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 (2011). 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.

Thomas J. LoVullo  
Chief, Aquatic Resources Branch  
Division of Hydropower Administration  
and Compliance

Document Content(s)

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