

141 FERC ¶ 62,023
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Allegheny Energy Supply Company

Project No. 2459-012

ORDER APPROVING RECREATION PLAN UPDATE
PURSUANT TO ARTICLE 417

(Issued October 9, 2012)

1. On June 1, 2012, Allegheny Energy Supply Company (AESC or licensee) filed a recreation plan update (plan update or RPU) pursuant to article 417 of the license for the Lake Lynn Hydroelectric Project (FERC No. 2459).¹ The RPU proposes some minor changes to the project recreation plan. The project is located on the Cheat River, in Monongalia County, West Virginia, and Fayette County, Pennsylvania. There are no federal lands within the project.

BACKGROUND

2. Article 417, as amended, requires AESC to file a plan update with the Commission every three years following issuance of the license.² As part of the updating process, the licensee is to monitor recreation use to determine whether the project's existing recreation facilities are meeting current needs. Monitoring activities, at a minimum, are to include the collection of annual recreational use data. The plan updates must be prepared in consultation with the U.S. Department of the Interior, West Virginia Division of Natural Resources, Pennsylvania Fish and Boat Commission, Monongalia County, local communities, law enforcement, residents, local and regional interest groups, and other agencies having land management or planning/zoning authority in the area. As a result of the last triennial RPU filed on April 1, 2009, the recreation plan was amended by order issued May 18, 2010.³

3. Each triennial plan update is to include: (1) annual recreational use figures; (2) a discussion of the adequacy of the licensee's recreation facilities at the project to meet recreation demand; (3) a description of the methodology used to collect all recreational

¹ December 27, 1994 Order Issuing New License (69 FERC ¶ 62,253).

² Article 417 was amended by ordering paragraph (G) of Order Modifying and Approving Recreation and Land Management Plan, issued April 11, 1997 (79 FERC ¶ 62,017).

³ Order Amending Recreation Plan (131 FERC ¶ 62,128).

use data; (4) if there is a need for additional facilities, a recreation plan proposed by the licensee to accommodate recreation needs in the project area; (5) documentation of agency consultation and agency comments on the update after it has been prepared and provided to the agencies; (6) consideration of the following project-specific issues: (a) safety and security; (b) navigational problems such as shallow water or heavy boat traffic; (c) swimming use, considering such issues as demand for swimming, commonly used sites, any problem areas, and the advantages and disadvantages of establishing permanent swimming sites;⁴ (d) user demand patterns for boat launching and other activities at Sunset Beach, Area 26, and other alternate boat launch site locations;⁵ and (e) the viability of continuing the primitive camping and privileged permit lease lot programs, including modifications to address demand, user conflicts, or other issues;⁶ and (7) specific descriptions of how the agencies' comments are accommodated by the plan update.

RECREATION PLAN UPDATE

4. Since the 2009 plan update, AESC conducted a one year trial assessing the year-round use of the southern section of the Cheat Lake Trail during daylight hours. Following this trial period, AESC decided to allow the southern section of the Cheat Lake Trail to remain open for year-round use during daylight hours. However, due to safety concerns, the trail may be closed temporarily if hazardous site conditions exist. Pursuant to the recommendations in the 2010 order amending the recreation plan, AESC now informs hikers of trail closures by posting signs on the Morgan's Run Bridge and posting any trail closures on the park website.

5. As approved in the 2010 order amending the recreation plan, and in response to public requests received during the 2009 RPU development, AESC now permits swimming at Cheat Lake Park under a "swim at your own risk" policy. Additionally, AESC constructed a designated "swim at your own risk" beach area in April 2010. In response to recent comments from the public meeting, AESC will increase the number of picnic tables in the designated beach area. In 2010, AESC constructed a nature trail nearly one mile in length through the Cheat Haven Nature Viewing Area and provided a

⁴ Pursuant to the Commission's February 12, 2007 letter responding to the licensee's 2006 recreation plan update, future plan updates are not required to evaluate swimming.

⁵ If parking or capacity problems at Sunset Beach are not easily resolved, the licensee is to evaluate development of alternate boat launch sites.

⁶ Order Amending Recreation Plan, issued March 31, 2008 (122 FERC ¶ 62,267), removed the requirement to provide primitive camping at Area 18 due to potential conflicts with nearby residents, anglers, and trail users, but requires the licensee to continue evaluating the viability of primitive camping in this area in future plan updates.

bike rack and picnic table at the end of the trail for use by park visitors. AESC will build a three-sided shelter at the end of the trail in 2012 as approved in the 2010 order.

6. The plan update includes recreation usage data and an evaluation of the adequacy of existing recreation areas. From 2009 to 2011, AESC conducted recreation counts at Cheat Lake Park, the tailrace recreation area, and the Sunset Beach Marina to estimate utilization of the recreation facilities provided at the Lake Lynn Hydroelectric Project. The licensee's security personnel conducted head counts around peak use times to obtain public use data.

7. Results of the recreation surveys from the past three years indicated annual use of the recreation facilities ranged from 29,242 to 35,600 recreation days. Overall recreation use increased compared to the last triennial recreation plan update for 2006-2008. The areas with the highest recreation usage include the hiking/biking trail, the boat launch at Sunset Beach Marina, fishing from boats in Cheat Lake, and the playground. Non-peak weekend recreation use of the tailrace fishing area decreased from 409 in 2006-2008 to 273 in 2009-2011. Most of the recreation facilities continue to be used at less than 50 percent capacity on off-peak weekend days. While use of the playground area exceeded capacity in some cases, this finding resulted from counting both persons utilizing the playground and bystanders adjacent to the playground area. Reporting methods in future updates should be modified to differentiate the number of people using the playground equipment and those using support facilities (i.e. benches or picnic tables provided for those supervising the children). Based on review of recreation facility usage numbers generated in 2009, 2010, and 2011 AESC believes that the existing facilities, as operated, are adequate to meet the current demonstrated demand for recreational use at the project and comply with the Recreation and Land Management Plan filed on June 26, 1995 and approved on April 11, 1997.⁷

8. In the 2009 RPU, AESC indicated that five lake observation platforms along the hiking/biking trail were removed due to safety concerns arising from vandalism and improper use. Several of the stairways leading to the lake observation platforms were rendered unsafe due to shoreline shifting and were also removed. Since the removal of these amenities, AESC has not received any complaints from the public. To compensate for the removal of these platforms, AESC initially agreed to install one new stationary access dock at the southern end of the hiking/biking trail, however, because of hillside stabilization issues at the location, the dock was not installed. Instead an existing dock, approximately half a mile north of this location, was assigned to the Cheat Lake Environment and Recreation Association (CLEAR), at no annual cost, to be used for public access to the trail. CLEAR is a local association of citizens interested in the

⁷ Order Modifying and Approving Recreation and Land Management Plan (79 FERC ¶ 62,017)

environmental and recreational management of Cheat Lake. CLEAR will be responsible for maintenance of the dock structure which will be open for public use.

9. There are 214 privilege permits at various locations around the Cheat Lake shoreline that allow holders to install and maintain boat docks. Docks and any other improvements must be approved by AESC prior to construction. There are also 37 privilege permits or licenses issued for leased plots, sometimes referred to as campsites. These leased campsites pre-date the recreation plan and have been grandfathered into the current plan (27 campsites are located along the southern section of the Cheat Lake Trail). Because of the lack of adequate sanitation facilities and aesthetic issues resulting from privilege permit campsites, AESC has determined that it will no longer issue new permits for campsites. AESC will continue to provide privilege permits for docks to property owners along the lake shoreline.

CONSULTATION

10. On March 29, 2012, AESC provided a draft copy of the 2012 plan update to the required agencies listed in article 417, and asked for comments within 45 days. None of these agencies provided comments on the plan update.

11. After distribution of the 2012 draft plan update to the agencies, a public meeting was held on April 17, 2012, to discuss public comments and concerns. The licensee received comments from the public which are included in the RPU. The licensee also received written comments from CLEAR on the draft plan update. AESC's responses to these comments are included in the plan update. The following is a summary of these comments and AESC's responses.

12. Some of these comments, such as reservoir levels, speed limit signs on access road to the project, counting cars on the access road, and advertising of the park, are outside the scope of the plan update. Other comments included a request to have additional picnic tables placed on the designated swimming beach. AESC responded that additional picnic tables will be placed at the designated swimming beach area by the end of May 2012. CLEAR requested an observation deck at the end of the trail where visitors can walk out to observe the lake. AESC responded that the reservoir level observation deck structures have had issues in the past with respect to access from the southern section of the Cheat Lake Trail and shoreline stability. The licensee will work with CLEAR to determine if a mutually agreeable area for an observation deck structure can be identified along the southern section of the Cheat Lake Trail. If such an area is identified the licensee will again work with CLEAR to determine the type of observation deck structure that would be built.

13. A commenter requested to have the southern section of the Cheat Lake Trail open after dusk, to allow people to use it later into the day during the winter months. AESC

responded that after review with park security personnel they did not support this request. The facility is designed and was approved for day use only. The facility is in a remote area and there is no lighting on the southern section of the Cheat Lake Trail and there are no personnel on duty in the evening to monitor the area. In response to public comments requesting that AESC provide a connector trail from the existing Cheat Lake Trail to the Sheepskin Trail, the AESC maintains that if and when the Sheepskin Trail is constructed near the project, AESC, with approval from the Commission, will work with trail developers to provide access from Lake Lynn/Bunker Hill Road to the Cheat Lake Trail.

DISCUSSION AND CONCLUSION

14. The licensee provided the required agencies the opportunity to comment on the plan update and these same agencies were provided a copy of the final plan update that was filed with the Commission on June 1, 2012. The licensee has worked to obtain community input on the RPU by holding a public meeting and asking for comments. The licensee has worked with CLEAR to develop and manage recreational facilities at the project.

15. In response to comments received at the April 17, 2012 public meeting, AESC has agreed to update all trail signs, maps, and the website to reflect changes to recreation facilities at Cheat Lake Park. Additionally, AESC has agreed to request permission in 2012 from the West Virginia Department of Transportation (WVDOT) for installation of a sign advertising the park at the intersection of Morgan's Run Road and West Virginia Route 857. The licensee's plans to update all trail signs, maps, and the website with current recreational facilities information, to request new signage from the WVDOT, and to not issue any new privilege permits for campsites are reasonable.

16. In regard to the request that the southern section of the Cheat Lake Trail be open after dusk, the trail is not designed for night time use. Opening the trail to night time use would be both a safety and a security concern. Once the sheepskin Trail is developed, the plan to link it to the Cheat Lake Trail would be in the public interest.

17. As requested during a public comment period, the licensee provided additional picnic tables at the designated swimming beach. Since a set number of tables were not included in the current recreation plan, this change would not require amending the plan. The licensee is working with CLEAR to determine if a mutually agreeable area for an observation deck structure can be identified along the southern section of the Cheat Lake Trail and the type of observation deck structure that might be built. This matter will be reported on in the next triennial update.

18. The recreational facilities currently provided are adequate for non-peak period demand for the project area. AESC will continue to monitor usage to determine if any

changes are warranted; however, at this time, no changes to the type, access and operation of facilities is proposed in this update and none will be required.

19. AESC and CLEAR have worked together to bring recreational improvements to the project area. The update documents the changes that have been made and it is anticipated that existing facilities will be able to accommodate recreation demand for the foreseeable future. The June 1, 2012 filing of the plan update meets the requirements of article 417, is in the public interest, and should be approved.

The Director orders:

(A) The recreation plan update for the Lake Lynn Hydroelectric Project (FERC No. 2459), filed on June 1, 2012, pursuant to article 417 of the license, 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 FPA, 16 U.S.C. § 8251 (2006), and the Commission's regulations at 18 C.F.R. § 385.713 (2012). 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.

Robert J. Fletcher
Chief, Land Resources Branch
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Administration and Compliance

Document Content(s)

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