

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426
November 22, 2024

OFFICE OF ENERGY PROJECTS

Project No. 2628-066 – Alabama
R.L. Harris Hydroelectric Project
Alabama Power Company

VIA Electronic Mail

Todd Fobian
Environmental Affairs Supervisor
Alabama Department of Conservation and Natural Resources
Wildlife and Freshwater Fisheries Division
Todd.Fobian@dcnr.alabama.gov

Reference: Section 10(j) Preliminary Determination of Inconsistency

Dear Mr. Fobian:

Thank you for your March 20, 2023, letter regarding the proposed licensing of the R.L. Harris Hydroelectric Project. In your letter, you recommended several measures to protect fish and wildlife resources under section 10(j) of the Federal Power Act (FPA). Of the 18 recommendations, 12 were within the scope of section 10(j). In our draft environmental impact statement (EIS) issued on November 21, 2024,¹ we considered your recommendations, but did not recommend adopting the following recommendations, that we found to be within the scope of section 10(j):

1. Within 5 years of license issuance release the following seasonal continuous minimum flows: 390 cfs (7/1 – 11/30); 510 cfs (5/1 – 6/30 and 12/1 – 12/30); and 760 cfs (1/1 – 4/30).

¹ The draft EIS for the project is available at the following link:
https://elibrary.ferc.gov/eLibrary/filelist?accession_Number=20241121-3056.

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2. Between 2/1 and 6/1 each year (b) stabilize flows in the Tallapoosa River downstream from Harris Dam for a 14-day period to improve river spawning and hatching success.²
3. Take the 2nd turbine unit off-line at least 2 hours after the 1st turbine unit is taken off-line.³
4. Develop and implement, within 9 months of license issuance, an Aquatic Resources Monitoring Plan. The plan would be implemented at determined intervals throughout the license period; include standardized sampling protocols for all aquatic species (macroinvertebrates, mollusks, crayfish, and fish); and include pre- and post-operational changes monitoring and provisions for altering project operations based on the monitoring.⁴

The draft EIS provides our explanation of why we believe your recommendations are outside the scope of section 10(j) or are inconsistent with the FPA or other applicable law, including supporting analysis and conclusions, and an explanation of how the measures recommended in the environmental document would adequately and equitably protect, mitigate damages to, and enhance fish and wildlife affected by development, operation, and management of the project.

Comments may be filed in response to our preliminary determination of inconsistency, including any modified recommendations, within the time frame allotted for comments on the draft EIS.⁵ Please respond to the following questions:

- Are our alternative recommendations on these issues, as described in the draft EIS, acceptable to you?
- If not, are there any other measures that you would agree to that would accomplish the objective of your original recommendations?

² We adopt, in part, recommendation (a) to stabilize Harris Lake levels (hold constant or slight increase) for a 14-day period to improve lake spawning and hatching success.

³ We adopt, in part, recommendation (a) to bring a second turbine unit at Harris Dam online no less than 30 minutes after bringing the first turbine online.

⁴ The staff alternative includes a similar monitoring plan that includes specific elements of, but not all of, Alabama DCNR's recommended plan.

⁵ The comment period for the draft EIS ends on January 20, 2025, which is a holiday. Therefore, the due date is the following business day.

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- Is there any additional evidence to support your recommendations or to demonstrate why they are consistent with the FPA?

In your filing, you may also request a meeting, telephone or video conference, or other additional procedure to attempt to resolve any preliminary determination of inconsistency. We suggest that any such procedure encompass the items in the attached agenda. Our regulations require that any meeting or conference occur within 90 days of the date of issuance of the environmental document.

Please remember that, under sections 313(b) and 10(a) of the FPA, we must provide the Commission with substantial evidence that any recommended measures would adequately protect or enhance fish or wildlife resources and that any project adopted would reflect equal consideration of the beneficial public uses of the waterway as set forth in the FPA.

The Commission strongly encourages electronic filing. Please file the requested information using the Commission's eFiling system at <https://ferconline.ferc.gov/eFiling.aspx>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. In lieu of electronic filing, please send a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, D.C. 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-2628-066.

If you have any questions, please contact Sarah Salazar at (202) 502-6863, or by email at sarah.salazar@ferc.gov.

Sincerely,

STEPHEN Digitally signed by
STEPHEN BOWLER
Date: 2024.11.22
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BOWLER

Stephen Bowler

South Branch

Division of Hydropower Licensing

Enclosure: Proposed Agenda for 10(j) Meeting

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10(j) MEETING AGENDA

A. Introduction

1. Introduction of Participants
2. Meeting Procedures and Objectives
3. Chronology of 10(j) Process

B. Discussion of 10(j) Issues

1. Within 5 years of license issuance release the following seasonal continuous minimum flows: 390 cfs (7/1 – 11/30); 510 cfs (5/1 – 6/30 and 12/1 – 12/30); and 760 cfs (1/1 – 4/30).
2. Between 2/1 and 6/1 each year (b) stabilize flows in the Tallapoosa River downstream from Harris Dam for a 14-day period to improve river spawning and hatching success.
3. Take the 2nd turbine unit off-line at least 2 hours after the 1st turbine unit is taken off-line.
4. Develop and implement, within 9 months of license issuance, an Aquatic Resources Monitoring Plan. The plan would be implemented at determined intervals throughout the license period, include standardized sampling protocols for all aquatic species (macroinvertebrates, mollusks, crayfish, and fish), and include pre- and post-operational changes monitoring and provisions for altering project operations based on the monitoring

C. Summary of Meeting

1. Issue Resolution
2. Follow-up Actions