



AN ALLETE COMPANY

30 West Superior Street  
Duluth, MN 55802-2093  
[www.mnpower.com](http://www.mnpower.com)



July 27, 2021

**VIA E-FILING**

Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, MN 55101-2147

Re: In the Matter of a the Petition by Minnesota Power for Approval of Land Sales  
**Docket No. E015/PA-20-675**

Dear Mr. Seuffert:

On July 26, 2021 Minnesota Power received from the Federal Energy Regulatory Commission ("FERC") an Order Amending Project Boundary in FERC Project No. 2360-272. See attached order. This FERC order will facilitate the sale of residential leased lots around hydro reservoirs that is pending in the above-referenced Docket. FERC conducted agency and tribal consultation and noted:

"No tribes expressed any concerns with the proposal. Additionally, in a June 21, 2021 email, the Fond du Lac Reservation requested additional information on the proposal from the licensee, which the licensee subsequently provided, and the Fond du Lac informed the licensee on July 22, 2021 that it did not have any concerns with the licensee's project boundary amendment proposal."

If you have any questions regarding the FERC order, please contact me at (218) 723-3963 or [dmoeller@allete.com](mailto:dmoeller@allete.com).

Yours truly,

David R. Moeller  
Senior Attorney and  
Director of Regulatory Compliance

DRM:th  
Attach.

I AM  
**ZERO INJURY.**

*Together we choose to work safely for our families, each other, and the public.  
We commit to be injury-free through continuous learning and improvement.*

176 FERC ¶ 62,050  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Allete, Inc.

Project No. 2360-272

ORDER AMENDING PROJECT BOUNDARY

(Issued July 26, 2021)

1. On December 22, 2020, and supplemented on April 27, 2021, Allete, Inc. (licensee) filed an application requesting Commission approval to amend the project boundary to more accurately reflect the lands needed for project purposes at the St. Louis River Hydroelectric Project No. 2360.<sup>1</sup> The proposed amended project boundary involves three of the project's developments: Island Lake Reservoir, Fish Lake Reservoir, and Whiteface Reservoir in St. Louis County, Minnesota.

**I. Background**

2. The project consists of four hydroelectric developments, each with a reservoir, and five headwater reservoirs. The licensee uses the headwater reservoirs, which are located on various tributaries to the St. Louis River, to control the flow of the St. Louis River Basin, in coordination with the operation of the downstream hydroelectric facilities. The project boundary for the reservoirs was established in 1991 during project relicensing and at that time was set to encompass lands where key project structures (e.g., dams, inlets, etc.), recreation areas, environmental areas, and cultural resource areas were located. Additionally, the project boundary includes certain lands around the reservoirs that are used solely for private residential use by individual leaseholders on licensee-owned lands.

**II. Licensee's Proposal**

3. The licensee is proposing to amend its project boundary at three of the project's reservoirs (i.e., Island Lake Reservoir, Fish Lake Reservoir, and Whiteface Reservoir) to more accurately reflect the lands needed for project purposes. The licensee would remove approximately 191 acres<sup>2</sup> of land around the reservoirs that are currently leased

---

<sup>1</sup> Order Issuing License (72 FERC ¶ 61,028), issued July 13, 1995.

<sup>2</sup> The acreages reported in the licensee's application, as well as reflected in this order, are approximations. Section 7 of the licensee's application includes maps of each reservoir that depict the current and proposed project boundaries.

to individuals for private residential use, while preserving an upland buffer area around the reservoirs in the areas to be removed from the project boundary. Of these 191 acres, 125 acres are located around Island Lake Reservoir, 18 acres are located around Fish Lake Reservoir, and 48 acres are located around Whiteface Reservoir. After removing the leased lots from the project boundary, the licensee would offer lots for sale to existing leaseholders.

4. Additionally, the licensee would add 469 acres of land around the three reservoirs, 468 acres of which are undeveloped lands that would be managed as Natural Character Areas for scenic and environmental protection uses. This includes several islands that were not previously included in the project boundary as well as a reflection of actual acreages of some islands that were previously in the project boundary based on revised cartographic calculations. Additionally, other lands would be added to the project boundary to clarify recreation site boundaries inside the project boundary. Of these 469 acres to be added to the project boundary, 261 acres are located around Island Lake Reservoir, 57 acres are located around Fish Lake Reservoir, and 151 acres are located around Whiteface Reservoir.

5. The licensee's filing includes a description of the affected environment (i.e., characteristics of the lands to be added and removed from the project boundary) and an analysis of effects of the project boundary adjustment on project operations, shoreline vegetation, sensitive species, wetlands, recreation, and historic properties. The licensee's analysis finds that its proposal would not affect these or any other project resources. Specifically, the licensee states that its proposal would not affect its license obligations or requirements, would result in a project boundary that more accurately reflects the lands needed for project purposes, and would not remove from the project boundary any lands with unique (i.e., environmental, recreational, or cultural resources) features. Rather, the only lands to be removed from the project boundary are lands used solely for private residential use but the licensee would preserve an upland buffer (i.e., three feet of shoreline land measured horizontally from the reservoir edges) within the project boundary in these areas to ensure adequate shoreline protection along the reservoirs.

### **III. Agency Consultation and Public Notice**

6. Prior to filing its application, the licensee met with shoreline leaseholders and discussed its proposal with St. Louis County staff as well as state and federal legislators. On October 13, 2020, the licensee provided a draft project boundary amendment application to a number of interested stakeholders for a 45-day comment period. Among these consulted stakeholders were the U.S. Army Corps of Engineers, National Park Service, U.S. Fish and Wildlife Service (FWS), Fond du Lac Reservation, Boise Forte Band of Minnesota Chippewa, Minnesota Department of Natural Resources (MDNR), Minnesota Pollution Control Agency (MPCA), Minnesota State Historic Preservation Office (SHPO), and St. Louis County. Only the MPCA and SHPO responded to the

licensee's request for comment. The MPCA requested further information regarding the potential for further residential development of project lands in the future, which the licensee adequately responded to. The SHPO responded with its general agreement with the licensee's conclusions in its draft project boundary amendment application but stating its expectation that further consultation with its office would be needed. In its April 27, 2021 supplemental filing, the licensee provided an updated documentation of consultation with the SHPO, including an April 20, 2021 letter from the SHPO concurring that the proposed project boundary amendment would have no effect on historic properties. The licensee's application also includes letters from two Minnesota senators, one Minnesota representative, and one member of the U.S. House of Representatives commenting on the licensee's proposal.

7. The Commission issued a public notice of the application on April 29, 2021, which established a deadline of May 31, 2021, for filing comments, motions to intervene, and protests. The MDNR was the only entity to respond to the public notice, stating that it concurs with the licensee's proposal to amend the project boundary while not changing project operations and while retaining an upland buffer around the reservoirs, but that it recommends that the licensee provides specific information to leaseholders and landowners to make them aware of all license requirements. Additionally, Commission staff made separate efforts to consult with tribal interests in the area of the project.<sup>3</sup>

#### **IV. Discussion**

8. Section 4.41(h)(2) of the Commission's regulations provide that a project boundary "must enclose only those lands necessary for operation and maintenance of the project and for other project purposes, such as recreation, shoreline control, or protection of environmental resources.... Existing residential, commercial, or other structures may be included within the boundary only to the extent that underlying lands are needed for project purposes." Thus, in evaluating the licensee's proposal, we must determine whether the lands proposed to be added to and removed from the project boundary serve a project purpose. The project license and approved plans include requirements for the licensee to implement a land management plan, protect cultural resources, and operate and maintain project recreation facilities. The below analysis reviews project purposes,

---

<sup>3</sup> A Communication Memorandum filed on June 17, 2021, summarizes the tribal consultation efforts conducted by Commission staff between May 4, 2021, and June 9, 2021. No tribes expressed any concerns with the proposal. Additionally, in a June 21, 2021 email, the Fond du Lac Reservation requested additional information on the proposal from the licensee, which the licensee subsequently provided, and the Fond du Lac informed the licensee on July 22, 2021 that it did not have any concerns with the licensee's project boundary amendment proposal.

approved plans, and other environmental considerations to determine the potential impacts of amending the project boundary and removing some lands from Commission jurisdiction.

**A. Lands to be Removed**

Land Use

9. Article 427 of the license required the licensee file a land management plan for the all licensee-owned land within the project boundary. The licensee filed its plan on April 2, 2007, and it was subsequently approved.<sup>4</sup> Among other things, the land management plan discusses the licensee's Recreation Lease Lot Program (Lease Program) as well as Natural Character Areas (discussed further, below). The approved plan describes the Lease Program as including nearly 1,000 cabins and homes that occupy project lands owned by the licensee across the project's developments and that such leased lots are subject to strict lease agreements. The lands proposed to be excluded from the project boundary are used exclusively for private residential use under the Lease Program and do not serve any operational, maintenance, or other project purpose. If the project boundary amendment is approved by the Commission, the licensee would then offer most of these lots for sale to current leaseholders. The licensee proposes to retain ownership of an upland buffer around the reservoirs that would remain in the project boundary to ensure adequate shoreline protection. Leaseholders would be eligible to obtain a riparian easement (included in Appendix 3 of the licensee's application) that, among other things, would allow the leaseholders to install boat docks, subject to existing MDNR and other authorizations.

10. In its June 1, 2021 comments, the MDNR expressed its concurrence with the licensee's proposal to amend the project boundary while not changing project operations and retaining an upland buffer around the reservoirs. The MDNR expressed the importance of providing specific information to leaseholders about project operations and other license requirements. We agree with the MDNR regarding the importance of such matters and appreciate the licensee's outreach and communications efforts, noted above, with leaseholders and county government. Further, we note the provisions of the riparian easement in Appendix 3 that address this issue, especially Condition 7 which specifies that the easement is subject to the authority of the Commission and highlights the importance of the project license in governing what may activities may occur on project lands.

11. Additionally, the licensee's proposal includes a provision for it to retain a three-foot shoreline buffer, measured horizontally from the reservoir edges, allowing it to

---

<sup>4</sup> Order Approving Land Management Plan (119 FERC ¶ 62,246), issued June 20, 2007.

supervise and control shoreline uses in the future. This, along with robust local environmental protections (e.g., the St. Louis County Shoreline Management Guide, which was included in the application as a reference), would ensure that adequate environmental protection and shoreline controls are in place to accomplish the licensee's goals under the land management plan once the leased lands are removed from the project boundary.

### Historic Properties

12. Article 424 of the license requires the licensee to implement the Programmatic Agreement (PA) among the Commission, Advisory Council on Historic Preservation, and the SHPO, executed on July 3, 1995. The PA required the licensee to file a Cultural Resources Management Plan (CRMP), which the licensee filed on May 14, 2001, and was subsequently approved.<sup>5</sup> Among other things, the approved CRMP contains procedures to evaluate potential effects to cultural or historic sites prior to any earth disturbing activities on residential leased lots (e.g., a certified archaeologist reviews any proposed construction activities to either confirm it will have no effect on any historic property or mitigate any such effect).

13. Prior to filing its project boundary amendment application, the licensee conducted archaeological surveys and consulted with the SHPO to ensure that none of the lands proposed to be removed from the project boundary contain historic properties eligible for listing on the National Register of Historic Places. As noted above, in a letter dated April 20, 2021, the SHPO stated its concurrence that the proposed project boundary amendment would have no effect on historic properties. Given this information and that there would be no land disturbance with the addition and removal of lands within the project boundary, we conclude that there would be no effect on historic properties.

### Recreation

14. Article 425 of the license required the licensee to revise and refile its existing recreation plan, with several specific recreation enhancements. The licensee filed its plan on October 20, 2006, and it was approved by the Commission in 2008 and has been updated several times since.<sup>6</sup> The approved recreation plan identifies a number of project

---

<sup>5</sup> Order Approving Cultural Resources Management Plan (95 FERC ¶ 62,275), issued June 27, 2001.

<sup>6</sup> Order Amending Recreation Plan Under Article 425, and Amending Articles 405 and 426 (122 FERC ¶ 62,210), issued March 3, 2008. The recreation plan has been amended since then by the Order Amending Recreation Plan Under Article 425 (133 FERC ¶ 62,162), issued November 23, 2010; the Order Amending Recreation Plan Under Article 425 (140 FERC ¶ 62,220), issued September 24, 2012; and the Order Approving

recreation sites owned and operated by the licensee, including boat launches, campsites, trails, fishing areas, canoe portages, whitewater boating facilities, etc. The licensee's proposed project boundary amendment does not include any changes in operation or maintenance of any project recreation sites. Thus, we conclude that the proposed removal of lands from the project boundary would not affect project recreation facilities.

### Threatened and Endangered Species

15. Using information from the FWS' Information and Planning Consultation (IPaC) website tool, the licensee initiated informal consultation with the FWS on May 12, 2020. The licensee identified the federally threatened Canada lynx, federally threatened gray wolf, federally threatened northern long-eared bat, and federally endangered piping plover as species that have the potential to occur in the project area. Section 4.5 of the licensee's application contains a robust analysis of the likelihood of occurrence of these species in the project area and determined that the proposed removal of project lands would cause no effect to federally listed species for several reasons. The licensee provided its draft application, including its analysis of effects, to the FWS on October 13, 2020, and the FWS did not respond. We have reviewed the licensee's application and similarly conclude that, because the proposal would not cause any ground disturbance or affect any wildlife habitat, the proposal would have no effect on federally listed species.

### **B. Lands to be Added**

#### Land Use

16. As noted above, the approved land management plan includes provisions for managing Natural Character Areas in the project boundary. The plan defines Natural Character Areas as designated, undeveloped project lands that provide wildlife habitat and protect scenic, cultural, and watershed resources while also allowing free recreational use. As part of the proposal, the licensee would add 469 acres of project lands to the project boundary, 193 acres of which are wetlands. All of these 469 acres are undeveloped lands currently managed for environmental benefits and would be managed as Natural Character Areas under the approved land management plan. Given the historic and proposed future use of these 469 acres of land, we agree with the licensee that such lands are appropriate to be included in the project boundary and will serve project purposes, including environmental protection and recreation. In accordance with Standard Article 5 of its license, the licensee states it owns the lands proposed to be added to the project boundary. Because the licensee has reviewed its project boundary and determined that these parcels are needed for project purposes, and the licensee owns

these lands, we concur that these lands should be incorporated into the project boundary and subject to all applicable license requirements.

### Recreation

17. The 2017 Order noted that several recreation facilities depicted in the licensee's recreation as-built drawings filed over time are not entirely located inside the project boundary, that such instances are minor in nature (e.g., small portions of extensive trail networks, overflow parking, or other parking facilities, etc.), and that the licensee should incorporate all recreation facilities required by the project license into the project boundary during the next major Exhibit G (project boundary) revision. As suggested by the 2017 Order, the proposed amendment includes these project boundary adjustments to incorporate all elements of the project recreation sites into the project boundary.

### **V. Conclusion**

18. The Commission's regulations state that existing residential structures may be included within the boundary only to the extent that underlying lands are needed for project purposes. The Commission has made it a practice to exclude residential dwellings from within project boundaries when appropriate. Regarding the licensee's proposal to remove 191 acres of land from the project boundary, we agree that this acreage is not needed for any project purpose under the license. The subject lands are primarily used for private residential use and are not used for project operations, project recreation, or any other project purposes. Further, no unique or sensitive natural resources (e.g., sensitive species or historic properties) that would require protection are located on the subject lands and no land disturbance would occur due to the proposed project boundary change. Regarding the licensee's proposal to add 469 acres of project lands to the project boundary, we find that lands are appropriate to be included in the project boundary and will serve project purposes, including environmental protection and recreation. The net increase in project lands will benefit project purposes and none of the consulted agencies objected to the proposal. Thus, for the above reasons, the licensee's request should be approved.

19. In order to reflect changes to the approved land management plan (e.g., the amount and location of Natural Character Areas, the nature and amount of leased lots in the Lease Program, etc.) based on our approval of the proposed project boundary amendment, ordering paragraph (B) requires the licensee to file, within 6 months of this order, a revised land management plan for Commission approval.

20. In order to reflect the changes in the project boundary due to the removal of 191 acres of project lands and the addition of 469 acres of project lands, ordering paragraph (C) requires the licensee to file, within 3 months of this order, revised applicable Exhibit G drawings for Commission approval. The revised Exhibit G drawings must comply with sections 4.39 and 4.41 of the Commission's regulations.



The Director orders:

(A) Allete, Inc.'s application, filed on December 22, 2020, and supplemented on April 27, 2021, requesting Commission approval to amend the project boundary for the St. Louis River Hydroelectric Project No. 2360, is approved.

(B) Within 6 months of this order, the licensee must file for Commission approval a revised land management plan that, at a minimum, updates Section II (Recreation Lease Lot Program) and Section III (Natural Character Areas) of the plan to reflect the lands added and removed as approved in ordering paragraph (A) of this order. The revised plan should be prepared in consultation with the U.S. Department of the Interior, Minnesota Department of Natural Resources, Fond du Lac Band of Lake Superior Chippewa, St. Louis and Carlton counties, and agencies having land management or planning/zoning authority in the area.

(C) Within 3 months of this order, the licensee must file for Commission approval revised Exhibit G drawings depicting the project boundary revisions necessary to reflect the lands added and removed as approved in ordering paragraph (A) of this order. The Exhibit G drawing(s) must comply with sections 4.39 and 4.41(h) of the Commission's regulations.

(D) 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 (2018), and the Commission's regulations at 18 C.F.R. § 385.713 (2020). 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  
Land Resources Branch  
Division of Hydropower Administration  
and Compliance

STATE OF MINNESOTA    )  
                                  ) ss  
COUNTY OF ST. LOUIS    )

AFFIDAVIT OF SERVICE VIA  
ELECTRONIC FILING

-----

Tiana Heger of the City of Duluth, County of St. Louis, State of Minnesota, says that on the 27<sup>th</sup> day of July, 2021, she served Minnesota Power's Letter in **Docket No. E015/PA-20-675** on the Minnesota Public Utilities Commission and the Energy Resources Division of the Minnesota Department of Commerce via electronic filing. The persons on E-Docket's Official Service List for this Docket were served as requested.



\_\_\_\_\_  
Tiana Heger