APPENDIX A
NEW YORK CANAL CORPORATION WORK PERMIT APPLICATION
INSTRUCTIONS TO APPLICANTS FOR COMMERCIAL CANAL WORK PERMITS

An applicant requesting a Canal Work Permit must complete those forms and/or follow the instructions, which have been checked below or otherwise provide the following information:

☐ Canal Work Permit Application.

☐ Proof of Liability Insurance Coverage:

☐ Certificate of Insurance for Occupancy Permits (FORM TA-95133). The Canal Corporation requires liability insurance coverage in the amount of $2,000,000 on all commercial permits. Please submit proof of this amount of insurance coverage with your permit application form. Please have your insurance company complete the enclosed form and return it to or along with your permit application.

☐ New York State Thruway Authority/ Canal Corporation Statement of Self-Insurance Form to be filled out if Self-Insured.

The New York State Canal Corporation reserves the right to specify the amount of insurance coverage required on all permits that it issues.

☐ Send to the property adjacent to New York State Canal lands to be permitted.

☐ Maps, plans and specifications pertaining to the proposed work. Please provide ___ sets of plans and specifications.

☐ Permit Fee:

A non-refundable application fee of $15.00 must be submitted by check or money order.

An additional charge of $250 per day shall be imposed for any approved work on the Canal system requiring an onsite inspection by Corporation staff of one-half day or more.

Checks or money orders must be made out to the New York State Canal Corporation and submitted with your application form to:

NEW YORK STATE CANAL CORPORATION
ATTENTION: CREDITS & COLLECTIONS
P.O. BOX 22058
ALBANY, NEW YORK 12201-2058

☐ Appendix C - State Environmental Quality Review - Short Environmental Assessment Form Part 1 - Project Information. Please fill out and return with your Canal Work Permit application.

NO WORK PURSUANT TO THIS APPLICATION SHALL COMMENCE UNTIL A CANAL WORK PERMIT IS ISSUED BY THE NEW YORK STATE CANAL CORPORATION.
CERTIFICATE OF INSURANCE
FOR OCCUPANCY PERMITS

NAME OF INSURED:

AGENCY NAME & ADDRESS:

ADDITIONAL INSURED:
People of the State of New York
New York State Canal Corporation
New York State Thruway Authority

PERMIT NO:

DATE OF CERTIFICATE:

MINIMUM LIMITS OF LIABILITY REQUIRED

<table>
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<tr>
<th>TYPE OF INSURANCE</th>
<th>PERSONAL INJURY LIABILITY</th>
<th>PROPERTY DAMAGE LIABILITY</th>
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<tr>
<td></td>
<td>Each Occurrence</td>
<td>Aggregate</td>
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<tr>
<td>Comprehensive General Liability</td>
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<tr>
<td>OR</td>
<td>Combined Single Limit</td>
<td>$2,000,000</td>
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The subscribing insurance company, licensed to do business in the State of New York, certifies that insurance of the kinds and types and for the limits of liability herein stated, has been procured by and furnished on behalf of the insured and is in full force and effect for the period listed below. The insurance company further agrees to furnish the New York State Canal Corporation a complete copy of the policy upon request.

The policy described above contains the following endorsement(s):

1. An endorsement naming, the “People of the State of New York, the New York State Canal Corporation and the New York State Thruway Authority” as additional insureds and covering the liability of the Permittee, the People of the State of New York, the Canal Corporation, the Authority and their officers, employees and agents, with respect to all acts or omissions under the permit whether or not authorized thereby, including any carry over or use of Canal Corporation lands, as well as the maintenance of any facility by the permittee or anyone acting in its behalf, and including omissions and supervisory acts of the Canal Corporation, the Authority, their officers, employees or agents.

2. An endorsement with the following describing of policy coverage:

   "The naming of the People of the State of New York, the New York State Canal Corporation, and the New York State Thruway Authority as additional insureds does not exclude the liability of the permittee, and does not exclude the liability of any one acting by, through or for the permittee, for damages to the property or facilities of the New York State Canal Corporation or the New York State Thruway Authority."

3. An endorsement providing for 30 days advance notice before cancellation or material change of coverage provided will be mailed to the New York State Canal Corporation, P.O. Box 22058, Albany, New York 12201-2205.

* See Reverse
NAME OF INSURANCE COMPANY

* BT

CORPORATE TITLE

* Signature must be that of an officer or an authorized individual employed by the insurance company. An agent’s signature is not acceptable. This signature also warrants that the certificate fairly describes the coverage of the policy and that there are no material or substantial limitations to either the limits of coverage or the object to be covered.

STATE OF

CITY OR COUNTY OF

On this _______________ day of ___________________ 19 ___, before me personally came

_____________________________, to me known, who being duly sworn, did deposit and say that he/she resides in ____________________________, that he/she is the ________________ of the

_____________________________, the corporation described in and which executed the foregoing instrument; that he/she knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the authority of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

(Notary Public)
PART I—PROJECT INFORMATION (To be completed by Applicant or Project sponsor)

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<th>1. PROJECT SPONSOR</th>
<th>2. PROJECT NAME</th>
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<th>3. PROJECT LOCATION</th>
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<tr>
<td>Municipality</td>
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<td>County</td>
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<th>4. PROJECT LOCATION (Site address and road intersections, development locations, etc. of project must)</th>
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<th>5. PROJECT ACTION</th>
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<th>6. ARTICULATE ACTION:</th>
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<th>7. AMOUNT OF LAND AFFECTED</th>
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<th>8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS?</th>
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<td>Yes</td>
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<th>9. WHAT IS CURRENT LAND USE IN VICINITY OF PROJECT?</th>
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<tr>
<td>Residential</td>
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<td>Commercial</td>
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<td>Agricultural</td>
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<td>Agricultural Park/Recreation Area/Other</td>
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<th>10. DOES ACTION INVOLVE A PERMIT APPROVAL OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)?</th>
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<td>Yes</td>
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<th>11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL?</th>
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<td>Yes</td>
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<th>12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION?</th>
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<td>Yes</td>
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I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE

Applicant/Project Name ____________________________ Date ________________

Signature ____________________________

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.

OVER

1
FIGURE 1
MINETTO CANOE PORTAGE FACILITIES
PERMIT
Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To: ERIE BOULEVARD HYDROPOWER LP
225 GREENFIELD PARKWAY
SUITE 201
LIVERPOOL, NY 13088
(315) 413-2787

Facility: OSWEGO RIVER HYDRO PROJECT
MINETTO, VARICK AND FULTON DEVELOPMENTS
OSWEGO COUNTY, NY

Facility Location: In MULTIPLE TOWNS in OSWEGO COUNTY
Facility Principal Reference Point: NYTM-E: NYTM-N:
Project Location: Minetto, Varick and Fulton Developments

Authorized Activity: Operation and maintenance of the Oswego River Hydro Project at the Fulton, Minetto and Varick Developments (FERC No. 2474) in accordance with the applicable provisions of the Oswego River offer of Settlement submitted to to the Federal Energy Regulatory Commission on February 19, 2004 and the attached conditions.

Permit Authorizations

Water Quality Certification - Under Section 401 - Clean Water Act
Permit ID 7-3599-00021/00001
New Permit Effective Date: 10/4/2004 Expiration Date: No Exp. Date

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: WILLIAM R ADRIANCE, Chief Permit Administrator
Address: NYSDEC HEADQUARTERS
625 BROADWAY
ALBANY, NY 12233

Authorized Signature: ___________________________ Date 10/04/07

Permit Components

NATURAL RESOURCE PERMIT CONDITIONS
GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following Permits: WATER QUALITY CERTIFICATION

1. Conformance With Plans All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or his agent as part of the permit application. Such approved plans were prepared by (See Natural Resource Permit Condition 11).

2. State May Order Removal or Alteration of Work If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

3. State Not Liable for Damage The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

4. Permittee Responsible For Other Approvals Granting of this permit does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval from the U.S. Army Corps of Engineers, U.S. Coast Guard, New York State Office of General Services or local government which may be required.

5. Precautions Against Contamination of Waters All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

6. No Interference With Navigation There shall be no unreasonable interference with navigation by the work herein authorized.

7. State May Require Site Restoration If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

8. Water Quality Certification The NYS Department of Environmental Conservation hereby certifies that the subject project will not contravene effluent limitations or other limitations or standards under
Sections 301, 302, 303, 306 and 307 of the Clean Water Act of 1977 (PL 95-217) provided that all of the conditions listed herein are met.

9. Notification Requirements for Emergencies The following procedures shall apply to all activities conducted at the project in response to an emergency:

Prior to commencement of emergency activities, Permittee must notify NYS DEC and receive approval in advance of the work commencing. If circumstances require that emergency activities be taken immediately such that prior notice to the NYSDEC is not possible, then the NYSDEC must be notified by the Certificate Holder within 24 hours of commencement of the emergency activities. In either case, notification must be by certified mail or other written form of communication, including fax and electronic mail. This notification must be followed within 24 hours by submission of the following information:

a. a description of the action;
b. location map and plan of the proposed action;
c. reasons why the situation is an emergency.

All notifications, requests for emergency authorizations and information submitted to support such requests shall be sent to the contacts listed in Special Condition 10.

10. Department contacts Except as otherwise specified, all contacts with the Department concerning this certificate shall be addressed to the following:

NYSDEC - Region 7 Headquarters
Regional Permit Administrator
Division of Environmental Permits
615 Erie Boulevard
West Syracuse, NY 13204-2400


OPERATIONS

12. Base Flows The certificate holder shall maintain instream flows in accordance with the settlement, in particular, Section 3.2.

13. Impoundment Fluctuations The reservoirs at the Fulton, Minetto and Varick Developments as well as the reservoir at Oswego Falls (Project reservoirs) shall be operated in accordance with the Settlement, in particular, Section 3.1.2. Alternative impoundment operating plans must be reviewed and approved by NYSDEC prior to being implemented. Emergencies shall be dealt with in accordance with special condition 9 of this certificate.

14. Bypass Flows The certificate holder shall maintain bypass flows in accordance with the Settlement, in particular, Section 3.3.

15. Flow Monitoring The certificate holder shall develop a stream flow and water level monitoring plan consistent with the Settlement, in particular, Section 3.6.
16. **Fish Protection/Passage**  Fish protection passage and movement provisions shall be provided in accordance with the Settlement, in particular, Section 3.5.

17. **Public Access**  Public access and recreational opportunities shall be provided in conformance with the Settlement, in particular, Section 3.7.

**CONSTRUCTION REQUIREMENTS**

18. **Maintenance Dredging**  The certificate holder shall curtail generation and install stoplogs or otherwise shut off flow through the turbines prior to commencing any maintenance dredging activities in the intake/forebay area.

19. **Sediment Analysis and Disposal**  The certificate holder must sample any sediments to be disturbed or removed from the project waters and test them for contaminants. Sampling and testing shall be accomplished according to a protocol submitted to and approved by the Department beforehand. Approval from the Department shall include all disposal locations for any sediments to be removed from the project waters.

20. **Erosion & Sediment Control**  Prior to commencing activities which could adversely affect water quality, the certificate holder must receive Department approval of an Erosion and Sediment Control Plan. This plan must be submitted at least 90 days before the intended date for commencing work. All work shall conform to the goals below.

   At minimum, the certificate holder must accomplish the following objectives:
   a. Isolate in-stream work from the flow of water and prevent discolored (turbid) discharges and sediments from entering the waters of the river due to excavation, dewatering and construction activities;
   b. Exclude the use of heavy construction equipment below the mean high water line until the work area is protected by an approved structure and dewatered, except where an emergency response requires immediate action;
   c. Stabilize any disturbed banks by grading to an appropriate slope, followed by armoring or vegetating as appropriate, to prevent erosion and sedimentation into the waterbody;
   d. Minimize soil disturbance, provide appropriate grading and temporary and permanent re-vegetation of stockpiles and other disturbed areas to minimize erosion/ sedimentation potential;
   e. Protect all waters from contamination by deleterious materials such as wet concrete, gasoline, solvents, epoxy resins or other materials used in the construction, maintenance and operation of the project;
   f. Install effective erosion control measures on the downslope of all disturbed areas and maintain them in a fully functional condition. These erosion control measures are to be installed before commencing any other activities involving soil disturbance;
   g. Ensure complete removal of all dredged and excavated material, debris or excess materials from construction, from the bed and banks of all water areas to an approved upland disposal site;
   h. Ensure that all temporary fill and other materials placed in the waters of the river are completely removed, immediately upon completion of construction, unless otherwise directed by the Department.

21. **Placement of cofferdams, construction of temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the river**  The design and
installation of cofferdams, temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the river must be approved by the Department prior to installation.

22. **Construction Drawdowns** Whenever construction and/or maintenance activities require that the water level of project reservoirs be lowered, it shall not be drawn down more than 1 foot per hour. During refill, the water level of the impoundment shall not be allowed to rise more than 1 foot per hour.

23. **Maintenance of River Flow** During all periods of construction, flows immediately downstream of work sites shall be maintained in accordance with condition 12 of this permit.

24. **Turbidity Monitoring During Construction** During construction related activities, the certificate holder will monitor the waters of the river at a point immediately upstream of project activities and at a second point no more than 100 feet downstream from any discharge point or other potential source of turbidity. The certificate holder specifically agrees that if, at any time, turbidity measurements from the downstream locations exceed the measurements from the locations upstream of the work areas, all related construction on the project will cease until the source of the turbidity is discovered and the situation is corrected.

25. **Notification of DEC of construction activities** The NYS DEC contact referenced in Special Condition 10 must be notified in writing at least two weeks prior to commencing any work performed under the authority of this certificate.

**GENERAL CONDITIONS - Apply to ALL Authorized Permits:**

1. **Facility Inspection by The Department** The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. **Relationship of this Permit to Other Department Orders and Determinations** Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. **Applications For Permit Renewals, Modifications or Transfers** The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
4. Submission of Renewal Application  The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Water Quality Certification.

5. Permit Modifications, Suspensions and Revocations by the Department  The Department reserves the right to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

   a. materially false or inaccurate statements in the permit application or supporting papers;
   b. failure by the permittee to comply with any terms or conditions of the permit;
   c. exceeding the scope of the project as described in the permit application;
   d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
   e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer  Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification
The permittee expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit
The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits
The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

**Item D: No Right to Trespass or Interfere with Riparian Rights**

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.
INTRODUCTION

1. On December 9, 1991, Niagara Mohawk Power Corporation (Niagara) filed an application for a new major license pursuant to sections 4(e) and 15 of the Federal Power Act (FPA)\(^1\) to continue operation and maintenance of the 18.05-megawatt (MW) Oswego River Project No. 2474. The project is located on the Oswego River, a navigable waterway of the United States, in Oswego County, New York. The project does not occupy any federal lands. As discussed below, I am issuing a new license for the project.

2. This order also approves an Offer of Settlement filed by the licensee on behalf of itself and a number of signatories with respect to the relicensing of the Oswego River Project. As licensed, the Oswego River Project would continue to be a dependable source of electric energy, help conserve nonrenewable energy resources, reduce atmospheric pollution, and protect and enhance environmental, recreational and cultural resources at the project.

BACKGROUND

3. The original license for the project was issued on May 27, 1968.\(^2\) The license expired on December 31, 1993, and since then, the project has operated under an annual license pending the disposition of the application for new license.\(^3\) In 1999, the Commission approved the transfer of the license from Niagara to Erie Boulevard Hydropower, L.P. (Erie).\(^4\)

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\(^1\) 16 U.S.C §§ 797(e) and 808, respectively.

\(^2\) 39 FPC 872 (1968), as amended, 50 FPC 1027 (1973).

\(^3\) See FPA section 15(a)(1), 16 U.S.C. § 808(a)(1).

\(^4\) 88 FERC ¶ 62,082 (1999).
4. Public notice of the license application was issued on February 9, 1993, setting April 12, 1993, as the deadline for filing motions to intervene. Timely motions to intervene were filed by John Leto Associates, U.S. Department of the Interior (Interior), New York State Department of Environmental Conservation (NYDEC), Adirondack Mountain Club, Trout Unlimited, City of Oswego, New York, and collectively, American Whitewater Affiliation, American Rivers, New York Rivers United, Natural Heritage Institute, Trout Unlimited, National Audubon Society, and Onondaga Audubon Society. Late motions to intervene were filed by the Town of Minetto, New York, and the City of Fulton, New York.

5. The timely motions to intervene were automatically granted under 18 C.F.R. § 385.214(c)(1)(2004). The late motions to intervene for the Town of Minetto, New York, and the City of Fulton, New York were granted by notices issued December 2, 1993, and March 5, 1996, respectively.

6. The Commission issued a public notice on January 30, 1996, indicating the project was ready for environmental analysis and soliciting comments, recommendations, terms and conditions, and prescriptions. In response, comments were filed by Interior, New York Rivers United, Adirondack Mountain Club, and NYDEC.

7. On November 24, 1999, Commission staff made available for public comment a draft environmental assessment (DEA) that analyzed the impacts of relicensing the project. In letters filed January 10, January 21, January 31, and February 22, 2000, respectively, NYDEC, U.S. Fish and Wildlife Service (FWS), Erie and Adirondack Mountain Club, and the City of Oswego, New York commented on the DEA. NYDEC filed additional comments on January 31, 2000.

8. On December 6, 2001, Commission staff issued a final environmental assessment (FEA). All motions to intervene and comments have been fully considered in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

9. The project consists of three developments extending from the Fulton development at river mile (RM) 11.6 to the Arick development at RM 1.4.

Trout Unlimited, the New York Council of Trout Unlimited, and Interior also filed motions in opposition to the project. Subsequently, they became signatories to the Settlement.
10. The Fulton development consists of a 509-foot-long, 15-foot-high concrete dam, a 33-acre reservoir, a 1,850-foot-long bypassed reach, and a powerhouse containing two generating units with a combined installed capacity of 1.25 MW.

11. The Minetto development consists of a 500-foot-long, 22.5-foot-high concrete dam, a 350-acre reservoir, and a powerhouse containing five generating units with a combined installed capacity of 8.0 MW.

12. The arick development consists of a 730-foot-long, 13-foot-high masonry gravity dam, a 32-acre reservoir, a 1,940-foot-long bypassed reach, and a powerhouse containing four generating units with a combined installed capacity of 8.8 MW.

13. Erie operates the Oswego River Project’s developments as store-and-release facilities. The developments use locks and dams owned by the New York State Canal Corporation (Canal Corporation) a subsidiary of the New York State Thruway Authority (NYSTA). NYSTA regulates the river to control flooding and to provide adequate water levels during the navigation season (generally May 1 to December 1) to operate the lock and dam system. The project is described in greater detail in ordering paragraph (B)(2).

14. Erie proposes to change project operations to a modified run-of-river (ROR) mode which would include limiting reservoir fluctuations and releasing minimum downstream flows according to the Settlement as discussed below. Erie does not propose any new construction or additional capacity at the project.

OFFER OF SETTLEMENT

15. On February 19, 2004, Erie filed an Offer of Settlement (Settlement) and an explanatory statement that includes provisions to protect and enhance fish and wildlife, and recreation resources.

16. This section discusses the provisions of the Settlement Offer, including the environmental effects of the Settlement Offer’s conditions (contained in section 3 of the Offer of Settlement). With the exception of the low-level flow diversion structures along a portion of the western side of the bypassed reach of the arick powerhouse, the provisions of the Settlement were assessed in staff’s 2001 FEA.

In addition to Erie, the Settlement was signed by the following parties: Adirondack Mountain Club, I aak Walton League, New York Rivers United, NYDEC, New York State Conservation Council, Trout Unlimited, Interior, FWS, and the National Park Service.
17. Section 1 sets forth the purpose and effect of the Settlement.

18. Section 2 describes the general agreement of the parties, including a 40-year license term and the withdrawal of measures proposed in the license application.

19. Section 2.2 of the Settlement states that the parties' intent is that the provisions of section 3 of the Settlement be included as numbered license articles. Because the water quality certificate (WQC) for this project incorporates the settlement by reference, this order does not include numbered articles for every Settlement provision. These articles do not purport to, and indeed cannot, alter or override the WQC, but rather are meant to be complementary.

20. Section 3 includes the measures which Erie intends to undertake with respect to operating and maintaining the Oswego River Project once a new license is issued. Specifically, section 3 includes the following provisions:

21. Section 3.1 states that Erie will operate the Oswego River Project in a modified ROR mode within 18 months of license issuance and acceptance. Section 3.1.2 limits year-round impoundment fluctuations at the Fulton and Minetto developments to 0.5-feet and to 1.0-feet at the arick development. In the FEA, staff recommended that Erie operate the project in a strict ROR mode, primarily citing the benefits to littoral aquatic habitat in the reservoir compared to the previous license which allowed peaking operation. However, the minor impoundment fluctuations allowed by the modified ROR mode will provide nearly the same level of protection to littoral aquatic habitat as strict ROR while allowing Erie some operational flexibility to buffer some of the effects of upstream projects. Allowing the arick impoundment to fluctuate up to 1.0 foot, will also provide greater safety for anglers fishing below the development by not exposing them to the rapid fluctuations which can occur in project inflows. The impoundment fluctuation limits will benefit the aquatic community while allowing Erie the economic benefits of

See Avista Corporation. 93 FERC ¶ 61,116 at p. 61,327 (2000).
some minor peaking capacity. These economic benefits should help recoup the cost of other environmental measures included in the settlement. Articles 403 and 404 require this operating mode.

22. Section 3.2 states that Erie will release base flows during the walleye spawning season and during the remainder of the year below the powerhouse when generating or over the spillway during non-generation periods at the Fulton development. The base flows, required by Article 404, are similar to the flows recommended in the FEA, and will protect aquatic habitat in the tailrace below the Fulton powerhouse, in the Fulton bypassed reach, and the portion of the Oswego River downstream of the Fulton development.

23. Section 3.3 states that Erie will seasonally release a range of bypassed reach flows at the Fulton and arick developments. These flows are similar to the flows recommended in the FEA. These bypassed reach flows, required in Article 405, will increase the amount of aquatic habitat in the Fulton and arick bypassed reaches.

24. Section 3.4 provides for Erie to install low-level flow diversion structures along a portion of the western side of the bypassed reach near the tailrace of the arick powerhouse. The diversion structures are designed to allow Erie to divert approximately 70 percent of the upper bypassed reach flow to the lower bypassed reach during certain periods. The structures, required by Article 406, will enhance fish and wildlife habitat and improve aesthetics in the bypassed reach. To minimize the effects of installing the structures, Article 401 requires Erie to file an Erosion and Sediment Control Plan at least 90 days prior to commencing activities which would adversely affect water quality, e., installing diversion structures or constructing recreation facilities.

25. Section 3.5 states that Erie will release year-round fish friendly flows through an existing sluice gate adjacent to the Fulton powerhouse, through an existing unused bay within the Minetto powerhouse, and through a location adjacent to the newly installed fish friendly is a flow that is released in a manner that is not expected to injure fish through contact with hard or rough surfaces.
trashrack overlays at the arick development. An upstream eel conveyance system is to be installed seasonally from June 15 through September 15, and 1.0-inch, clear-spaced trashrack overlays or 1.5-inch diameter perforated plates are to be placed seasonally from May 1 through November 30 at the Fulton, Minetto, and arick developments for fish protection. The fish protection measures and fish friendly flow releases (Article 407) will provide riverine and migratory species with routes to freely move downstream and provide seasonal protection from turbine entrainment without the expense of constructing new downstream passage facilities which the FEA found unnecessary.

26. Section 3.6 provides for Erie to develop a stream flow and water-level monitoring plan, including gages and equipment to document compliance with project impoundment level fluctuations and minimum flow release requirements. This plan will allow documentation of compliance with the required mode of project operation, and is required by Article 401 and the WEC.

27. Section 3.7 provides for Erie to continue allowing public access to all lands within the project boundary including the impoundments, bypassed reaches, and adjacent lands associated with each development. A recreation plan for the project, required by Article 409, is discussed separately below.

28. As noted, the signatories to the Settlement request that the Commission incorporate the provisions in section 3.0 of the Settlement, without material modifications, as license conditions in a new license for the project. I conclude that with minor modifications pursuant to this order, the Settlement Offer is fair and reasonable and is in the public interest. As so modified, I accept the Settlement Offer, as incorporated in Articles 403 through 409. I explain the exceptions to the Settlement next.

Exceptions to the Offer of Settlement

Oswego Falls Project

29. Section 3.0 of the Settlement also includes provisions for operating and maintaining the upstream Oswego Falls Project. This requirement is beyond the scope of this license and must be properly considered in the context of the Project 5984 license.1

The Oswego Falls Project No. 5984, located upstream of the Oswego River Project, was relicensed to Niagara in March 1996, see 74 FERC ¶ 62,138 (1996).
30. Section 3.7.1 describes a canoe portage facility around Minetto dam. Erie would construct the facility and appropriate portage trail signage on the west side of the Oswego River downstream of the Minetto development on land owned by the NYSTA. The signatories to the Settlement request that this item not be included as a condition of the license. At the arick and Fulton developments, adequate passage for canoeists is available through the existing locks.

31. The issue of providing a canoe portage facility at the Minetto development was assessed in the FEA which concluded that there is a need for canoe portage. The lock is located in the center of the river and can be difficult to enter for canoeists because of strong currents on both sides of the upstream entrance to the lock. However, upon further review, we conclude that the conditions affecting canoe passage at the Minetto development are a result of the lock's location which is not a situation created by the Oswego Project. Therefore, as requested by the parties, this license does not include the canoe portage put-in facility at the Minetto development.

WATER QUALITY CERTIFICATION

32. Under Section 401(a)(1) of the Clean Water Act (CWA), the Commission may not issue a license for a hydroelectric project unless the state water quality certifying agency either has issued a water quality certification (WQC) for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA provides that the state certification shall become a condition of any federal license or permit that is issued. Only a reviewing court can revise or delete these conditions.

33. On December 4, 1991, Niagara submitted a request for WQC to NYDEC. On November 19, 1992, NYDEC denied without prejudice Niagara's request for WQC. On

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1 Erie filed, on February 18, 2004, an application to amend the Oswego Falls Project license which was approved by the Commission on June 9, 2004, see 107 FERC ¶ 62,221 (2004).


January 3, 1994, NYDEC issued a draft W  C, and on May 6, 1994, Niagara appealed the draft W  C. A subsequent legal proceeding led to settlement talks culminating in the filed Settlement. On October 4, 2004, NYDEC issued a W  C for the Oswego River Project. The conditions of the W  C are set forth in Appendix A of this order, and are incorporated in the license by ordering paragraph D. Condition 11 of the W  C states that the certificate includes and incorporates the Settlement. The W  C includes requirements for minimum flows, limiting impoundment fluctuations, fish passage facilities, flow and water level monitoring, and recreation. For the W  C conditions, Article 401 requires the licensee to file plans for Commission approval.

SECTION 18 FISHWAY PRESCRIPTIONS

34. Section 18 of the FPA\textsuperscript{14} provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as the Secretaries of the U.S. Departments of Commerce or of the Interior may prescribe.

35. In a letter dated March 26, 1996, Interior prescribed downstream fish passage at the three project developments. This prescription was later revised in a February 27, 2001, Interior filing. Subsequent to the Settlement, in a letter filed March 4, 2004, Interior states that the fish passage, protective measures, and the implementation schedule identified in section 3.5 of the Settlement, supersede the measures incorporated in their February 27, 2001, modified prescriptions.

36. Section 2.9 of the Settlement notes that the license for the Oswego River Project should include the standard article reserving Interior’s authority to prescribe fish passage facilities at the project. Consistent with the Commission’s policy, Article 402 of this license reserves the Commission’s authority to require fishways that may be prescribed by Interior for the Oswego River Project.

THREATENED AND ENDANGERED SPECIES

37. Section 7(a) of the Endangered Species Act of 1973 (ESA)\textsuperscript{1} requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat.

\textsuperscript{14} 16 U.S.C. § 811.

\textsuperscript{1} 16 U.S.C. § 1536(a).
38. In the FEA (Section C.4), staff noted the FWS finding that no federally listed or proposed threatened and endangered species are known to occur in the project area. By letter filed June 14, 1999, the FWS stated that no further consultation pursuant to section 7 of the ESA was necessary for this project.¹

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

39. Section 10(j) of the FPA¹ requires the Commission, when issuing a license, to include conditions based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act,¹ to adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the project. If the Commission believes that any such recommendations may be inconsistent with the purpose and requirements of Part I of the FPA, or other applicable law, section 10(j)(2) of the FPA requires the Commission and the agencies to attempt to resolve such inconsistencies, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If the Commission still does not adopt a recommendation, it must explain how the recommendation is inconsistent with Part I of the FPA or other applicable law and how the conditions imposed by the Commission adequately and equitably protect, mitigate damages to, and enhance fish and wildlife resources.

40. In letters filed March 29, 1996, and April 2, 1996, Interior and NYDEC, respectively, submitted recommendations pursuant to section 10(j) of the FPA. Since NYDEC is also a signatory to the Settlement, we consider its earlier section 10(j) recommendations superseded by the provisions of the Settlement.¹ By letter filed March 8, 2004, Interior states that its previously filed 10(j) recommendations are superseded by the Settlement provisions. The recommendations of the fish and wildlife agencies for the Oswego River Project, as now reflected in the Settlement Offer, are included in the license.

¹ Letter from David A. Stilwell, Acting Field Supervisor, FWS, Cortland, New York.


¹ 16 U.S.C. § 661 e e .

¹ Letter form David A. Stillwell, Field Supervisor, FWS, Cortland, NY.
OTHER ISSUES

Administrative Conditions

41. The Commission collects annual charges from licensees for administration of the FPA. Article 201 provides for the collection of such funds.

42. The Commission requires licensees to file sets of approved project drawings on microfilm and in electronic file format. Article 202 requires the filing of these drawings.

43. The Commission requires that for new major licenses, licensees must set up and maintain an amortization reserve account upon license issuance. Article 203 requires the establishment of the account.

44. Some projects directly benefit from headwater improvements that were constructed by other licenses, the United States, or permittees. Article 204 requires the licensee to reimburse such entities for these benefits if they were not previously assessed and reimbursed.

Commission Approval of Construction Plans

45. Erie proposes to construct and maintain low-level flow diversion structures along a portion of the western side of the bypassed reach near the tailrace of the Arick powerhouse. Articles 301 through 304 require the licensee to submit plans of the construction activities for Commission approval prior to the start of construction. Article 305 requires the licensee to file revised Exhibit F and G drawings showing the project as built.

Recreation Plan

46. In the FEA, staff recommended that Erie update their recreation plan filed with the Commission on December 14, 1993. The plan includes a description of the existing recreation facilities and use at the project. In addition, the existing plan includes Erie’s proposal for constructing recreation facilities that have since been withdrawn according to section 2.14.1 of the Settlement. The comprehensive recreation plan should be updated to be consistent with the Settlement and describe existing recreation facilities and management practices. Article 409 requires the revised plan. However, I note that the

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2 Section 2.14.1 of the Settlement are license application proposals that have been withdrawn and superseded by the Settlement including project operation, minimum flow releases, fish passage facilities, and recreation facilities.
Commission has reserved authority to require Erie or any successor to provide additional recreation facilities and access to project lands and waters for recreational purposes, should circumstances warrant.\(^{21}\)

**Historic Properties**

47. On July 19, 1996, the New York State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Commission executed a Programmatic Agreement (PA) for managing historic properties that may be affected by the relicensing of the Oswego River Project.\(^{22}\) Article 410 requires Erie to implement the PA, including the Cultural Resources Management Plan (CRMP) for the project. The PA satisfies the Commission’s responsibilities under Section 106 of the National Historic Preservation Act.\(^{23}\)

**Use and Occupancy of Project Lands and Waters**

48. Requiring a licensee to obtain prior Commission approval for every use or occupancy of the project land would be unduly burdensome. Therefore, Article 411 allows the licensee to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape planting. Such uses must be consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project.

**COMPREHENSIVE PLANS**

49. Section 10(a)(2)(A) of the FPA\(^ {24}\) requires the Commission to consider the extent to which a project is consistent with federal and state comprehensive plans for improving,
developing, or conserving waterways affected by the project.\(^2\) Under Section 10(a)(2)(A), federal and state agencies filed 43 plans that address various resources in New York. Of these, the Commission staff identified and reviewed seven plans relevant to this project.\(^2\) No conflicts were found.

**APPLICANTS PLANS AND CAPABILITIES**

50. In accordance with Sections 10(a)(2)(C) and 15(a) of the FPA,\(^2\) staff has evaluated Erie’s record as a licensee with respect to the following: (A) conservation efforts (B) compliance history and ability to comply with the license (C) safe management, operation, and maintenance of the project (D) ability to provide efficient and reliable electric service (E) need for power (F) transmission services (G) cost effectiveness of plans and (H) actions affecting the public. I accept the staff’s findings in each of the following areas.

**A. Conservation Efforts**

51. Erie has developed an extensive Demand Side Management Program (DSMP). Erie’s goal with respect to DSMP is to encourage efficient use of energy resources. The energy-efficiency programs are basically conservation programs and include measures ranging from water heater wraps to high efficiency lighting and equipment. Erie also has innovative rate options which include time-of-use rates, real-time pricing, and voluntary interruptible and curtailable rate programs.

\(^2\) Comprehensive plans for this purpose are defined at 18 CFR §2.19 (2004).


\(^2\) 16 U.S.C. §§ 803(a)(2)(C) and 808(a).
52. Erie’s conservation and load management programs show that it has made an effort to conserve electricity and reduce peak hour demands. The staff concludes that Erie has made a satisfactory effort to comply with section 10(a)(2)(C) of the FPA.

B. Compliance History and Ability to Comply with the New License

53. Staff has reviewed Erie’s compliance with the terms and conditions of the existing license. Staff finds that Erie’s overall record of making timely filings and compliance with its license is satisfactory. The staff concludes that Erie has or can acquire the resources and expertise necessary to carry out its plans and comply with all articles and terms and conditions of a new license.

C. Safe Management, Operation, and Maintenance of the Project

54. The staff reviewed Erie’s management, operation, and maintenance of the project, including all applicable safety requirements such as warning signs and boat barriers. The project lock and dams are currently owned and operated by the Canal Corporation. Erie has filed Emergency Action Plans for the Oswego River Project designed to provide early warning to persons located upstream and downstream who may be affected by a project emergency. Staff concludes that the project works are safe and that Erie’s plans to manage, operate, and maintain the project safely are adequate for future operations and would pose no threat to public safety if operated according to the regulations governing hydroelectric licenses.

D. Ability to Provide Efficient and Reliable Electric Service

55. The staff reviewed Erie’s plans and its ability to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. Erie has been operating the project in an efficient manner within the constraints of the existing license, and staff concludes that it would continue to provide efficient and reliable electric service in the future.

E. Need for Power

56. The Oswego River Project has historically generated 74,200 MWh of electricity annually. This electricity from a non-polluting renewable source currently helps meet a growing demand. Without the Oswego River Project, Erie would have to either (1) purchase power (2) install additional fossil-fuel generators or (3) purchase other hydroelectric facilities. Staff concludes that there is a need for power generated by the project.
F. Transmission Services

57. Erie proposes no new transmission facilities at the project, and the project as proposed to be licensed would not affect the existing regional transmission grid.

G. Cost-Effectiveness of Plans

58. Erie is not proposing, nor does this order approve, any new generating capacity at the Oswego River Project. Erie is proposing a number of measures for the enhancement of natural resources and recreational opportunities. Staff concludes that Erie’s plans for implementing these measures, as well as its continued operation of the project, will likely be achieved in a cost-effective manner.

H. Actions Affecting the Public

59. The Oswego River Project generates electricity that is used to serve the needs of the public. Erie pays taxes annually to local and state governments, and the project provides employment opportunities and attracts those interested in various forms of available recreation. Staff concludes that implementing the various environmental and recreational enhancement measures approved in the license will benefit the public.

PROJECT ECONOMICS

60. In determining whether a proposed project will be best adapted to a comprehensive plan for developing a waterway for beneficial public purposes, the Commission considers a number of public interest factors, including the economic benefit of the project power.

61. Under the Commission’s approach to evaluating the economics of hydropower projects, as articulated in 72 FERC ¶ 61,027 (1995), the Commission employs an analysis that uses current costs to compare the costs of the project and likely alternative power, with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission’s economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and of reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

62. If licensed in accordance with the Settlement as proposed by Erie, the W C conditions, and other requirements adopted herein, the project would produce an average of about 72,500 MWh of energy annually at an annual cost of about 839,040 or 11.57

\[ \text{72 FERC ¶ 61,027 (1995).} \]
mills kWh. The annual value of the project's power would be about 2,956,790 or 40.78 mills kWh. Thus, the project's power would cost about 2,117,750 or 29.21 mills kWh less than currently available alternative power.

63. In analyzing public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary benefits). These benefits include their value as almost instantaneous load-following response to dampen voltage and frequency instability on the transmission system, system-power-factor-correction through condensing operations, and a source of power available to help in quickly putting fossil-fuel based generating stations back on line following a major utility system or regional blackout.

64. Ancillary services are now mostly priced at rates that recover only the cost of providing the electric service at issue, which do not resemble the prices that would occur in competitive markets. As competitive markets for ancillary services develop, the ability of hydro projects to provide ancillary services to the system will increase the benefits of the project.

COMPREHENSIVE DEVELOPMENT

65. Sections 4(e) and 10(a)(1) of the FPA, respectively, require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

66. Based on my independent review and evaluation of the Oswego River Project, recommendations from staff, the resource agencies, and other stakeholders, and the no-action alternative, as documented in the FEA, I have selected the Oswego River Project, with the WC conditions and the Settlement provisions, as the preferred alternative.

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3 16 U.S.C. §§ 797(e) and 803(a)(1).
67. I selected this alternative because (1) issuance of a new license would serve to maintain a beneficial, dependable, and inexpensive source of electric energy (2) the required environmental measures would protect and enhance fish and wildlife resources, water quality, recreational resources, and historic properties and (3) the 18.05 MW of electric energy generated from renewable resource would continue to offset the use of fossil-fueled, steam-electric generating plants, thereby conserving nonrenewable resources and reducing atmospheric pollution.

LICENSE TERM

68. Section 15(e) of the FPA,\textsuperscript{31} provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years. The Commission’s general policy is to establish 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures 40-year terms for projects with a moderate amount of such activities and 50-year terms for projects with extensive measures.

69. The Settlement (section 2.1) contains a provision that the term of the new license should be 40 years from the effective date of the license. This license authorizes a moderate amount of new environmental mitigation measures relative to the size of the project. Therefore, I will specify a 40-year term from the effective date of the license for the Oswego River Project.

SUMMARY OF FINDINGS

70. The FEA for the Oswego River Project contains background information, analysis of effects, support for related license articles, and the basis for a finding that the project will not result in any major, long-term adverse environmental effects. The project would be safe if operated and maintained in accordance with the requirements of this license.

71. Based on the review and evaluation of the project, as proposed by the applicant including the Settlement provisions and the WCC conditions, I conclude that the continued operation and maintenance of the project in the manner required by the license would protect and enhance fish and wildlife resources, water quality, recreation, aesthetic, and historic resources. The electricity generated from this renewable water power resource would be beneficial because it would continue to offset the use of fossil-fueled generating stations, thereby conserving non-renewable resources and reducing atmospheric pollution. I conclude that the Oswego River Project, with the conditions set

\textsuperscript{31} 16 U.S.C. § 808(e).
forth below, will be best adapted to the comprehensive development of the Oswego River for beneficial public uses.

The Director orders

(A) This license is issued to Erie Boulevard Hydropower, L.P. (licensee) for a period of 40 years, effective the first day of the month in which this order is issued, to operate and maintain the Oswego River Project. This license is subject to the terms and conditions of the FPA, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of

(1) All lands, to the extent of the licensee’s interests in those lands, enclosed by the project boundary shown by Exhibit G filed on December 6, 1991

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<th>Exhibit G Drawings</th>
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<tr>
<td>Sheet No. 1</td>
<td>1001</td>
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<td>Sheet No. 6</td>
<td>1006</td>
<td>Fulton Development Project Boundary and Location Area</td>
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(2) Project works consisting of the following three developments

The Fulton Development consisting of (1) a 509-foot-long, 15-foot-high concrete buttress dam topped with 6-inch-high flashboards, and consisting of (a) a 35-foot-high, 41-foot-long, 14-foot-wide concrete intake structure with three steel gates (b) a 10-foot-long, 40-foot-wide, 11-foot-deep forebay and (c) trashracks with 38-inch steel bars with 2.5-inch openings (2) a 33-acre reservoir with a normal pool elevation of 334.5 feet msl
(3) a powerhouse containing two generating units with a combined installed capacity of 1.25 MW and (4) appurtenant facilities.

The Minetto Development consisting of (1) a 500-foot-long, 22.5-foot-high concrete gravity dam topped with 10-inch-high flashboards, and consisting of (a) a 40-foot-high, 190-foot-long, 40-foot-wide concrete intake structure with nine steel gates (b) a 100-foot-long, 200-foot-wide, 25-foot-deep forebay and (c) trashracks with 0.5-inch steel bars with 2.5-inch openings (2) a 350-acre reservoir with a normal pool elevation of 307.8 feet msl (3) a powerhouse containing five generating units with a combined installed capacity of 8.0 MW and (4) appurtenant facilities.

The arick Development consisting of (1) a 730-foot-long, 13-foot-high masonry gravity dam topped with a series of stepped flashboards ranging from 10-inches-high to 36-inches-high, and consisting of (a) a 189-foot-high, 26-foot-long, 28-foot-wide intake structure with 24 steel gates and an unused minimum flow gate (b) a 950-foot-long, 150-foot-wide, 18-foot-deep forebay and (c) trashracks with 38-inch steel bars with 4.0-inch openings (2) a 32-acre reservoir with a normal pool elevation of 270.0 feet msl (3) a powerhouse containing four generating units with a combined installed capacity of 8.8 MW and (4) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibit A and F shown below.

Exhibit A

Pages A-1 through A-14 filed on December 6, 1991.

Exhibit F

The following sections of Exhibit F filed on December 6, 1991

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<th>Exhibit F Drawings</th>
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<tr>
<td>Sheet No. 1</td>
<td>1007</td>
<td>Fulton Location Plan</td>
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<tr>
<td>Sheet No. 2</td>
<td>1008</td>
<td>Fulton Intake and Powerhouse Plan and Section</td>
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<td>Sheet No. 3</td>
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<td>Minetto Plans and Sections</td>
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<td>arick West Side Linear Park Extension Site Plan</td>
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<tr>
<td>Sheet No. 6</td>
<td>1012</td>
<td>arick West Side Linear Park Extension Sections</td>
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</table>
(3) All of the structures, fixtures, equipment, or facilities used to operate or maintain the project and located within the project boundary, all portable property that may be employed in connection with the project, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) The Exhibits A, F, and G described above are approved and made part of this license.

(D) This license is subject to the conditions submitted by the NYDEC pursuant to section 401 of the CWA, as those conditions are set forth in Appendix A to this order.

(E) This license is subject to the articles set forth in Form L-3 (October 1975), entitled Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States, and the following additional articles

Article 201. The licensee shall pay the United States the following annual charges, effective the first day of the month in which this license is issued for the purposes of reimbursing the United States for the Commission’s administrative costs, pursuant to Part I of the Federal Power Act, a reasonable amount as determined in accordance with provisions of the Commission’s regulations in effect from time to time. The authorized installed capacity for that purpose is 18,050 kilowatts.

Article 202. Within 45 days of the date of issuance of the license, the licensee shall file the approved exhibit drawings in aperture card and electronic file formats.

   a) Three sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-14 7-3 8 ) aperture cards. Prior to microfilming, the FERC Drawing Number (e.g., P-2474-1001 through P-2474-1012) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (e.g., F-1, G-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

   Two of the sets of aperture cards shall be filed with the Secretary of the Commission, ATTN OEP DHAC. The third set shall be filed with the Commission’s Division of Dam Safety and Inspections New York Regional Office.

   b) The licensee shall file two separate sets of exhibit drawings in electronic raster format with the Secretary of the Commission, ATTN OEP DHAC. A third set shall be filed with the Commission’s Division of Dam Safety and Inspections New York Regional Office.
Office. The drawings must be identified as (CEII) material under 18 CFR § 388.113(c). Each drawing must be a separate electronic file, and the file name shall include FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this license and file extension e.g., P-2474-1001, G-1, Project Boundary, MM-DD-YYYY.TIF. Electronic drawings shall meet the following format specification

- **IMAGERY - black white raster file**
- **FILE TYPE** Tagged Image File Format, (TIFF) CCITT Group 4
- **RESOLUTION** 300 dpi desired, (200 dpi min)
- **DRAWING SIZE FORMAT** 24 36 (min), 28 40 (max)
- **FILE SIZE** less than 1 MB desired

Each Exhibit G drawing that includes the project boundary must contain a **minimum** of three known reference points, arranged in a triangular format. The latitude and longitude coordinates, or state plane coordinates, of each reference point must be shown and identified on the drawing. Each Exhibit G drawing must be stamped by a Registered Land Surveyor.

c) The licensee shall file three separate sets of the project boundary vector data in a geo-referenced electronic file format (such as Arc iew shape files, GeoMedia files, MapInfo files, or any similar format) with the Secretary of the Commission, ATTN OEP DHAC. The file name shall include FERC Project Number, data description, date of this license, and file extension e.g., P-2474, boundary vector data, MM-DD-YYYY.SHP. The geo-referenced electronic boundary data file must be positionally accurate to 40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. A single electronic boundary data file is preferred and must contain all reference points shown on the individual project boundary drawings. The latitude and longitude coordinates, or state plane coordinates, of each reference point must be shown. The data must be accompanied by a separate text file describing the map projection used (i.e., UTM, State Plane, Decimal Degrees, etc), the map datum (i.e., North American 27, North American 83, etc.), and the units of measurement (i.e., feet, meters, miles, etc.).

The text file name shall include FERC Project Number, data description, date of this license, and file extension e.g., P-2474, project boundary metadata, MM-DD-YYYY.TXT.

Article 203. Pursuant to Section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensee shall set aside in a project amortization reserve account at the end of each fiscal year one-half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment.
To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensee shall deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensee shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensee shall maintain the amounts established in the project amortization reserve account until further order of the Commission.

The specified reasonable rate of return used in computing amortization reserves shall be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly included in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios shall be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

**Article 204.** If the licensee's project was directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license.

**Article 301.** At least 60 days before starting construction, the licensee shall submit one copy to the Commission's D2SI-NYRO Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of the final contract plans and specifications. The plans and specifications should include a blasting plan, if applicable. The Commission may require changes to the plans and specifications to assure construction is performed in a safe and environmentally sound manner. Construction may not commence until authorized by the D2SI-NYRO Regional Engineer.

**Article 302.** At least 60 days before starting construction, the licensee shall submit one copy to the Commission's D2SI-NYRO Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of the Quality Control and Inspection Program (CIP) for the Commission's review and approval. The CIP shall include a sediment and erosion control plan.
Article 303. Before starting construction, the licensee shall review and approve the design of contractor-designed cofferdams and deep excavations. At least 30 days before starting construction of the cofferdams, the Licensee shall submit one copy to the Commission’s D2SI-NYRO Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission’s Director, Division of Dam Safety and Inspections), of the approved cofferdam construction drawings and specifications and the letters of approval.

Article 304. At least 60 days before starting construction, the licensee shall submit one copy to the Commission’s D2SI-NYRO Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of the Temporary Emergency Action Plan (TEAP) for the Commission’s review and approval. The TEAP shall describe emergency procedures in case failure of a cofferdam, any large sediment control structure, or any other water retaining structure that could endanger construction workers or the public. The TEAP shall include a notification list of emergency response agencies, a plan drawing of the proposed cofferdam arrangement, the location of safety devices and escape routes, and a brief description of testing procedures.

Article 305. Within 3 months of completing the construction of the low-level flow diversion structures along a portion of the western side of the bypassed reach near the tailrace of the arick powerhouse, the licensee shall file, for Commission approval, revised Exhibit F and G drawings, as applicable, showing the project as built. The licensee shall submit six copies to the Commission, one copy to the New York Regional Engineer, and one copy to the Director, Office of Energy Projects.

Article 401.

(a) Requirement to File Plans for Commission Approval

The New York State Department of Environmental Conservation (NYDEC) Water Quality Certificate (WQC) conditions (Appendix A) and the Settlement provisions require the licensee to operate the project with specific requirements, develop plans, and implement programs and report the results of monitoring studies without prior Commission approval. The plans listed below do not include prior Commission approval, but now shall also be submitted to the Commission for approval.
<table>
<thead>
<tr>
<th>WC Condition No. (Appendix A)</th>
<th>Settlement Section No.</th>
<th>Plan Name</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.6</td>
<td></td>
<td>Stream flow and Water Level Monitoring Plan</td>
<td>Within 15 months of license issuance</td>
</tr>
<tr>
<td>19 and 20</td>
<td></td>
<td>Sediment Analysis and Disposal, and Erosion and Sediment Control Plan</td>
<td>90 days prior to commencing work</td>
</tr>
<tr>
<td>21</td>
<td></td>
<td>Cofferdam Plan</td>
<td>90 days prior to commencing work</td>
</tr>
</tbody>
</table>

For each plan, the licensee shall submit to the Commission documentation of its consultation with the NYDEC and the U.S. Fish and Wildlife Service, copies of comments and recommendations made in connection with the plan or report, and a description of how the plan or report accommodates the comments or recommendations. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to make changes to any plan or report. Upon Commission approval, the plan becomes a requirement of the license, and the licensee shall implement the plans or changes in project operations or facilities, including any changes required by the Commission.

**Article 402**

Authority is reserved by the Commission to require the licensee to construct, operate, and maintain, or to provide for construction, operation, and maintenance of, such fish passage facilities as may be prescribed by the Secretary of the Interior under section 18 of the FPA.

**Article 403**

Within eighteen months of license issuance, the licensee shall operate the Oswego River Project in Modified Run-of-River (MROR) mode as described in Section 3.1.2 of the Settlement with the following impoundment fluctuation limits in the Fulton, Minetto, and Arick developments as shown below and specified in Table 3-1 of the Settlement.

Normal impoundment fluctuations shall be defined as the maximum drawdown limit associated with the operating range necessary to achieve normal operation. The normal impoundment fluctuation limits shall be measured in the downward direction from the permanent crest of each dam or from the top of the flashboards (when in place). Water surface elevations higher than the elevation from which any downward fluctuation is measured are considered outside of the normal impoundment fluctuation one, and variations of same are not considered as utilization of the normal impoundment.
fluctuation.

Oswego River Hydroelectric Projects Normal Impoundment Fluctuations

<table>
<thead>
<tr>
<th>Development</th>
<th>Permanent Crest of Dam (feet, USGS)</th>
<th>Flashboards</th>
<th>Normal Impoundment Fluctuations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fulton</td>
<td>334.0</td>
<td>6</td>
<td>0.5 foot (year-round) measured in a downward direction from the permanent crest of the dam or the top of the flashboards when in place.</td>
</tr>
<tr>
<td>Minetto</td>
<td>307.0</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>arick</td>
<td>267.5</td>
<td>30, 32, 34, 36</td>
<td>1.0-foot (year-round) measured in a downward direction from the permanent crest of the dam or the top of flashboards when in place.</td>
</tr>
<tr>
<td></td>
<td>268.5</td>
<td>10</td>
<td></td>
</tr>
</tbody>
</table>

The arick dam is currently fitted with a system of stepped flashboards with a maximum height of 36 inches from permanent crest elevation of the dam and may be adjusted as needed by the licensee. The current system is designed to fail at approximately 15 inches of overtopping. Under normal operating conditions, the water level is maintained at 30 inches above crest (Elev. 270.0).

These impoundment fluctuation limitations may be curtailed or suspended if required by operating emergencies beyond the control of the licensee, including security, and for short periods upon mutual agreement between the licensee and the New York State Department of Environmental Conservation. If the limitations are so modified, the licensee shall notify the Commission as soon as possible, but no later than ten (10) business days after each such incident.

Article 404. e Within eighteen months of license issuance, the licensee shall release the base-flows shown below and specified in Table 3-2 of the Settlement. The base-flow(s) as described in Table 3-2 shall be maintained in the river immediately downstream of the developments powerhouses. No base-flow is provided at the Minetto Development due to the backwatering effect created by the dam at Lock 6. The base flow at the arick Development is provided for via the bypass flow as described in Table 3-3 of the Settlement.

These base-flow requirements may be curtailed or suspended if required by operating emergencies beyond the control of the licensee, including security, and for limited periods upon mutual agreement between the licensee and the New York State Department of Environmental Conservation. If the flows are so modified, the licensee shall notify the Commission as soon as possible, but no later than ten (10) business days
after each such incident.

**Oswego River Base-Flow Schedule**

<table>
<thead>
<tr>
<th>Site</th>
<th>Flow Magnitude</th>
<th>Location</th>
<th>Season</th>
<th>Implementation Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fulton</td>
<td>800-cfs or inflow (whichever is less) for walleye spawning</td>
<td>Below powerhouse when generating or over the spillway during non-generation periods.</td>
<td>From The beginning of Walleye spawning season which begins when water temperature ≥ 4 °C for 4 consecutive days after March 15th of each year. To The end of Walleye spawning season which ends 30 days after the water temperature ≥ 10 °C for 4 consecutive days.</td>
<td>Within 18 months of license issuance and acceptance.</td>
</tr>
<tr>
<td>Fulton</td>
<td>300-cfs or inflow (whichever is less)</td>
<td>At the end of the Walleye spawning season.</td>
<td>To cease at the beginning of Walleye spawning season.</td>
<td></td>
</tr>
</tbody>
</table>

Inflow is approximately equal to the gross river inflow less the flow volume used for canal lockage operations.

**Article 405.** Within eighteen months of license issuance, the licensee shall release the bypass flows as shown below and specified in Table 3-3 of the Settlement.
## Oswego River Bypass flow Schedule

<table>
<thead>
<tr>
<th>Site</th>
<th>Flow Magnitude</th>
<th>Location</th>
<th>Season</th>
<th>Timing of Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fulton</td>
<td>75-cfs (65-86) fish friendly flow</td>
<td>Release from the sluice gate adjacent to the Fulton powerhouse</td>
<td>Year-round</td>
<td></td>
</tr>
<tr>
<td>arick</td>
<td>800-cfs (782-818) or inflow, whichever is less</td>
<td>Existing sluice gate(s) adjacent to the State head gate</td>
<td>All of Walleye spawning season (see Article 404 for Conventions Definitions Section).</td>
<td>Within 18 months of license issuance and acceptance</td>
</tr>
<tr>
<td></td>
<td>400-cfs (389-410) or inflow, whichever is less</td>
<td></td>
<td>End of Walleye spawning season through May 31</td>
<td></td>
</tr>
<tr>
<td></td>
<td>200-cfs (192-207) or inflow, whichever is less</td>
<td></td>
<td>June 1 through September 15</td>
<td></td>
</tr>
<tr>
<td></td>
<td>400-cfs (389-410) or inflow, whichever is less</td>
<td></td>
<td>September 16 through the beginning of Walleye spawning season</td>
<td></td>
</tr>
</tbody>
</table>

Note: Throughout the entire year the first 200 cfs released at the arick development will be made fish friendly as described in Section 3.5, see footnote 8.

The Parties agree that the licensee and the resource agencies will reevaluate this seasonal flow as requested by the licensee at a minimum of 5 years after license issuance with the intention of determining if implementing decreased bypass flows will meet agency management objectives.

Inflow is approximately equal to the gross river inflow less the flow volume used for canal lockage operations.
Article 406. Within eighteen months of license issuance, the licensee shall install low-level flow diversion structures along a portion of the western side of the bypassed reach near the tailrace of the arick powerhouse. The licensee shall consult with the New York State Department of Environmental Conservation and the U.S. Fish and Wildlife Service prior to the design and installation of these low-level flow diversion structures.

These structures shall be field located just upstream of the existing tailrace training wall. The licensee shall construct these low level flow diversion structures with minimal height and length to avoid any unnecessary impact to the river or fish. These modifications will attempt to divert approximately 70 percent of the upper bypassed reach flow, during the 200 cfs bypass flow release period from June 1 through September 16, to the lower bypassed reach.

Article 407. The licensee shall implement the fish-protection, passage, and movement measures as shown below and specified in Table 3-4 and 3-5 of the Settlement. The licensee shall provide the following measures and structures to facilitate fish movement.
## Oswego River Hydroelectric Projects Fish Movement

<table>
<thead>
<tr>
<th>Development</th>
<th>Downstream Movement Routes</th>
<th>Upstream Eel Conveyance System</th>
<th>Implementation Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fulton</td>
<td>75-cfs fish friendly release through the existing sluice gate adjacent to the Fulton powerhouse</td>
<td>An upstream eel conveyance system will be field located in consultation with the USFWS, the NTSDEC and the Canal Corp. Each conveyance system will be installed seasonally from June 15 through September 15.</td>
<td>Within six (6) years of license issuance and acceptance</td>
</tr>
<tr>
<td>Minetto</td>
<td>25-cfs fish passage release through an existing unused bay within the Minetto powerhouse</td>
<td>Within 18 months of license issuance and acceptance</td>
<td>Within four (4) years of license issuance and acceptance.</td>
</tr>
<tr>
<td>Arick</td>
<td>200-cfs fish friendly release through a location adjacent to the newly installed trashrack overlays</td>
<td></td>
<td>Within two (2) years of license issuance and acceptance.</td>
</tr>
</tbody>
</table>
### Oswego River Hydroelectric Projects Fish Protection Measures

<table>
<thead>
<tr>
<th>Development</th>
<th>Protection Measures</th>
<th>Implementation Schedule</th>
<th>Location</th>
<th>Seasonality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fulton</td>
<td>Seasonal overlays in the form of 1 clear-spaced trashracks or 1.5 diameter perforated plates</td>
<td>Within 2 years of license issuance and acceptance for the Oswego River Project.</td>
<td>At the same location as the existing trashracks</td>
<td>To be placed seasonally from May 1 or when flows permit safe installation through November 30 or when the water temperature reaches 7 degrees C or less (whichever is sooner)</td>
</tr>
<tr>
<td>Minetto</td>
<td>Within 4 years of license issuance and acceptance for the Oswego River Project.</td>
<td>To be located at the State Head Gates adjacent to the dam.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>arick</td>
<td>Within 6 years of license issuance and acceptance for the Oswego River Project.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

At the Fulton Development, the licensee shall install protective measures within two (2) years of license issuance that include 1.0-inch clear-spaced trashrack overlays or 1.5-inch diameter perforated plates to be placed seasonally from May 1 or when flows permit safe installation (whichever is later) through November 30 or when the temperature of the river decreases to 7 C or less (whichever is sooner) as shown in the above table and described in Table 3-5 of the Settlement. The licensee shall provide a year-round 75-cfs minimum fish friendly flow release located at a sluice gate adjacent to the powerhouse, and shall install an upstream eel conveyance system at the Fulton Development to be placed seasonally from June 15 through September 15 within six years of license issuance as described in Table 3-4 of the Settlement.

At the Minetto Development, the licensee shall install protective measures within four years of license issuance that include 1.0-inch clear-spaced trashrack overlays or 1.5-inch diameter perforated plates to be placed seasonally from May 1 or when flows permit safe installation (whichever is later) through November 30 or when the temperature of the river decreases to 7 C or less (whichever is sooner) as shown in the above table and described in Table 3-5 of the Settlement. The licensee shall provide a year-round 25-cfs minimum fish friendly flow release located within one of the existing unused bays at the Minetto powerhouse, and install an upstream eel conveyance system at the Minetto development to be placed seasonally from June 15 through September 15 within four
years of license issuance as shown in the above table and described in Table 3-4 of the Settlement.

At the arick Development, the licensee shall install protective measures within six years of license issuance that include 1.0-inch clear-spaced trashrack overlays or 1.5-inch diameter perforated plates to be placed seasonally from May 1 or when flows permit safe installation (whichever is later) through November 30 or when the temperature of the river decreases to 7°C or less (whichever is sooner) as shown in the table above and described in Table 3-5 of the Settlement. This measure will be located at the State Head Gate structure adjacent to the dam. The licensee shall provide a year-round 200-cfs minimum fish friendly flow release located at the arick dam. The licensee shall also install an upstream eel conveyance system at the arick development to be placed seasonally from June 15 through September 15 within two years of license issuance as shown in the above table and described in Table 3-4 of the Settlement.

The licensee may curtail or suspend the requirements of this commitment if required by operating emergencies beyond the control of the licensee, including security, and for limited periods upon mutual agreement between the Licensee, the U.S. Fish and Wildlife Service, and the New York State Department of Environmental Conservation. If the requirements of this commitment are so modified, the licensee shall notify the Commission as soon as possible, but no later than ten (10) business days after each such incident.

Article 408. e

No less than 90 days prior to the installation, construction, or modification of any structures required by Articles 407 and 408, the licensee shall submit, for Commission approval, design drawings for the proposed activity.

The design drawings shall be prepared in consultation with the New York State Department of Environmental Conservation and the U.S. Fish and Wildlife Service. The licensee shall include with the drawings documentation of agency consultation, copies of comments and recommendations on the completed drawings after they have been prepared and provided to the agencies, and specific descriptions of how the agencies comments are accommodated by the drawings. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the drawings with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensees reasons, based on site-specific information.

The Commission reserves the right to require changes to the drawings. The activity shall not be implemented until the licensee is notified by the Commission that the drawings are approved. Upon Commission approval, the licensee shall implement the requirements of Articles 406 and 407, including any changes required by the
Article 409. Within one year of license issuance, the licensee shall file, for Commission approval, a revision of the recreation plan that was filed with the Commission on December 14, 1993, which has been prepared in consultation with the New York State Canal Corporation (NYSCC), the New York State Department of Environmental Conservation (NYDEC), and the U.S. Department of the Interior, National Park Service (NPS). The plan shall include, at a minimum (a) a description, including site plans, of the licensee’s recreation facilities located at the Oswego River Project (b) a schedule of the days and times the recreational facilities will be open and available for public use and (c) a description of the licensee’s plans to allow public access to all lands within the Commission project boundary associated with each development covered by this license, with the exception of those lands and facilities specifically related to hydroelectric generation where public safety or site security would be a concern. Lands and facilities where public access will be precluded may include, but are not necessarily limited to, dams, dikes, gates, intake structures, water conveyance structures, powerhouses, substations, transmission lines, and certain access roads leading to such facilities.

The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provide to the NYSCC, NYDEC, and NPS and specific descriptions of how the NYSCC, NYDEC, and NPS comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the NYSCC, NYDEC, and NPS to comment and to make recommendations prior to filing the Commission for approval. If the licensee does not adopt a recommendation, the filing should include the licensee’s reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No ground-disturbing or land-clearing activities for expanding and improving recreation facilities shall begin until the licensee is notified by the Commission that the plan is approved. Upon approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 410. Within one year of license issuance, the licensee shall implement the Programmatic Agreement Among the Federal Energy Regulatory Commission and the New York State Historic Preservation Officer For Managing Historic Properties That May Be Affected By A License Issuing To Erie Boulevard Hydropower, L.P For The Operation Of The Oswego River Project In Owego County, New York (FERC No. 2472) executed on July 19, 1996, including but not limited to the Cultural Resources Management Plan (CRMP) for the project. In the event that the Programmatic Agreement is terminated, the licensee shall implement the provisions of its
approved CRMP. The Commission reserves the authority to require changes to the CRMP at any time during the term of the license. If the Programmatic Agreement is terminated prior to Commission approval of the CRMP, the licensee shall obtain approval before engaging in any ground-disturbing or land-clearing activities or taking any other action that may affect any historic properties within the project's area of potential effect.

**Article 411.**

(a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters, and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy are consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are:

1. landscape plantings
2. non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings
3. embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline
4. food plots and other wildlife enhancements.

To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall:

1. inspect the site of the proposed construction
2. consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site
3. determine that the proposed construction is needed and would not change the basic contour of the impoundment.
shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee’s costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of, project lands for (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and approvals have been obtained (2) storm drains and water mains (3) sewers that do not discharge into project waters (4) minor access roads (5) telephone, gas, and electric utility distribution lines (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-k or less) and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project impoundment. No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of, project lands for (1) construction of new bridges or roads for which all necessary state and approvals have been obtained (2) sewer or effluent lines that discharge into project waters, for which all necessary and state water quality certification or permits have been obtained (3) other pipelines that cross project lands or waters but do not discharge into project waters (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary and state approvals have been obtained (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E and (7) other uses, if (i) the amount of land conveyed for a particular use is 5 acres or less (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Energy Projects, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G map may be used), the nature of the proposed use, the identity of any Federal or state agency
official consulted, and any Federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraphs (c) or (d) of this article

(1) Before conveying the interest, the licensee shall consult with Federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include the following covenants running with the land (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands shall occur in a manner that shall protect the scenic, recreational, and environmental values of the project and (iii) the grantee shall not unduly restrict public access to project waters.

(4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project’s scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article shall be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G drawings would be filed for approval for other purposes.
(g) The authority granted to the licensee under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

(F) The licensee shall serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to the filing. Proof of service on these entities must accompany the filing with the Commission.

(G) This order is issued under authority delegated to the Director and is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in Section 313(a) of the FPA. The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission. The licensee’s failure to file a request for rehearing of this order shall constitute acceptance of this license.

. Mark Robinson
Director
Office of Energy Projects
APPENDIX A

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CERTIFICATION UNDER SECTION 401 OF THE FEDERAL CLEAN WATER ACT

On October 4, 2004, the New York State Department of Environmental Conservation granted water quality certification under section 401 of the Clean Water Act to Erie Boulevard Hydropower, L.P. for the Oswego River Project with the following conditions:

1. Conformance With Plans. All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or his agency as part of the permit application. Such approved plans were prepared by (See Natural Resources Permit Condition 11).

2. State May Order Removal or Alteration of Work. If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

3. State Not Liable for Damage. The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

4. Permittee Responsible For Other Approvals. Granting of this permit does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval from the U.S. Army Corps of Engineers, U.S. Coast Guard, New York State Office of General Services or local government which may be required.
5. Precautions Against Contamination of Waters. All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

6. No Interference With Navigation. There shall be no unreasonable interference with navigation by the work herein authorized.

7. State May Require Site Restoration. If upon the expiration of revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

8. Water Quality Certification. The NYS Department of Environmental Conservation hereby certifies that the subject project will not contravene effluent limitations or other limitations or standards under Sections 301, 302, 303, 306, and 307 of the Clean Water Act of 1977 (PL 95-217) provided that all of the conditions listed herein are met.

9. Notification Requirements for Emergencies. The following procedures conducted at the project in response to an emergency:

Prior to commencement of emergency activities, Permittee must notify NYDEC and receive approval in advance of the work commencing. If circumstances require that emergency activities be taken immediately such that prior notice to the NYDEC is not possible, then the NYDEC must be notified by the Certificate Holder within 24 hours of commencement of the emergency of the emergency activities. In either case, notification must be by certified mail or other written form of communication, including fax and electronic mail. This notification must be followed within 24 hours by submission of the following information:

a. a description of the action
b. location map and plan of the proposed action
c. reasons why the situation is an emergency.

All notifications, requests for emergency authorizations and information submitted to support such requests shall be sent to the contacts listed in Special Condition 10.

10. Department Contacts. Except as otherwise specified, all contacts with the Department concerning this certificate shall be addressed to the following: 

OPERATIONS

12. Base Flows. The certificate holder shall maintain instream flow in accordance with the settlement, in particular, Section 3.2.

13. Impoundment Fluctuations. The reservoirs at the Fulton, Minetto and arick Developments as well as the reservoir at Oswego Falls (Project reservoirs) shall be operated in accordance with the Settlement, in particular, Section 3.1.2. Alternative impoundment operating plans must be reviewed and approved by NYDEC prior to being implemented. Emergencies shall be dealt with in accordance with special condition 9 of this certificate.

14. Bypass Flows. The certificate holder shall maintain bypass flows in accordance with the Settlement, in particular, Section 3.3.

15. Flow Monitoring. The certificate holder shall develop a stream flow and water level monitoring plan consistent with the Settlement, in particular, Section 3.6.

16. Fish Protection Passage. Fish protection passage and movement provisions shall be provided in accordance with the Settlement, in particular, Section 3.5.

17. Public Access. Public access and recreational opportunities shall be provided in conformance with the Settlement, in particular, Section 3.7.

CONSTRUCTION REQUIREMENTS

18. Maintenance Dredging. The certificate holder shall curtail generation and install stoplogs or otherwise shut off flow through the turbines prior to commencing any maintenance dredging activities in the intake forebay area.

19. Sediment Analysis and Disposal. The certificate holder must sample any sediments to be disturbed or removed from the project waters and test them for contaminants.
Sampling and testing shall be accomplished according to a protocol submitted to and approved the Department beforehand. Approval from the Department shall include all disposal locations for any sediments to be removed from the project waters.

20. Erosion Sediment Control. Prior to commencing activities which could adversely affect water quality, the certificate holder must receive Department approval of an Erosion and Sediment Control Plan. This plan must be submitted at least 90 days before the intended date for commencing work. All work shall conform to the goals below.

At minimum, the certificate holder must accomplish the following objectives

a. isolate in-stream work from the flow of water and prevent discolored (turbid) discharges and sediments from entering the waters of the river due to excavation, dewatering and construction activities

b. Exclude the us of heavy construction equipment below the mean high water line until the work area is protected by an approved structure and dewatered, except where an emergency response requires immediate action

c. Stabilize any disturbed banks by grading to an appropriate slope, followed by armoring or vegetating as appropriate, to prevent erosion and sedimentation into the waterbody

d. Minimize soil disturbance, provide appropriate grading and temporary and permanent re-vegetation of stockpiles and other disturbed areas to minimize erosion sedimentation potential

e. Protect all waters from contamination by deleterious materials such as wet concrete, gasoline, solvents, epoxy resins or other materials used in the construction, maintenance and operation of the project

f. Install effective erosion control measures on the downslope of all disturbed areas and maintain them in a fully functional condition. These erosion control measures are to be installed before commencing any other activities involving soil disturbance

g. Ensure complete removal of all dredged and excavated material, debris or excess materials from construction, from the bed and banks of all water areas to an approved upland disposal site

h. Ensure that all temporary fill and other materials placed in the waters of the river are completely removed, immediately upon completion of construction, unless otherwise directed by the Department.
21. Placement of cofferdams, construction of temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the river. The design and installation of cofferdams, temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the river must be approved by the Department prior to installation.

22. Construction Drawdowns. Whenever construction and or maintenance activities require that the water level of project reservoirs be lowered, it shall not be drawn down more than 1 foot per hour. During refill, the water level of the impoundment shall not be allowed to rise more than 1 foot per hour.

23. Maintenance of River Flow. During all periods of construction, flows immediately downstream of work sites shall be maintain in accordance with condition 12 of this permit.

24. Turbidity Monitoring During Construction. During construction related activities, the certificate holder will monitor the waters of the river at a point immediately upstream of project activities and at a second point no more than 100 feet downstream from any discharge point or other potential source turbidity. The certificate holder specifically agrees that if, at any time, turbidity measurements from the downstream locations exceed the measurements from the locations upstream of the work areas, all related construction on the project will cease until the source of the turbidity is discovered and the situation is corrected.

25. Notification of DEC of construction activities. The NYS DEC contact referenced in Special Condition 10 must be notified in writing at least two weeks prior to commencing any work performed under the authority of this certificate.

GENERAL CONDITIONS - Apply to ALL Authorized Permits

1. Facility Inspection by the Department. The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department’s representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or