

APPENDIX 1-2
FERC ORDER ISSUING NEW LICENSE (PROJECT NO. 2392)
DTD APRIL 13, 1994

67 FERC ¶ 62,038

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Simpson Paper (Vermont) Company

Project No. 2392-004
New Hampshire and VermontORDER ISSUING NEW LICENSE
(Major Project)INTRODUCTION

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Simpson Paper (Vermont) Company (SPC) filed a license application under Part I of the Federal Power Act (Act) to continue to operate and maintain the Gilman Project located on the Connecticut River in Essex County, Vermont and Coos County, New Hampshire. 1/ 2/ The Commission issued the original license for the project on May 17, 1965, under its jurisdiction over constructed projects situated on navigable waters of the United States. The license expired on December 31, 1990, and the project has since then been operated under annual license.

SPC proposes no changes to increase the project's capacity. SPC, a manufacturer of paper products, would continue to utilize the electricity generated by the project at its mill.

BACKGROUND

Notice of the application has been published. Any protests or motions to intervene that were filed in this proceeding have been withdrawn, and no agency objected to issuance of this license. Comments received from interested agencies and individuals have been fully considered in determining whether to issue this license.

PROJECT DESCRIPTION

The project structures consist of the Gilman dam, a concrete gravity structure approximately 108 feet long and 29 feet high, and a rock-filled timber crib structure approximately 170 feet long and 40 feet high, each with a crest elevation of 828.3 feet USGS; 5-foot-high flashboards bringing the normal water surface elevation to 833.3 feet USGS; a hydraulically operated crest gate

- 1/ Georgia-Pacific Corporation filed an application for new license for the Gilman Project on December 27, 1988. Transfer of the annual license from Georgia-Pacific Corporation to Simpson Paper (Vermont) Company was approved by Commission order dated June 30, 1992.
- 2/ The Connecticut River is a navigable waterway of the United States. See Connecticut River Power Company, 10 FPC 1255 (1951) and Gilman Paper Company, 33 FPC 1021, 1022 (1965).

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18 feet high and 27 feet wide; a reservoir having an area of 130 acres, a storage capacity of 705 acre-feet, and a normal water surface elevation of 833.3 feet USGS; a powerhouse containing four turbine-generator units, one rated at 2,250 kilowatts (kW), one rated at 1,000 kW, and two rated at 800 kW each for a total rated capacity of 4,850 kW; a 200-foot-long transmission line; a 2.4-kV generator bus, a 2.4kV/34.5kV step-up transformer; and appurtenant facilities. A detailed project description is included in ordering paragraph (B)(2). SPC proposes to continue to operate the project in a run-of-river mode.

APPLICANT'S PLANS AND CAPABILITIES

Pursuant to Section 10(a)(2)(C) and Section 15(a) of the Act the staff evaluated the applicant's record as a licensee for these areas: (1) conservation efforts; (2) ability to comply with the new license; (3) safe management, operation, and maintenance of the project; (4) ability to provide efficient and reliable electric service; (5) need for power; (6) transmission line improvements; (7) project modifications; and (8) compliance record. ^{3/} I accept the staff's finding in each of these areas.

Consumption Efficiency Improvement Programs (Section 10(a)(2)(C))

The applicant, SPC, is a manufacturer of paper products, and as such, is not an electric utility selling power to end-use consumers. SPC is not subject to state or other regulatory authorities on matters relating to the conservation of electric energy or load-management to reduce peak demands for capacity.

SPC has on-going programs to conserve energy and reduce capacity demands in the SPC paper-products manufacturing facility. These programs improve the profitability of the corporation's operations and are sufficient. No other incentives are necessary.

The plans and abilities of the applicant to comply with the articles, terms, and conditions of any license issued to it and other applicable provisions of Part I of the Act (Section 15(a)(2)(A)).

SPC states that it is committed to meeting the requirements of all the articles, terms, and conditions of the existing license. SPC maintains that its past performance, in conjunction

^{3/} The original applicant for new license was Georgia-Pacific Corporation. (see footnote 1) For the purposes of the section 10 and section 15 findings, and the compliance record finding we consider Simpson Paper (Vermont) Company to have acquired Georgia-Pacific's record.

of compliance with the requirements of the jurisdictional agencies, demonstrate that it is committed to meeting the future requirements for the continued operation of the project.

Staff's review of the compliance record of SPC substantiates that SPC has complied in a good faith with all articles, terms, and conditions of its existing license. Also, it appears that SPC has the financial and personnel resources necessary to fulfill its obligations under the license and Part I of the Act. Based on the above SPC will be able to comply with the terms and conditions of the new license and other provisions of Part I of the Act.

The plans of the applicant to manage, operate and maintain the project safely (Section 15(a)(2)(B))

SPC states that it is operating the generating facilities with foremost concern for the safety of its employees and the public. Records indicate that there has never been an employee fatality associated with the project's operations. The only injury occurred on April 9, 1984, when an employee sustained a lower back strain while repairing the No. 4 waterwheel, and lost 10 days of work.

The project is, and will continue to be, operated run-of-river which causes no extreme water level fluctuations, thus posing no project-caused hazard for fishermen and boaters.

Based upon the review of the specific information provided by SPC on various aspects of the project that affect public safety, and inspection reports prepared by the Commission's Regional Director, it is concluded that SPC's plans to manage, operate, and maintain the project safely, are adequate.

The plans and abilities of the applicant to operate and maintain the project in a manner most likely to provide efficient and reliable electric service (Section 15(a)(2)(C))

A new No. 1 water wheel and generator unit, installed in 1985-86, is automatically controlled. The three other turbines and generators (Nos. 2, 3, and 4) are manually controlled. Maintenance upkeep has included upgrading electrical systems and repairs to the project works. Also, in 1979, the SPC installed a new hydraulically operated crest gate in the Gilman dam. This 27-ft-wide gate is operated to maintain the level of the headpond at top of flashboards and up to a surcharge of 1.5 feet, and to reduce the incidence of flashboard failure at high flows.

In addition, SPC's routine maintenance and rehabilitation of hydroelectric equipment increases efficiency and generation.

SPC believes that the Gilman Project is fully developed and, therefore, does not currently have plans for additional development at the Gilman Project site. Furthermore, SPC evaluated the project and determined that no economically feasible opportunities currently exist to install additional capacity at the project.

Based on the above considerations, a review of the operation inspection reports by the Regional Director, SPC's past performance, and future plans to operate the project, staff concludes that the project is, and under the new license will continue to be, operated and maintained in an efficient and reliable manner.

Need of the applicant over the short and long terms for the electricity generated by the project - (Section 15(a)(2)(D))

SPC's need for the electricity produced by the project is addressed in the attached EA. Based on the discussion in the EA, staff finds that SPC's short- and long-term need for power exists to justify licensing the Gilman Project.

The Applicant's Existing and Planned Transmission Service (Section 15(a)(2)(E))

If the applicant is issued a new license, no changes of the existing, very simple transmission system, its operation, or operating characteristics, will occur, and none are planned. The transmission facilities are adequate for continued operation.

If a new license is denied, the applicant will be forced to increase the capacity of the mill's power-line facilities sufficiently to accommodate the replacement power which SPC will be forced to purchase from a local utility - most probably the NEP. SPC will also be forced to install higher-capacity transformers at the utility interconnection point - at a cost estimated by SPC to be approximately \$400,000.

Whether the plans of the applicant will be achieved, to the greatest extent possible, in a cost effective manner (Section 15(a)(2)(F))

No increase of generating capacity at the Gilman Project is planned. With the hydraulic capacity of 2,850 cfs, SPC adequately utilizes the flows of the Connecticut River.

The proposed minimum flow release of 210 cfs, from June 1 to October 15, would not significantly impact the power generation. The generation would be decreased by about 2.6% or 671,185 kWh.

SPC is an industrial entity engaged in the manufacture of paper products from wood pulp; thus, the electrical output of the

Gilman Project is used by SPC at the Gilman mill, and none of the output is sold to other end-use customers. It is, however, an economic necessity for SPC to continue to conserve electricity, thereby reducing costs, and remaining competitive in the paper-making industry.

Recreation resources meet the needs of the area.

Staff concludes that the applicant's plans for continued operation of the project will be fulfilled, to the greatest extent possible, in a cost effective manner.

The Applicant's Record of Compliance with the Terms and Conditions of the Existing License (Section 15(a)(3))

The compliance records of SPC with the terms and conditions of its existing license are satisfactory. Further, the Licensee has maintained the project in a satisfactory manner.

WATER QUALITY CERTIFICATION

The Gilman Project is located within the jurisdiction of both New Hampshire and Vermont, and therefore requires a 401 State Water Quality Certification (WQC) from each state. On December 16, 1992, the New Hampshire Department of Environmental Services issued SPC a WQC for the Gilman Project No. 2392. The WQC listed one condition, to monitor dissolved oxygen and water temperature for at least three years after the project is issued a license. In addition, the WQC has three other requirements; that Gilman maintain the state water quality standards; allow the state access to the project and monitoring equipment; and structural and operational modifications to the project may require an amended WQC.

On July 28, 1989, the Vermont Department of Environmental Conservation (VDEC) issued a WQC for the Gilman Project No. 2392. The WQC listed seven conditions, A through G. Condition A relates to project operations (including minimum flow requirements); condition B relates to impoundment drawdowns; conditions C and D relate to upstream and downstream fish passage facilities; condition E relates to trash and debris removal; condition F relates to desilting of the project impoundment; and condition G requires that any significant change in project operation have prior VDEC written approval.

On April 11, 1990, the Commission issued an EA for the Gilman Project supporting the need for a 210 cfs spillflow to protect water quality as required in condition A of the original WQC. SPC did not agree that a 210 cfs spillflow was needed to protect water quality, and therefore, by letter dated December 30, 1992, SPC appealed this condition of the WQC and requested that the Commission issue a revised EA. On December 15, 1993,

SPC and the State of Vermont finalized a settlement agreement resolving the dispute over the spillflow condition. By letter dated February 17, 1994, the Vermont Agency of Natural Resources amended the WQC, changing condition A as noted in bold print below. Conditions B through G of the original WQC remain unchanged.

A. The project shall operate run-of-river, maintain the impoundment at or within 6 inches from the top of the flashboards, maintain a 210 cfs minimum flow at the dam from June 1 through October 15, **whenever instantaneous inflow to the project is 1,000 cfs or less, to protect water quality, and the applicant shall file for review and approval a flow monitoring plan.**

The requirements in condition A, regarding the timing for spillflows and a spillflow monitoring plan, are appropriate for maintaining water quality in the Connecticut River, and are included in license articles 401, 402, and 403. Additionally, this spillflow will result in only a small reduction in power generation. On average, inflows of 1,000 cfs or less occur about 25 percent of the time between June and October, thus 210 cfs would be spilled at the dam about 25 percent of the time during these months.

New Hampshire's WQC has four requirements. Vermont's amended WQC has seven conditions, A through G as stated in the certificate. Pursuant to Section 401(d) of the Clean Water Act (CWA), conditions of the water quality certification become terms and conditions of the license as a matter of law. All New Hampshire's requirements relate to water quality. Vermont's conditions A, E, F, and G, relate to water quality. However, Vermont's conditions C and D, regarding upstream and downstream fish passage facilities, are clearly unrelated to water quality. In addition, Interior has reserved its authority, pursuant to Section 18 of the Act, to prescribe fishways at the Gilman Project (for discussion see SECTION 18 - RESERVATION OF AUTHORITY TO PRESCRIBE FISHWAYS), which provides for upstream and downstream fish passage facilities at such time when they are needed.

COASTAL ZONE MANAGEMENT PROGRAM

The State of Vermont is not a participant in the Coastal Zone Management Program (CMP). The New Hampshire Office of State Planning is responsible for reviewing hydroelectric projects for consistency with New Hampshire's CMP. The Gilman Project is not located within New Hampshire's coastal zone boundary and is not expected to affect coastal resources, therefore, no consistency certification is required.

SECTION 18 - RESERVATION OF AUTHORITY TO PRESCRIBE FISHWAYS

The New Hampshire Fish and Game Department (NHFGD) and the Vermont Agency of Natural Resources (VANR) recommend that both upstream and downstream fish passage facilities be installed at the Gilman dam when deemed necessary by the state fish and wildlife agency, the FWS, and the National Marine Fisheries Service. Interior, by letter dated May 5, 1989, stated that, although fish passage facilities are not needed at the present time, they may be needed in the future. Interior, therefore, recommends that the Licensee be required to provide fish passage facilities at the project when prescribed by the Secretary of the Interior under Section 18 of the Act. SPC does not oppose a reservation clause that would permit consideration of fishway facilities in the future.

I recognize that future fish passage needs and management objectives can not always be predicted at the time of license issuance. Section 18 of the Act provides the Secretary of the Interior the authority to prescribe fishways. 4/ Although fishways may not be recommended by Interior at the time of project licensing, upon receiving a specific request from Interior, it is appropriate for the Commission to include a license article which reserves the Interior's prescription authority. 5/ Therefore, article 405 reserves the Commission's authority to require fishways that Interior may prescribe.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

Section 10(j) of the Act requires the Commission to include license conditions, based on recommendations of Federal and state fish and wildlife agencies, for the protection, mitigation of adverse impacts to, and enhancement of fish and wildlife resources. Pursuant to Section 10(j) of the Act, staff made a determination that the recommendations of the Federal and state fish and wildlife agencies are consistent with the purposes and requirements of Part I of the Act and applicable law. Staff has addressed the concerns of the Federal and state fish and wildlife agencies in the EA and the license includes conditions consistent with the recommendations of the agencies.

COMPREHENSIVE PLANS

Section 10(a)(2) of the Act, 16 U.S.C. §803(a)(2), requires the Commission to also consider the extent to which the project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways

4/ Section 18 of the Act states that the Commission shall require such fishways as may be prescribed by the Secretary of Commerce or the Secretary of the Interior as appropriate.

5/ Lynchburg Hydro Associates, 39 FERC ¶ 61,079 (1987).

affected by the project. Under section 10(a)(2), federal and state agencies have filed with the Commission eight comprehensive plans that address various resources in New Hampshire and seven comprehensive plans that address various resources in Vermont. Of these, the staff identified and reviewed six New Hampshire plans and four Vermont plans relevant to this project. ^{6/} No conflicts were found.

COMPREHENSIVE DEVELOPMENT

Sections 4(e) and 10(a)(1) of the Act, require the Commission to give equal consideration to all uses of the waterway on which a project is located. When the Commission reviews a project, the recreational, fish and wildlife resources, and other nondevelopmental values of the involved waterway are considered equally with power and other developmental values. In determining whether, and under what conditions, a hydropower license should be issued, the Commission must weigh the various economic and environmental tradeoffs involved in the decision.

A. Recommended Alternative

Based on staff's independent review and evaluation of the proposed Gilman Project, agency recommendations, and the recommended alternative, I have selected issuing a license for the proposed project, with additional staff-recommended environmental measures, as the preferred option. I selected this option because: (1) with these measures, the environmental effects of subsequent operation would be minor; (2) these measures would protect or improve fish, wildlife, and recreation resources; and (3) the electricity generated from a renewable resource would be provided, thus continuing to offset the use of existing fossil-fueled, steam-electric generating plants; thereby, conserving nonrenewable energy resources, and reducing atmospheric pollution, and global warming.

The beneficial effects (in addition to the air quality benefits) on the environment associated with the licensing of the Gilman Project would result from the required environmental measures. These measures include:

(a) operating the project in a run-of-river mode;

(b) spilling from the project dam, whenever inflow to the project is 1,000 cfs or less, a continuous minimum flow of 210 cubic feet per second from June 1 through October 15, or inflow to the project, whichever is less, into the

^{6/} For a list of the plans, see the attached Environmental Assessment.

Connecticut River for the protection of water quality in the Connecticut River;

(c) developing and implementing a plan to monitor the run-of-river operating mode and the minimum flow conditions of this license;

(d) developing and implementing a plan to monitor dissolved oxygen (DO) concentrations and water temperature of the Connecticut River downstream and upstream of the Gilman Project.

(e) implementing the canoe portage plan, filed December 27, 1988, and the boat launch site plan, filed September 19, 1989.

B. Developmental and Nondevelopmental Uses of the Waterway

The project would annually generate an estimated 25,078 MWh of relatively low-cost electricity from a renewable energy resource for use by the applicant in its paper mill and by NEP's wholesale customers. Positive, long-term benefits to water quality and resident fisheries below the project would occur due to the spillage of an instantaneous minimum flow of 210 cfs at the Gilman dam to improve dissolved oxygen (DO) conditions. The Atlantic salmon restoration program for the Connecticut River Basin (CRB) would benefit from the cooperation and support of the Licensee in implementing a fish passage plan involving the Gilman dam. Upgrading the existing canoe portage around the project dam and improving the existing boat launch site for the project impoundment would provide better access to the river for water-based recreation within the project area.

The primary costs associated with the project would be: (1) the loss of approximately 182,015 kWh, or 0.7 percent, in potential annual energy generation currently valued at approximately \$11,000 ^{2/} due to the release of the minimum spillage flow; (2) the costs that would be shared by the Licensee in implementing a fish passage plan involving the Gilman dam; and (3) the construction and maintenance expenses of implementing the proposed recreational enhancement measures.

Based on the above discussion, the costs of the environmental measures are commensurate with the benefits to the resources, and the project would be economically beneficial even with the environmental measures.

Based on review of the agency and public comments filed on this project, and on staff's independent analysis and assessment

^{2/} 182,015 kWh at \$0.06/kWh.

of the project pursuant to sections 4(e), 10(a)(1), and 10(a)(2) of the Act, I find that the Gilman Project is best adapted to a comprehensive plan for the proper use, conservation, and development of the Connecticut River and other project related resources.

PROJECT RETIREMENT

The Commission has issued a Notice of Inquiry (NOI), dated September 15, 1993, requesting comments that address numerous issues involving the potential decommissioning of licensed hydropower projects at some future time, based on project-specific circumstances. ^{8/} The NOI states that the Commission is not proposing new regulations at this time, but is inviting comments on whether new regulations may be appropriate. Alternatively, the Commission may consider issuing a statement of policy addressing the decommissioning of licensed hydropower projects, or take other measures. The Gilman Project may be affected by future actions that the Commission takes with respect to issues raised in the NOI. Therefore, the license includes Article 204, which reserves authority to the Commission to require the licensee to conduct studies, make financial provisions, or otherwise make reasonable provisions for decommissioning of the project in appropriate circumstances. The terms of Article 204 are effective unless the Commission, in Docket No. RM 93-23, finds that it lacks statutory authority to require such actions.

By including Article 204, I do not intend to prejudge the outcome of the NOI. I am simply including the article so that the Commission will be in a position to make any lawful and appropriate changes in the terms and conditions of this license, which is being issued during the pendency of the NOI, based on the final outcome of that proceeding.

TERM OF LICENSE

In 1986, the Electric Consumers Protection Act modified Section 15 of the Act to specify that any license issued under Section 15 shall be for a term which the Commission determines to be in the public interest, but not less than 30 years, nor more than 50 years. The Commission's policy is to establish 30-year terms for those projects which propose little or no redevelopment, new construction or new capacity; 40-year terms for those projects that propose moderate redevelopment, new construction or new capacity; and 50-year terms for those

^{8/} Notice of Inquiry, Project Decommissioning at Relicensing, Docket No. RM93-23-000, September 15, 1993, 58 FR 48,991 (1993).

projects that propose extensive redevelopment, new construction or new capacity.

SPC proposes no modifications to the existing project facilities or changes in operation of the project. The existing license expired on December 31, 1990. Accordingly, the new license for the project will be for a term of 30 years effective the first day of the month in which this license is issued.

SUMMARY OF FINDINGS

An EA was issued for this project. Background information, analysis of impacts, support for related license articles, and the basis for a finding of no significant impact on the environment are contained in the EA attached to this order. Issuance of this license is not a major federal action significantly affecting the quality of the human environment.

The design of this project is consistent with the engineering standards governing dam safety. The project will be safe if operated and maintained in accordance with the requirements of this license. Analysis of related issues is provided in the Safety and Design Assessment. ^{9/}

I conclude that the project would not conflict with any planned or authorized development, and would be best adapted to comprehensive development of the waterway for beneficial public uses.

THE DIRECTOR ORDERS:

(A) This license is issued to Simpson Paper (Vermont) Company (Licensee), for a period of 30 years, effective the first day of the month in which this license is issued to operate and maintain the Gilman Project. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(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:

<u>Exhibit G-</u>	<u>FERC No.2392 -</u>	<u>Showing</u>
1	16	Project Location

^{9/} A Safety and Design Assessment was prepared for the Gilman Project No. 2392 and is available in the Commission's public file for this project.

(2) Project works consisting of: (a) the Gilman dam, a concrete gravity structure approximately 108 feet long and 29 feet high, and a rock-filled timber crib structure approximately 170 feet long and 40 feet high, each with a crest elevation of 828.3 feet USGS; (b) 5-foot-high flashboards bringing the normal water surface elevation to 833.3 feet USGS; (c) a hydraulically operated crest gate 18 feet high and 27 feet wide; (d) a reservoir having an area of 130 acres, a storage capacity of 705 acre-feet, and a normal water surface elevation of 833.3 feet USGS; (e) a powerhouse containing four turbine-generator units, one rated at 2,250 kW, one rated at 1,000 kW, and two rated at 800 kW each for a total rated capacity of 4,850 kW; (f) a 200-foot-long transmission line; (g) a 2.4-kV generator bus, a 2.4kV/34.5kV step-up transformer; and (h) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of exhibits A and F recommended for approval in the attached Safety and Design Assessment.

(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 located within or outside the project boundary, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) The exhibit G described above and those sections of exhibits A and F recommended for approval in the attached Safety and Design Assessment are approved and made part of the license.

(D) 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 charge, effective the first day of the month in which this license is issued:

For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 6,460 horsepower.

Article 202. Pursuant to Section 10(d) of the 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. One half of the project surplus earnings, if any, accumulated under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year under the license, the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts established in the project amortization reserve account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the annual weighted costs of long-term debt, preferred stock, and common equity, as defined below. The annual weighted cost for each component of the reasonable rate of return is the product of its capital ratio and cost rate. The annual capital ratio for each component of the rate of return shall be calculated based on an average of 13 monthly balances of amounts properly includable in the Licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for long-term debt and preferred stock shall be their respective weighted average costs 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 203. If the Licensee's project was directly benefitted 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. The benefits will be assessed in accordance with Subpart B of the regulations.

Article 204. The Commission reserves authority, in the context of a rulemaking proceeding or a proceeding specific to this license, to require the Licensee at any time to conduct studies, make financial provisions, or otherwise make reasonable provisions for decommissioning of the project. The terms of this

article shall be effective unless the Commission, in Docket No. RM93-23, finds that the Commission lacks statutory authority to require such actions or otherwise determines that the article should be rescinded.

Article 401. The Licensee shall operate the Gilman Project in a run-of-river mode for the protection of aquatic resources in the Connecticut River. The Licensee, in operating the project in a run-of-river mode, shall at all times act to maintain the reservoir water surface elevation at or within 6 inches of the top of the flashboards, and minimize the fluctuation of the reservoir surface elevation by maintaining a discharge from the project so that, at any point in time, flows, as measured immediately downstream of the project, approximates the sum of the inflows to the project reservoir.

Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the Licensee, or for short periods upon mutual agreement between the Licensee, the Vermont Agency of Natural Resources, the New Hampshire Fish and Game Department, and the U.S. Fish and Wildlife Service. If the flow is so modified, the Licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 402. From June 1 through October 15, whenever inflow to the project is 1,000 cfs or less, the Licensee shall release from the Gilman Project dam a continuous minimum flow of 210 cubic feet per second, or inflow to the project, if less. This flow release is required for the protection of water quality in the Connecticut River. During the entire year, all flows not used for hydropower operation shall also be spilled from the project dam.

This flow may be temporarily modified if required by operating emergencies beyond the control of the Licensee, or for short periods upon mutual agreement between the Licensee, the Vermont Agency of Natural Resources, the New Hampshire Fish and Game Department, and the U. S. Fish and Wildlife Service. If the flow is so modified, the Licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 403. Within 90 days of issuance of this license, the Licensee shall file, for Commission approval, a plan to monitor the run-of-river operating mode and the minimum flow specified in articles 401 and 402 of this license.

The Licensee shall prepare the aforementioned plan after consultation with the U.S. Fish and Wildlife Service, the New Hampshire Fish and Game Department, and the Vermont Agency of Natural Resources. The Licensee shall include with the plan

documentation of consultation, copies of comments and recommendations on the plan after the plan has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the licensee's plan. The Licensee shall allow a minimum of 30 days for the agencies to comment and make recommendations before filing the plan with the Commission. 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 require changes to the proposed plan. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission.

Article 404. Within 90 days of issuance of this license, the Licensee shall file with the Commission for approval a plan to monitor dissolved oxygen (DO) concentrations and water temperature of the Connecticut River downstream and upstream of the Gilman Project.

The Licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service, the New Hampshire Fish and Game Department, and the Vermont Agency of Natural Resources. The Licensee shall include with the plan documentation of consultation and copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The Licensee shall allow a minimum of 30 days for the agencies to comment and make recommendations prior to filing the plan with the Commission. 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 require changes to the proposed plan. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission.

If the results of the monitoring indicate that changes in project structures or operations are necessary to ensure maintenance of state water quality standards for the Connecticut River, the Commission may direct the Licensee to modify project structures or operations.

Article 405. Authority is reserved to the Commission to require the Licensee to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of, such fishways, as may be prescribed by the Secretary of the Interior, pursuant to Section 18 of the Federal Power Act.

Article 406. The canoe portage plan, filed December 27, 1988, and the boat launch site plan, filed September 19, 1989, are approved and made part of the license. The canoe portage plan, consisting of two pages and three drawings, figures A-C, in Appendix E-VIII of the application, provides for upgrading the canoe portage around Gilman dam, including signs, trail maintenance, a portage rest area, and foot access to New Hampshire State Route 135. The boat launch site plan, consisting of a cover letter and four pages and one drawing in attachment 3 of the additional information, provides for leveling and surfacing the boat launch, enlarging the parking area, installing trash cans, relocating the entrance to the boat launch site, posting signs at the boat launch to limit its use to car-top and small trailered boats, and relocating the Dalton Fire Department's dry hydrant.

The Licensee shall implement the plan within 1 year from issuance of this license and upon completion of the recreation facilities, file documentation with the Commission that all facilities approved herein were constructed as proposed. In addition, the Licensee shall operate and maintain or arrange for the operation and maintenance of the recreation facilities during the term of license.

Article 407. (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 is 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, cancelling 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 water 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; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. 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, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir 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 and roads for which all necessary state and federal 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-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. 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 federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal 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 federal 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 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 five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum 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 45 days before conveying any interest in project lands under this paragraph (d), the Licensee must submit a letter to the Director, Office of Hydropower Licensing, 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 or K 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 paragraph (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 covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational

use; and (ii) the grantee shall take all reasonable precautions to insure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

(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 or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will 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 or K 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.

(E) 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 that filing. Proof of service on these entities must accompany the filing with the Commission.

(F) This order is issued under authority delegated to the Director and constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. section 385.713. The filing of a request for rehearing does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically ordered by the Commission. The Licensee's failure to file a request for rehearing shall constitute acceptance of this order.

A handwritten signature in dark ink, appearing to read 'Fred E. Springer', is written over a horizontal line.

Fred E. Springer
Director, Office of
Hydropower Licensing