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UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;  
Vicky A. Bailey, William L. Massey,  
Linda Breathitt, and Curt H, bert, Jr.

Kennebec Water District                      )                      Project No. 2555-001

ORDER ISSUING SUBSEQUENT LICENSE

(Issued July 28, 1999)

On December 4, 1991, Central Maine Power Company (Central Maine) filed an application for a new license pursuant to Sections 15 and 4(e) of the Federal Power Act (FPA), 1/ for the continued operation of four projects: the Oakland Project No. 2559, which has two developments; the Rice Rips Project No. 2557; the Automatic Project No. 2555; and the Union Gas Project No. 2556. 2/ The projects, listed in order from upstream to downstream, are located on Messalonskee Stream, a tributary of the Kennebec River, in Kennebec County, Maine. Although the projects had been operated under separate licenses, Central Maine sought a single new license that would encompass all four projects. 3/

1/ 16 U.S.C. □□ 797(e), 808.

2/ Original licenses were issued for the Oakland and Rice Rips Projects on February 24, 1969, 41 FPC 176 and 179, respectively, and for the Automatic and Union Gas Projects on August 30, 1968, 40 FPC 376 and 378, respectively. The four licenses were effective May 1, 1965, and expired December 31, 1993. The projects have operated under interim authority.

3/ In an order issued concurrently with this one, we affirm our earlier finding, in Kennebec Water District, 84 FERC I 61,027 (1998), that the Messalonskee Stream from the Union Gas Project (the lowermost project on the stream) to the Messalonskee's confluence with the Kennebec is a navigable waterway of the United States. Because the four projects constitute a single unit of development, the location of the Union Gas Project on a navigable stream requires that all four projects be licensed. See Kennebec Water District, 80 (continued...)

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Subsequent to the filing of the application, the four projects were transferred from Central Maine: the Automatic Project to Kennebec Water District (District), which became the relicense applicant for that project, 4/ and the other three projects to FPL Energy Maine Hydro LLC (FPL Hydro), which is now the relicense applicant for those projects. 5/ This order issues a license to the District for the 800-kilowatt (kw) Automatic Project No. 2555. By separate order we are also issuing a license to FPL Hydro for the continued operation of the Messalonskee Project No. 2556 which comprises the Oakland, Rice Rips, and Union Gas Projects.

#### BACKGROUND

Notice of the application was published, and comments were received. Timely motions to intervene in this proceeding were filed by the Maine State Planning Office (Planning Office) and the U.S. Department of the Interior (Interior). The Kennebec Valley Chapter of Trout Unlimited (Kennebec Trout) filed a timely motion to intervene in response to the notice of Commission staff's Draft Environmental Impact Statement (EIS), which was issued in January 1996. Kennebec Trout's motion is in opposition to the project.

The environmental review of this application was consolidated with the review of seven other applications for original, new, or subsequent licenses for projects in the Kennebec River Basin. The Draft EIS evaluated the potential impacts of the 11 projects. Numerous comments on the Draft EIS were filed, and the Commission staff considered these comments in preparing the Final EIS, which was issued in July 1997. 6/ we have fully considered the motions and comments received from interested agencies and individuals in determining whether, and under what conditions, to issue this license. 7/

3/(...continued)

FERC 61,208 at p. 61,828 (1997).

4/ 70 FERC □ 62,003 (1995).

5/ 85 FERC □ 62,208 (1998).

6/ References in this order to the EIS are to the Final EIS unless otherwise specified. Comments on the Final EIS were received from the U.S. Environmental Protection Agency (EPA), Kennebec Trout, Kennebec Coalition, and Maine Professional River Outfitters.

7/ A number of intervenors and commenters in the Kennebec River  
(continued...)

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#### PROJECT DESCRIPTION

The Automatic Project is located downstream of FPL Hydro's Rice Rips Project and upstream of its Union Gas Project. The Automatic Project includes an 81-foot-long, 33-foot-high dam with 2-foot-high flashboards; a powerhouse containing one 800-kw generator; and a 4.5-mile-long impoundment with a gross storage capacity of 900 acre-feet.

A more detailed description of project facilities is contained in ordering paragraph (B)(2). For a description of the developments that comprise the Messalonskee Project No. 2556, see the companion license order in that proceeding.

#### APPLICANT'S PLANS AND CAPABILITIES

In accordance with Sections 10 and 15 of the FPA, 8/ we have evaluated the District's record as a licensee with respect to the following: (1) compliance history and ability to comply with the subsequent license; and (2) safe management, operation, and maintenance of the project. 9/

7/ (...continued)

Basin licensing proceedings raised issues regarding the scope of the environmental analysis and the assumptions underlying that analysis. The EIS generally responded to those comments, and we addressed them at length in our earlier orders issuing licenses for other projects evaluated in the EIS. See, e.g., 81 FERC m 61,249 at pp. 62,114-15. These issues included our choice of an environmental baseline and "no action" alternative, consideration of watershed-wide land use protection, alternative energy sources, consideration of license denial and project decommissioning for all projects, and inclusion of other projects in the environmental analysis. Since those issues have already been addressed, we see no need to repeat our earlier discussion, which we incorporate by reference here to the extent pertinent.

8/ 16 U.S.C. §§ 803 and 808.

9/ In Order 513, the Commission's relicensing rulemaking, the Commission exempted licensees (such as the Water District) of minor projects (installed capacity of 1.5 megawatts or less, see 18 CFR a 4.30(b)(17)) whose licenses waive Sections 14 and 15 of the FPA, from the information requirements in 18 CFR 16.10, which correspond to the information requirements of Sections 10 and 15 of the FPA (consumption improvement program; compliance history and  
(continued...)

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1. Compliance History and Ability to Comply with the Subsequent License

We have reviewed the District's record of compliance with the terms and conditions of the existing license. We find that the District's overall record of making timely filings and compliance with its license is satisfactory. Therefore, we believe that the District can satisfy the conditions of a subsequent license.

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

We have reviewed the District's record of management, operation, and maintenance of the Automatic Project and conclude that the dam and other project works are safe and that the licensee's record of managing, operating, and maintaining these facilities supports the decision to issue a subsequent license.

WATER QUALITY CERTIFICATION

Under Section 401(a)(1) of the Clean Water Act (CWA), 10/ the Commission may not issue a license for a hydroelectric project unless the certifying agency has either issued water quality certification 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 state certification shall become a condition on any federal license or permit that is issued. 11/ On August 28, 1995, the Maine Department of Environmental Protection (Maine DEP) issued Section 401 water quality certification for all four projects, subject to certain conditions.

9/ (...continued)

ability to comply with new license; safe management, operation, and maintenance of the project; ability to provide efficient and reliable service; need for power; transmission service; cost effectiveness of plans; and actions affecting the public). The Commission stated that it would require those licensees to provide items of information required under Section 16.10 that the Commission deems necessary to evaluate their individual applications. See 54 Fed. Reg. 23756 (June 2, 1989); 55 Fed. Reg. 10768 (March 23, 1990), FERC Statutes and Regulations, Regs. Preambles 1986-1990 R 30,854 at pp. 31,444-45 (May 17, 1989).

10/ 33 U.S.C. 1341(a)(1).

11/ 33 U.S.C. 1341(d).

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Maine DEP's water quality certification includes nine conditions, the substantive ones of which we summarize here, and which are attached in full as Appendix A to this order. 12/ While we have included certain of these provisions as license articles, all of the Section 401 conditions are conditions to this license. 13/

Condition 1 requires the licensee to maintain an instantaneous minimum flow of 15 cfs through all project developments at all times. 14/ Condition 1 further requires that the licensee submit plans for providing and monitoring the minimum flows for Maine DEP approval (see also license Article 401).

Condition 2 requires the licensee to maintain impoundment water levels within 1.0 foot of full pond. Condition 2 further requires the licensee to submit plans for providing and monitoring the impoundment water levels for Maine DEP approval (see also license Article 402).

- 12/ As we have acknowledged in *Kennebec Water Power Company*, 81 FERC e 61,254 (1997), we are required by the decision of the United States Court of Appeals in *American Rivers, et al. v. FERC*, 129 F.3d 99 (1997), to accept all conditions in a water quality certification as conditions on a license even if we believe that the conditions may be outside the scope of Section 401. While we have included certain of the provisions as license articles, all of the Section 401 conditions are conditions to this license. In any event, nothing in the conditions of the water quality certification shall be viewed as restricting the Commission's ability or the licensee's obligation, under the Federal Power Act, to take timely action necessary to protect human life or the environment.
- 13/ Because Maine DEP issued one water quality certification for the application for all four Messalonskee projects, some of the conditions in the certification do not pertain to the Automatic Project. In particular, Conditions 4 and 5 relate to down ramping at the Union Gas development and to wetland and waterfowl issues at Messalonskee Lake; these areas are included in the Messalonskee Project, for which we are issuing a new license concurrently with this license. Since the District is not the licensee of that project, it has no control over the implementation of these conditions.
- 14/ As noted below, Interior recommended that the licensee release instantaneous minimum flows of 100 cfs. By letter dated May 13, 1996, Maine DEP stated that these higher minimum flows do not conflict with the water quality certification.

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Condition 3 requires the licensee to sample dissolved oxygen, temperature, and chlorophyll a in Messalonskee Stream (see license Article 406) and to provide a water quality sampling plan to Maine DEP for review and approval within six months of license issuance. Maine DEP reserves the right, after proper notification and hearing, to require structural or operational changes if monitoring indicates that water quality standards are not met.

Condition 6 requires the licensee to install project identification signs and improve parking at the project. Condition 6 further requires the licensee to submit a schedule, for Maine DEP approval, for implementing the recreational enhancements.

#### ENDANGERED SPECIES ACT

There are no federally-listed threatened or endangered species that occur in the vicinity of the Automatic Project, other than occasional transient bald eagles and peregrine falcons. 15/ In any event, we have included measures to protect waterfowl and fishery resources on which bald eagles and peregrine falcons feed (Articles 401, 402, and 406).

#### SECTION 18 FISHWAY PRESCRIPTIONS

Section 18 of the FPA 16/ states that the Commission shall require construction, maintenance, and operation by a licensee of such fishways as the Secretaries of the U.S. Departments of Commerce and of the Interior may prescribe. By letter of January 26, 1994, Interior's Fish and Wildlife Service (FWS) requested that the Secretary's authority to prescribe fishways be reserved. Article 405 of this license reserves authority to the Commission to require the licensee to construct, operate, and maintain such fishways as the Secretary of the Interior may prescribe in the future.

#### RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

Section 10(j)(1) of the FPA 17/ requires the Commission, when issuing a license, to include conditions based upon recommendations of federal and state fish and wildlife agencies,

15/ See Interior's letter of January 26, 1994, filed January 28, 1994.

16/ 16 U.S.C. , 811.

17/ 16 U.S.C. R 803 (j)(1).

and habitat)" affected by the project. If the Commission believes that any such recommendation may be inconsistent with the purposes and requirements of Part I of the FPA or other applicable law, Section 10(j)(2) requires the Commission and the agencies to attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If the Commission then does not adopt a recommendation, it must explain how the recommendation is inconsistent with applicable law and how the conditions selected by the Commission adequately and equitably protect, mitigate damages to, and enhance fish and wildlife.

Maine's recommendations pertaining to fish and wildlife, by executive order of the Governor, are contained in the conditions of the water quality certification, which we have already discussed.

By letter dated January 26, 1994, Interior provided recommendations, pursuant to Section 10(j), for the four combined Messalonskee projects. One of those recommendations, which would require the licensee to monitor recreational use of the project area to determine whether existing access facilities are meeting demands for public use of fish and wildlife resources, is not within the scope of Section 10(j), because it is not a specific measure to protect, enhance, or mitigate damages to fish and wildlife. However, we have considered this recommendation under Section 10(a) of the FPA, and, in Article 408, we are requiring the licensee to file with the Commission a plan to monitor recreational use at the Automatic Project.

Interior submitted three recommendations relating to minimum flows, only two of which apply to the Automatic Project. Interior would require the licensee to discharge from the Messalonskee Lake Dam and from each of the four downstream hydroelectric developments an instantaneous flow of 100 cfs or inflow, whichever is less, and to file with the Commission, after consultation with FWS and other agencies, a plan for complying with the minimum flow requirements. This recommendation was advanced primarily to improve habitat for brown trout below the Union Gas Dam and in the Rice Rips bypassed reach. 19/ Interior

18/ 16 U.S.C. R 661 et seq.

19/ Because Messalonskee Lake is essentially the only development that stores water, any minimum flow delivered below the Union Gas development would have to be released from Messalonskee Lake and passed through each succeeding (continued...)

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also recommended that the licensee file with the Commission a plan to monitor wetlands and associated wildlife use at the developments.

We are adopting those recommendations in Article 401

(minimum flows) and Article 403 (monitoring of minimum flow requirements); Article 408, which provides for the filing of a recreation plan after consultation with Interior and other agencies, addresses Interior's concern regarding the monitoring of wetlands and wildlife at the Automatic Project. 20/ The procedural background and analysis of the Commission's consideration of Interior's Section 10(j) recommendations for all of the Messalonskee developments is contained in our companion order issuing the Messalonskee Project license and is incorporated here by reference to the extent that it is pertinent to the Automatic Project.

#### OTHER COMMENTS AND RECOMMENDATIONS

Kennebec Trout recommends that the District be required to share with Central Maine (now FPL Hydro) the cost of installing a parking area where the County Road crosses Messalonskee Stream below the Rice Rips powerhouse as mitigation for the lack of access to the Automatic tailrace. The EIS states that access to the Automatic tailrace is limited by steep terrain and residential development. The EIS evaluated the need for recreational facilities in the Automatic Project area and concluded that the parking facility by the County Road was not needed at this time. The EIS recommends that the Water District improve the parking area at the car-top boat put-in site in North Street Park. 21/ This improvement would provide adequate access to the Automatic Project impoundment. We adopt the recommendation in the EIS and are including Article 407 in the license, which requires the District to improve the parking area at the North Street Park put-in site.

#### COMPREHENSIVE PLANS

Section 10(a)(2) of the FPA requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. Under Section 10(a)(2), federal and state agencies filed a total

19/(...continued)  
dam.

20/ See the discussion of Section 10(j) recommendations in our companion order issuing the Messalonskee Project license.

21/ EIS at pp. 4-163-64.

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of 13 plans. Of these we identified nine plans relevant to the project. 22/ The project does not conflict with any of these comprehensive plans.

#### COMPREHENSIVE DEVELOPMENT

Sections 4(e) and 10(a)(1) of the FPA 23/ require the

Commission, in acting on applications for license, to give equal consideration to the power and development purposes and to the purposes of energy conservation, the protection, mitigation and enhancement of fish and wildlife, the protection of recreation opportunities, and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgement 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.

The EIS analyzed the effects associated with the continued operation of the Automatic Project. It recommends a number of measures to protect and enhance environmental resources. These measures will provide minimum flows and limit reservoir draw-downs to improve fish and wildlife resources, enhance recreational resources in the project vicinity, and protect cultural resources affected by the project.

In determining whether a proposed project will be best adapted to a comprehensive plan for developing a waterway for beneficial public purposes, pursuant to section 10(a)(1) of the FPA, the Commission considers a number of public interest factors, including the economic benefits of project power.

- 22/ Strategic Plan for Management of Atlantic Salmon in Maine, 1981, Atlantic Sea-Run Salmon Commission; Maine River Study - Final Report, 1982, Maine Department Of Conservation; State Comprehensive River Management Plan, 1987, Maine State Planning Office; Hydrology of Floods - Kennebec River Basin, Maine, 1985, U.S. Army Corps of Engineers; Hydrology of Floods, Kennebec River Basin, Maine, Part II, 1988, U.S. Army Corps of Engineers; Water Resource Study - Kennebec River Basin, 1989, U.S. Army Corps of Engineers; Fisheries USA: The Recreational Fisheries Policy of the FWS, Fish and Wildlife Service; North American Waterfowl Management Plan, 1986, Interior and Canadian Wildlife Service; Final EIS - Restoration of Atlantic Salmon to New England Rivers, 1989, Interior.

- 23/ 16 U.S.C. 20 797(e) and 803(a)(1).

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Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in Mead Corp., 24/ 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 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. In making its decision, the Commission considers the project power benefits both with the applicant's proposed mitigation and enhancement measures and with the Commission's proposed modifications and additions to the applicant's proposal.

As proposed by the District, the Automatic Project would produce an average of 2.903 (Gwh) of energy annually at an annual cost of about \$122,900 (42.3 mills/kwh). The current annual value of the project's power would be \$144,100 (49.6 mills/kwh). We base this value on the cost of alternative resources, which in this case is the cost of a new combined cycle combustion turbine plant and the regional cost of natural gas. 25/ To determine whether the proposed project is currently economically beneficial, we subtract the project's cost from the value of the project's power. Thus, based on current costs, the project, as proposed by the District, would cost about \$21,200 annually (7.3 mills/kwh) less than the current cost of alternative power.

As licensed by the Commission, the project will produce an average of 2.627 Gwh of energy annually at an annual cost of about \$121,700 (46.3 mills/kwh). The current annual value of the licensed project's power is about \$138,700 (52.8 mills/kwh). Thus, we find the project as licensed will cost \$17,000 annually (6.5 mills/kwh) less than the current cost of alternative power.

Based on our review of the agency and public comments, and our evaluation of the environmental and economic effects of the proposed project and its alternatives pursuant to Section 10(a)(1) of the FPA, we find that the Automatic Project, with our protection and enhancement measures, will be best adapted to the comprehensive development of Messalonskee Stream and the Kennebec River Basin for all beneficial public uses.

24/ 72 FERC ¶ 61,027 (1995).

25/ Our estimate of the value of project power is more completely described in the EIS at p. 2-55, n. 10.

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#### LICENSE TERM

Section 15(e) of the FPA specifies that any new license issued shall be for a term that we determine to be in the public interest but the term may not be less than 30 years or more than 50 years. Our policy establishes 30-year terms for projects that propose little or no redevelopment, new construction, new capacity, or enhancement; 40-year terms for projects that propose moderate redevelopment, new construction, new capacity, or enhancement; and 50-year terms for projects that propose extensive redevelopment, new construction, new capacity, or



enhancement. The District does not propose any new capacity or development at the Automatic Project.

Central Maine, the original applicant, suggested that we coordinate the license terms for the projects encompassed in the Kennebec River Basin EIS to expire simultaneously with the license for the Hydro-Kennebec Project No. 2611, another project on the mainstem Kennebec River. That license expires in the year 2036. Central Maine argued that this would enable the Commission to ensure that numerous licenses in the Kennebec River Basin would expire around the same time.

In our policy statement on cumulative impacts and license reopeners, we stated that we would endeavor to coordinate the expiration dates of licenses for projects located in the same river basin to the maximum extent feasible, consistent with our commitment to considering the cumulative impacts of projects in the same river basin collectively at relicensing. 26/ In earlier orders issuing licenses for other projects encompassed in the Kennebec River Basin EIS, we concluded that issuing licenses with the expiration dates Central Maine suggested would further this policy, not only by ensuring that those licenses would expire simultaneously, 27/ but also by providing an opportunity for coordination of their expiration dates with the expiration dates

26/ Use of Reserved Authority in Hydropower Licenses to Ameliorate Cumulative Impacts, 59 Fed. Reg. 66718 (December 28, 1994), FERC Statutes and Regulations s 31,010 at p.31,219 (1994). This policy is codified at 18 C.F.R. a 2.23 (1999). See also Central Maine Power Company, 73 FERC 3 61,149 at p. 61,422 (1995); Duke Power Company, 73 FERC S 61,335 at p. 61,940 (1995).

27/ Because those projects entailed differing degrees of construction and enhancement, the licenses would not have expired at the same time if we had based each license term on those factors alone.

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of other licenses for projects in the basin. 28/ Consequently, we issued licenses for those projects with license terms expiring in 2036. Following that policy here, we will issue a license for a 37-year term for the Automatic Project, effective the first day of the month in which this license is issued. 29/

#### SUMMARY OF FINDINGS

The Final EIS includes background information, analysis of impacts, discussion of enhancement measures, and support for related license articles. The project will not result in any major, long-term adverse environmental impacts.

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.

We conclude that issuing a license for the Automatic Project, with our required enhancement measures, will not conflict with any planned or authorized development, and will be best adapted to a plan for comprehensive development of the waterway for beneficial public uses.

The Commission orders:

(A) This license is issued to the Kennebec Water District, for a period of 37 years, effective the first day of the month in which this order is issued, to operate and maintain the Automatic Project No. 2555. This license is subject to the terms and conditions of the FPA, which is incorporated by reference as part

28/ See, e.g., 81 FERC c 61,249 at p. 62,123.

29/ Besides the Hydro-Kennebec Project license, expiring in 2036, the license for the Benton Falls Project No. 5073 expires in 2034. In addition, the license for the Flagstaff Project No. 2612 expired in 1997 (no new license has yet been issued), and several other projects have licenses expiring within the next ten years: Harris Project No. 2142 (2001); and Anson Project No. 2365, Abenaki Project No. 2364, and Lockwood Project No. 2574 (2004). New Licenses could be issued for those projects with expiration dates coordinated with those of the licenses we are issuing in the present orders. We cannot, of course, commit ourselves here to issuing such licenses; moreover, the terms of such licenses as we may issue for those projects may also depend on other factors, such as the amount of new construction involved. However, our action in the present orders makes such coordination possible.

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of this license, and subject to the regulations the Commission issues under the provisions of the FPA. 30/

(B) The project consists of:

(1) All lands, to the extent of the licensee's interest in those lands, shown in the following exhibits:

Exhibit G-	FERC Drawing	Showing
	No. 2555	

5	1001	Detail Map - Reservoir
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(2) The project works, consisting of: (a) an 81-foot-long,  
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33-foot-high concrete gravity dam with (i) a 33-foot-long non-overflow section, (ii) a 20-foot-long, 2-foot-wide gated section with one 14-foot-high, 16-foot-wide Taintor gate, (iii) a 30-foot-long spillway section topped with 2-foot-high flashboards, (iv) an intake section beneath the spillway, and (v) an earthen section containing a 30-foot-long retaining wall; (b) a 63-foot-high, 19-foot-wide, 31-foot-long, concrete and brick powerhouse, housing one horizontal Francis turbine and General Electric generator combination with a rated capacity of 800 kw; (c) a 4.5-mile-long impoundment with a gross storage capacity of 900 AF; and (d) appurtenant facilities.

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

Exhibit A - The following sections of Exhibit A filed December 4, 1991: The turbine and generator descriptions on page A-27; and additional mechanical and electrical equipment described elsewhere on pages A-29 through A-33.

Exhibit F - The following Exhibit F drawings filed on December 4, 1991:

30/ The Automatic Project is part of a unit of development that includes the developments being authorized under the new license for the Messalonskee Project No. 2556. Because that license is a major license, to which Sections 14 and 15 of the FPA apply, we are issuing a major, subsequent license for the Automatic Project, to ensure that the entire unit of development remains subject to Sections 14 and 15. We will not waive those or other sections of the FPA that are normally waived for a project receiving a minor license.

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Exhibit F- FERC Drawing Showing  
No. 2555

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Dam & Powerhouse - Plan,  
Elevation & Sections

(3) All 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 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 the license.

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

Article 201. The licensee shall pay the United States an annual charge, effective the first day of the month in which this license is issued, for the purposes of reimbursing the United States for the cost of administration of Part I of the Federal Power Act, 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 800 kw. Under the regulations currently in effect, projects with authorized installed capacity of less than or equal to 1,500 kilowatts are not assessed an annual charge.

Article 202. 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, in the same manner as for benefits received during the term of this new license.

Article 203. Within 45 days of the issuance of this license, the licensee shall file three original sets of aperture cards of the approved exhibit drawings. The sets must be reproduced on silver or gelatin 35 mm microfilm and mounted on type D (3-14" x 7-3/8") aperture cards. The licensee shall submit 1 copy of Form FERC-587 with the aperture cards.

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Prior to microfilming, the FERC Drawing Number shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number must 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 issuance of this license must be typed on the upper left corner of each aperture card.

Two sets of the aperture cards shall be filed with the Secretary of the Commission, ATTN: OHL/Division of Licensing and Compliance. The third set of aperture cards shall be filed with Commission's New York Regional Office.

Article 401. Within 60 days of the installation of water level and streamflow monitoring devices required by Article 403, the licensee shall release a minimum flow of 100 cfs or inflow to the Automatic impoundment, whichever is less (except that at no time shall minimum flows drop below 15 cfs), from the Automatic Project as measured in the project's tailrace immediately downstream of the dam for the protection and enhancement of

aquatic resources in Messalonskee Stream and the Kennebec River.

Minimum flow releases from the Automatic Project may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement between the licensee, U.S. Fish and Wildlife Service, the Maine Department of Inland Fisheries and Wildlife, and the Maine Department of Environmental Protection. 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. Within 60 days of installation of water level and streamflow monitoring devices required by Article 403, the licensee shall limit the maximum drawdown of water levels in the Automatic impoundment to 1.0 foot of full pond elevation of 94.3 feet for the protection and enhancement of water quality and aquatic resources in Messalonskee Stream and the Kennebec River.

The maximum drawdown limitation may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement between the licensee, the U.S. Fish and Wildlife Service, Maine Department of Inland Fisheries and Wildlife, and Maine Department of Environmental Protection. If the drawdown limitations are so modified, the licensee shall notify the Commission as soon as possible, but no later than ten days after each such incident. Notification of drawdowns that exceed the restriction for Messalonskee Lake or any of the three impoundments from ice-out through and including July 31 shall include the reason for the drawdown and documentation of prior consultation with the Maine Department of Inland Fisheries and Wildlife.

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Article 403. Within six months of license issuance, the licensee shall file for Commission approval a plan to install, operate, and maintain streamflow monitoring equipment necessary to monitor and record compliance with the minimum flows required by Article 401 and the impoundment water level elevations required by Article 402.

The plan shall include, but need not be limited to: a schedule for installing the monitoring equipment; the proposed location, design, and calibration of the monitoring equipment; the method of data collection; a provision for providing the data to the consulted agencies, within 30 days from the date of the agencies request for the data; and a provision for notification of the Maine Department of Inland Fisheries and Wildlife and Maine Department of Environmental Protection prior to any proposed draw-down of up to 8 feet for flood control. This plan may incorporate existing monitoring equipment as long as it meets the standards of the U.S. Geological Survey.

The licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the U.S. Geological Survey, the Maine Department of Inland Fisheries and Wildlife, Maine Department of Marine



Resources, and the Maine Department of Environmental Protection.

The licensee shall include with the plan documentation of agency consultation, 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 to 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 site-specific information.

The Commission reserves the right to require changes to the plan. The monitoring plan shall not be implemented until the licensee is notified that the plan is approved. Upon Commission approval, the licensee shall implement the plan including any changes required by the Commission.

Article 404. Within 60 days of license issuance, the licensee shall file for Commission approval a plan to release the minimum flows required by Article 401 of this license. The plan shall include, but need not be limited to:

- (1) the method of release;
- (2) specific measures that would ensure that the minimum flow requirements would be met at all times;

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- (3) an explanation of any modifications to existing facilities to release the required minimum flows; and
- (4) design drawings, including any pertinent hydraulic calculations, and technical specifications for any modifications to facilities necessary to meet the minimum flow requirements.

The Commission reserves the right to require changes to the plan. The plan for releasing the required minimum flows shall not be implemented until the licensee is notified that the plan is approved. Upon Commission approval, the licensee shall implement the plan including any changes required by the Commission.

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

Article 406. Within six months of license issuance, the licensee shall file with the Commission, for approval, a water quality monitoring plan to ensure that development operations and



facilities do not contribute to violations of state water quality standards. The licensee shall, for a 5-year period, monitor dissolved oxygen, temperature, and chlorophyll a levels in Messalonskee Stream and identify periods of generation during sampling. The plan shall include, but need not be limited to:

- (1) the methodology, including sampling protocol based on the Maine Department of Environmental Protection's most recent river sampling protocol, or other protocol approved by the Maine Department of Environmental Protection;
- (2) a schedule for implementation of the plan;
- (4) a schedule for consultation with the consulted agencies concerning the results of the monitoring; and
- (5) a schedule for filing the results, agency comments, and licensee's response to agency comments with the Commission.

The licensee shall prepare the plan after consultation with the Maine Department of Environmental Protection, Maine Department of Inland Fisheries and Wildlife, Maine Department of Marine Resources, National Marine Fisheries Service, and U.S. Fish and Wildlife Service. The licensee shall include with the plan documentation of agency consultation, copies of comments and

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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 to make recommendations before filing the plan with the Commission for approval. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on site-specific information.

The Commission reserves the right to require changes to the plan. The water quality monitoring plan shall not be implemented until the licensee is notified that the plan is approved. Upon Commission approval the licensee shall implement the plan, including any changes required by the Commission.

If the results of the 5-year monitoring program indicate that violations of the Class GPA standards for trophic state still occur, the Commission may direct the licensee to modify project structures or operations, including alternative flow releases, as necessary to protect water quality in Messalonskee Stream.

Article 407. Within six months of license issuance, the licensee shall file with the Commission, for approval, a recreation plan showing existing recreational development and indicating the entities responsible for operation and maintenance of the facilities for the Automatic Project. The plan shall also

provide for construction of improvements to the parking area at the North Street Park, or for an alternate access location, and for monitoring and reporting on recreation use. The plan shall provide for, but need not be limited to: (1) final site plans for the facilities cited above; (2) erosion and sediment control during construction; and (3) an implementation schedule.

The licensee shall prepare the plan after consulting with the Maine Department of Environmental Protection, Maine Department of Conservation, U.S. Fish and Wildlife Service, the city of Waterville, Waterville Conservation Commission, and Natural Resources Conservation Service. 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 provided to the consulted entities, and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations prior to filing the plan with the Commission for approval. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

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

Article 408. Within three months of license issuance, the licensee shall prepare a plan to monitor recreational use of the Automatic Project to determine whether existing access facilities and the new facilities required in Article 407 are meeting public use demands without harm to wetlands and wildlife. The plan shall provide for monitoring the effects of recreational use at the project and filing a monitoring report concurrently with the Form 80, Recreation Report, starting with the Form 80 report due in 2004.

Every six years during the term of the license, the licensee shall file, with the Commission, a report on the monitoring results along with the required Form 80. The report shall include: (1) annual recreation use figures; (2) a discussion of the adequacy of the licensee's recreation facilities at the project to meet recreation demand; (3) a description of the methodology used to collect all study data; and (4) where there is a need for additional facilities, a recreation plan proposed by the licensee to accommodate recreation needs at the project. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations prior to filing the report and Form 80 with the Commission.

The licensee shall prepare the recreation use monitoring plan after consulting with the Maine Department of Inland

Fisheries and wildlife, U.S. Fish and wildlife Service, National Park Service, and Maine Department of Conservation. 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 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 to make recommendations prior to filing the plan with the Commission for approval. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on development-specific information.

The Commission reserves the right to require changes to the plan. The monitoring plan shall not be implemented until the licensee is notified that the plan is approved. Upon approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 409. The licensee shall implement the "Programmatic Agreement Among the Federal Energy Regulatory Commission, the

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Advisory Council on Historic Preservation, and the Maine State Historic Preservation Officer for the Management of Historic Structures and Eligible Archaeological Sites that may be Affected by New Licenses Issuing to Central Maine Power Company and Kennebec Water Power Company For Ten Hydroelectric or Storage Projects in Maine" executed on September 29, 1993, including but not limited to the Cultural Resources Management Plan (CRMP) for the Automatic 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, the licensee shall obtain approval before engaging in any ground disturbing activities or taking any other action that may affect any historic properties within the project's area of potential effect.

Article 410. (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, 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 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

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serve single-family type dwellings;

- (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and
- (4) food plots and other wildlife enhancement.

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 or roads where all necessary state and federal approvals have been obtained;
- (2) storm drains and water mains;

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- (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

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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 five 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 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 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

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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; 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 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 final unless a request for rehearing by the Commission is filed within 30 days of the date of its issuance, as provided in Section 313 of the FPA. 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,

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except as specifically ordered by the Commission. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission. Commissioner Bailey dissented in part with a separate statement attached.

( S E A L )

David P. Boergers,  
Secretary.

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APPENDIX A

WATER QUALITY CERTIFICATION CONDITIONS

THEREFORE, the Department GRANTS certification that there is a reasonable assurance that the continued operation of the Messalonskee Project, as described above, will not violate applicable water quality standards, SUBJECT TO THE FOLLOWING CONDITIONS:

1. MINIMUM FLOWS

- A. Except as temporarily modified by approved maintenance activities, emergencies beyond the applicant's control, as defined below, or upon mutual agreement between the applicant and Department, the applicant shall discharge an instantaneous minimum flow of 15 cfs through all project developments, including the Rice Rips bypass, at all times.

The top 0.5 feet of Messalonskee Lake shall, in addition to being used for generation flows, be used to augment natural flows to meet the 15 cfs minimum flow

requirement.

- B. Operating emergencies beyond the applicant's control include, but may not be limited to, equipment failure or other abnormal condition, and orders from local, state, or federal law enforcement or public safety authorities.
- C. The applicant shall, in accordance with the schedule established in a new FERC license for the project, submit plans for providing and monitoring the minimum flows required by Part A of this condition. These plans shall be reviewed by and must receive approval of the DEP Bureau of Land and Water Quality.

## 2. WATER LEVELS

- A. Except as temporarily modified by (1) approved maintenance activities, (2) inflows to the project area, (3) operating emergencies beyond the applicant's control, as defined below, (4) by flashboard failure, or (5) upon mutual agreement between the applicant and Department, the following water levels shall be maintained:

Messalonskee Lake (cycling)	within 0.5 feet of full pond from 6/1-8/31 and within 1.0 feet from 9/1- 5/31;
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Oakland, Rice Rips, and Automatic (run-of-river)	within 1.0 feet of full pond elevations;
Union Gas (cycling)	within 1.3 feet of full pond elevation.

- B. Operating emergencies beyond the applicant's control include, but may not be limited to, equipment failure or other temporary abnormal condition, and orders from local, state, or federal law enforcement or public safety authorities.
- C. The applicant shall, in accordance with the schedule established in a new FERC license for the project, submit plans for providing and monitoring the water levels in each of the project impoundments as required by Part A of this condition. These plans shall be reviewed by and must receive approval of the DEP Bureau of Land and Water Quality.

## 3. WATER QUALITY SAMPLING

- A. The applicant shall sample dissolved oxygen, temperature, and chlorophyll a in Messalonskee Stream. The applicant shall also record flow out of the

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Messalonskee Lake dam and identify periods of generation during sampling. The Department will review the results of this sampling in conjunction with sampling being performed by the Oakland Waste Water Treatment Plant in Rice Rips Lake.

- B. within 6 months following the issuance of a new FERC license for the project, the applicant shall submit a water quality sampling plan to the Department for review and approval.
- C. If it is determined, based on a review of the sampling discussed in Part A of this condition and the sampling performed by the Oakland Waste Water Treatment Plant, that Messalonskee Stream is not meeting Class C standards for dissolved oxygen or Rice Rips Lake is not meeting Class GPA standards for trophic state, the Department reserves the right, after notice and opportunity for hearing, and upon consideration of the joint responsibility of the Town of Oakland and the applicant, to require such reasonable structural and/or operational changes to the Oakland Waste Water Treatment Plant or the Messalonskee Project as are deemed necessary to meet applicable Class C or Class GPA standards, except that no changes to the Messalonskee Project will be required until at least 5

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years have passed from the effective date of a new FERC license for the project.

4. DOWNRAMPING

The applicant shall implement the new downramping sequence at the Union Gas development as outlined in the supporting documentation for the application for 401 certification.

5. WATERFOWL NESTING

- A. The applicant shall implement the provisions of the "Messalonskee Lake Waterfowl Management Plan" and begin conducting wetland assessments and waterfowl surveys within 2 years of the issuance of a new FERC license for the project.
- B. The applicant shall consult with the Maine Department of Inland Fisheries and wildlife regarding the findings of the wetland assessments and waterfowl surveys. The results of these assessments and the applicant's proposals for maintaining or enhancing wetlands and waterfowl nesting shall be submitted to the DEP Bureau of Land and Water Quality. After reviewing the results, any applicant proposals, and DIF&W comments, the Department shall order such continuation or modification of water levels established by this approval as is deemed necessary and appropriate to

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protect nesting waterfowl.

6. RECREATIONAL FACILITIES

- A. The applicant shall maintain and improve recreational facilities and public access within the project boundaries including: installing project identification signs at all projects, evaluating the feasibility of a 'green belt/multi use' area between the Oakland and Rice Rips Development, improving parking at the Rice Rips Development, evaluating the feasibility of creating a carry-in access site to the Rice Rips impoundment, and improving parking at the Automatic Development.
- B. The applicant shall, in accordance with the schedule established in a new FERC license for the project, submit a schedule for implementing Part A of this condition. This schedule shall be reviewed by the Department of Conservation and the DEP Bureau of Land and Water Quality and must be approved by the DEP Bureau of Land and Water Quality.

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7. LIMITS OF APPROVAL

This approval is limited to and includes the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. All variances from the plans and proposals contained in said documents are subject to the review and approval the Department prior to implementation.

8. COMPLIANCE WITH APPLICABLE LAWS

The applicant shall secure and appropriately comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements and orders required for the operation of the project.

9. EFFECTIVE DATE

This water quality certification shall be effective on the date of issuance of a new hydropower project license by the Federal Energy Regulatory Commission (FERC) and shall expire with the expiration of the FERC license.

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Bailey, Commissioner, dissenting in part:

I am not persuaded that the 100-cfs minimum flow is the best resolution of this issue. As stated in my dissent in the companion order issuing the Messalonskee Project license, I do not believe that this represents the best balance of the various interests that must be considered under the Federal Power Act. In addition, this issue highlights my concern that the Commission rarely exercises its discretion when evaluating recommendations submitted under section 10(j).

Vicky A. Bailey  
Commissioner

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