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Liverpool, NY 13088

August 15, 2002

Hon. Magalie Roman Salas, Secretary  
Federal Energy Regulatory Commission  
Mail Code DLC, HL-11.1  
888 First Street, NE  
Washington, DC 20426

**RE: Erie Boulevard Hydropower, L.P.'s Hoosic River Project No. 2616  
Offer of Settlement**

Dear Secretary Salas:

Pursuant to 18 CFR §385.602, enclosed for filing please find an original and eight (8) copies of a document entitled Hoosic River Project Offer of Settlement (Settlement Offer) that was recently executed by inter alia, Erie Boulevard Hydropower, L.P. (Erie), the New York State Department of Environmental Conservation (NYSDEC), the United States Fish and Wildlife Service (USFWS), American Whitewater, The Town of Schaghticoke, New York Rivers United (NYRU), the Adirondack Mountain Club (ADK), and several other governmental agencies (GA's) and non-governmental organizations (NGO's) as regards to the licensing of the Hoosic River Project No. 2616.

The signatories of this Settlement Offer have given careful consideration of the need to balance non-power and power aspects of the project resulting in numerous settlement measures for the enhancement, protection and mitigation of the resources affected by this project. As some of these measures may not be consistent with the Original License Application proposals, be it known that any inconsistencies between any of the pending license applications and the Settlement Offer, should allow the Settlement Offer to prevail.

A separate Explanatory Statement is required to accompany all Settlement Offer submittals according to 18 CFR §385.602(c)(ii). This transmittal letter should be considered the Explanatory Statement for the filing of the Hoosic River Offer of Settlement as the contents hereof elucidates the facts and places into perspective the effect of the execution of the Settlement Offer.

## **EXPLANATORY STATEMENT**

### **I. INTRODUCTION**

Erie and the parties to this Settlement Offer entered into settlement negotiations as a result of denial of Erie's application for Section 401 water quality certifications by the NYSDEC on November 19, 1992 and the applicant's subsequent request for administrative rehearing. Execution of this Settlement Offer resolves all pertinent issues pertaining to the 401 and FERC licensing proceedings and paves the way for the NYSDEC to henceforth issue the water quality certification for the Hoosic River Project adopting the provisions of this Settlement Offer. Moreover, this Settlement Offer sets forth the terms and conditions that the signatories have agreed should be included in the new license for the Hoosic River Project.

Upon approval by the Commission and through agreement by all of the signatories, this Settlement Offer will attain a new license term of 40 years according to the terms and conditions that the signatories have agreed upon. These terms and conditions include protection, mitigation and enhancement (PM&E) measures which will result in enhanced aquatic habitat, enhanced fish movement and fishing opportunities, increased habitat for riparian vegetation, wetland and wildlife resources, increased recreational access and adaptive management of future whitewater recreation opportunities at the project.

### **II. OFFER OF SETTLEMENT COMPOSITION**

The enclosed settlement offer includes the following significant features:

- Section 1 is composed of a number of ancillary points and considerations pertaining to the Settlement Offer including a description (subsection 1.2) of what provisions of the Settlement Offer are intended to be included in the ensuing FERC license;
- Section 2 covers a number of general agreements among the parties that pertain to the new license affected by the Settlement Offer. In addition, Subsection 2.12 provides for cooperative consultation among the parties in connection with potential future amendment to the license to add a new unit at the Schaghticoke Development powerhouse to facilitate more efficient generation control while providing the base flow enhancement stipulated in the Settlement Offer. Subsection 2.13 also includes those provisions that are withdrawn from the original license applications in lieu of this Settlement Offer;
- Section 3 covers the development-specific PM&E measures for the Hoosic River Project including recreational enhancements to be included in the ensuing FERC license (subsection 3.5.1) as well as what provisions of the Settlement Offer are to be omitted from the new license (subsection 3.5.2);

### **III. CONCLUSION**

Erie is aware that the Commission strongly supports the settlement process and settlement offers, accordingly, it has joined with the parties listed in Section 1 of the Settlement Offer in an attempt to best respond to resource concerns. All of the signatories have sacrificed

August 15, 2002

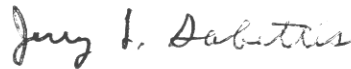
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great time, effort, and expense to unilaterally agree to a fair and sound Settlement Offer that encompasses a balance of non-power and power needs and affords interested stakeholders relicensing benefits.

The execution of this Settlement Offer will also yield the ancillary benefit of facilitating the NYSDEC's issuance of a 401 water quality certificate, thus allowing positive FERC action, on a licensing proceeding that has been pending since December 18, 1991.

If there are any questions pertaining to this submittal or additional copies of same are requested, please call the undersigned at (315) 413-2787.

Very truly yours,



Jerry L. Sabattis  
Hydro Licensing Coordinator

Enclosures: Settlement Offer  
Attached Service List

xc w/Encl: S. S. Hirschey  
W. J. Madden  
Service List  
Settlement Offer Signatories

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## CERTIFICATE OF SERVICE

**PROJECT: Hoosic River Hydroelectric Project No. 2616**

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Date: \_\_\_\_\_

\_\_\_\_\_

# RELIANT ENERGY

*Liverpool, NY*

## HOOSIC RIVER OFFER OF SETTLEMENT

## JOHNSONVILLE DEVELOPMENT SCHAGHTICOKE DEVELOPMENT

*JUNE 2002*

Prepared by:

***Kleinschmidt***  
*Energy & Water Resource Consultants*

RELIANT ENERGY  
*Liverpool, NY*

**HOOSIC RIVER  
OFFER OF SETTLEMENT**

**JOHNSONVILLE DEVELOPMENT  
SCHAGHTICOKE DEVELOPMENT**

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**HOOSIC RIVER  
OFFER OF SETTLEMENT**

**JOHNSONVILLE DEVELOPMENT  
SCHAGHTICOKE DEVELOPMENT**

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**HOOSIC RIVER  
OFFER OF SETTLEMENT**

**JOHNSONVILLE DEVELOPMENT  
SCHAGHTICOKE DEVELOPMENT**

**1.0 INTRODUCTION**

*The Agreement and The Parties*

This agreement (the Settlement Offer) dated as of June 14, 2002, is made and entered into pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC) (18 C.F.R. § 385.602) by and among the following entities who shall, except as otherwise noted, be referred hereafter to as a Party and collectively as “Parties”:

- Adirondack Mountain Club (ADK)
- American Rivers
- American Whitewater (AW)
- Erie Boulevard Hydropower, L.P. (Erie) acting through its General Partner, Reliant Energy
- New York Rivers United (NYRU)
- New York State Conservation Council (NYSCC)
- New York State Department of Environmental Conservation (NYSDEC)
- Rensselaer County Conservation Alliance (RCCA)
- Town of Schaghticoke (Town)
- Trout Unlimited (TU)
- U.S. Department of the Interior (DOI), U.S. Fish and Wildlife Service (USFWS)
- U.S. Department of the Interior (DOI), National Park Service (NPS)
- Village of Schaghticoke (Village)

### 1.1 Term of the Settlement Offer

This Settlement Offer shall become effective when it has been executed by the above-referenced Parties and shall remain in effect, in accordance with its terms, throughout the term of the new license including any annual licenses.

### 1.2 Agreements to Be Incorporated As License Conditions

The agreements in the Settlement Offer are a comprehensive, integrated, and indivisible set of measures intended to address non-power and power values relating to the licensing of the Hoosic River Project. The Parties agree that each term of this Settlement Offer is in consideration and support of every other term and that it is essential that the FERC, except where expressly noted to the contrary in this Offer of Settlement, incorporate as license conditions in the new license each of the commitments which the Licensee has agreed to undertake in Section 3.0 of this Settlement Offer. "License conditions" are intended to mean numbered articles of the license.

### 1.3 Purpose, Goals and Geographic Scope

The purpose of this Settlement Offer is to document the agreements that have been reached as the result of comprehensive discussions among the Parties with regard to the referenced hydroelectric developments with a pending license application before the FERC and a pending application for water-quality certification before the NYSDEC.

The goal of the Settlement Offer is to provide for the continued operation of the subject project with appropriate long-term environmental and recreational protection and mitigation measures that will meet diverse objectives for maintaining a balance of non-power and power values in the Hoosic River.

The geographic scope of the agreements to be incorporated as license conditions includes the Hoosic River upstream of its confluence with the Hudson River to the eastern most end of the Johnsonville impoundment.

The Parties, having given careful and equal consideration to non-power and power values, provide in this Settlement Offer the terms and conditions for the resolution of operational, fisheries, wildlife, water quality, and recreational issues raised by and analyzed by the Parties as they are applicable to the issuance of a license and Water-Quality Certification for the subject project.

#### 1.4 Project Decommissioning

This Settlement Offer does not include any provisions relating to decommissioning or dam removal of the subject project in whole or part. With or without amendment of this Settlement Offer, any Party may seek such further relief from the FERC regarding such decommissioning as the FERC may order, recognizing that no Party to this Settlement Offer has, or is advocating decommissioning of any project facilities at this time, nor does evidence currently exist which would suggest the need to advocate for decommissioning during the term of the license. If and when the subject project is decommissioned or retired during the term of any new license, the Parties will be entitled to take such positions on decommissioning issues at that time as they find appropriate.

#### 1.5 Successors and Assigns

The Settlement Offer shall be binding on the Parties and on their successors and assigns.

#### 1.6 Parties To Support Regulatory Approvals

The Parties agree to support the issuance of a license and water-quality certification that is consistent with the terms of this Settlement Offer. This support shall include reasonable efforts to expedite the National Environmental Policy Act (NEPA) process to be undertaken by the FERC, as well as any regulatory approvals that may be needed to implement provisions of the Settlement Offer. For those issues addressed herein, the Parties agree not to propose or otherwise communicate to the FERC or to any

other federal or state resource agency with jurisdiction directly related to the relicensing process any comments, certification, or license conditions other than ones consistent with the terms of this Settlement Offer. However, this Settlement Offer shall not be interpreted to restrict any Party's participation or comments in future relicensing of the subject developments.

#### 1.7 Agency Appropriations

Nothing in this Settlement Offer shall be construed as obligating any federal, state, or local government to expend in any fiscal year any sum in excess of appropriations made by Congress to state or local legislatures or administratively allocated for the purpose of this Settlement Offer for the fiscal year or to involve the DOI, USFWS, or NPS in any contract or obligation for the future expenditure of money in excess of such appropriations or allocations.

#### 1.8 Establishes No Precedents

The Parties have entered into the negotiations and discussions leading to this Settlement Offer with the explicit understanding that all offers of settlement and the discussions relating thereto are privileged, shall not prejudice the position of any Party or entity that took part in such discussions and negotiations, and are not to be otherwise used in any manner in connection with these or any other proceedings. The Parties understand and agree that this Settlement Offer establishes no principles or precedents with regard to any issue addressed herein or with regard to any Party's participation in future relicensing proceedings and that none of the Parties to this Settlement Offer will cite this Offer or its approval by the FERC, or the NYSDEC as establishing any principles or precedents except with respect to the matters to which the Parties have herein agreed.

#### 1.9 Conventions and Definitions

The Parties agree that the following conventions and definitions should have the meanings so noted throughout this Offer of Settlement.

**Base Flow:** The required minimum instantaneous instream flow, measured in cfs, to be continuously released into the river channel below the powerhouse, including, where applicable, dam leakage where an accurate estimate exists, and bypass flows.

**Bypass Flow:** The instream flow intentionally and continuously released into a bypass reach.

**Bypass Reach:** The portion of original riverbed fully or partially dewatered as a result of the diversion of water.

**Elevation:** Vertical distance, measured in feet, above mean sea level using USGS datum.

**Impoundment Fluctuation:** Defined within this agreement as a specific range of impoundment elevations associated with normal project operation which is measured in the downward direction from a specific reference point.

**Left/Right Bank:** The left or right riverbank as seen looking downstream.

**License Issuance and Acceptance:** For purposes of this Offer of Settlement, "License Issuance and Acceptance" means that the FERC issues a final license consistent with the terms of the Offer of Settlement relative to the particular enhancement being considered.

**Licensee:** Erie Boulevard Hydropower, L.P., and limited partner of Reliant Energy.

**Normal Operation:** The daily operation of the Johnsonville and Schaghticoke developments that may involve utilization of allowable impoundment fluctuations as needed to produce energy.

## **2.0 GENERAL AGREEMENTS OF THE PARTIES**

### **2.1 License Term**

The Parties agree, based upon and in consideration of the Settlement Offer provisions identified in Section 2.2, that the license should be for a term of 40 years from the date of license issuance, and agree to join in a request for rehearing if a license is issued for less than 40 years from date of license issuance.

### **2.2 Enforceability and Withdrawal Rights**

The Parties agree that it is their intent, and this Settlement Offer is based upon, and in consideration of their expectation that Sections 3.1, 3.2, 3.3, 3.4, and 3.5.1 will be included in any license issued as numbered license articles and that the Commission will enforce these provisions. If, in making its licensing decision, the Commission determines that any of the sections identified herein are not within its jurisdiction to enforce, it will so expressly and clearly notify the Parties in the licensing order. If the Commission does not so expressly identify any of the provisions of the Sections identified herein, then the Parties will, in reliance thereon, proceed as though each of the Sections identified herein are enforceable by the FERC.

In the event that the FERC should, contrary to the integrated and indivisible nature of this Settlement Offer described herein in Section 1.2, issue a new license which materially and significantly modifies any of the commitments identified in Sections 3.1, 3.2, 3.3, 3.4, and 3.5.1 which the Licensee has agreed to undertake as part of this Settlement Offer and in the event the new license is not thereafter satisfactorily modified as a result of the filing of a request for rehearing as provided in Section 2.3, and in the event any Party thereafter determines that its interests will be materially and adversely affected by the change or changes so made by the Commission, it may, after first providing written notice of its intention to do so to the other Parties together with a written explanation of its reasons for doing so, withdraw from this Settlement Offer and thereafter the Settlement Offer shall have no force and effect and the Parties shall in any subsequent administrative and judicial proceedings take the position that the basis upon



which the Commission's public interest determination was made in connection with the issuance of the new license and the new license should have no force and effect and should be considered null and void.

### 2.3 Rehearings and Judicial Review

The Parties agree that none of them will file a request for rehearing of any new license unless the license contains conditions which are materially inconsistent with the terms of this Settlement Offer, which omit as license conditions terms of the Settlement Offer that the Parties have agreed should be included as license conditions, or if the FERC determines that it will not enforce any of the provisions of the Settlement Offer which the Parties have agreed should become enforceable conditions of the new license, as expressly identified in Section 2.2. In the event that any Party decides to file a request for rehearing in accordance with the terms of this provision, it will provide written notice of its intention to do so to all the other Parties at the earliest practicable time and thereafter the other Parties will join in the rehearing request or file an appropriate and supportive rehearing request of their own. Thereafter, if any Party, following the issuance of a FERC Order on Rehearing, elects to file a petition for judicial review with respect to the matters covered by this provision, the other Parties will support such a petition to the extent reasonably possible.

### 2.4 Water-Quality Certification — Withdrawal Rights

The Parties agree that they will support the issuance by the NYSDEC of one Section 401 Water-Quality Certification that is consistent with the provisions of this Settlement Offer for the Hoosic River Project. If the NYSDEC should issue a 401 certification for the project that is materially inconsistent with the provisions of this Settlement Offer, any Party can withdraw from this Settlement Offer by providing written notice of its intention to do so to the other Parties within 60 days from the date of issuance of any such certification or, in the event any Party seeks judicial or agency review, 60 days from the date of the denial of such review. The NYSDEC will distribute to the Parties copies of the 401 certification that is issued.

## 2.5 Reopeners

The Parties agree that, except as provided herein, this Settlement Offer is not intended to limit or restrict the ability of any Party to petition the FERC pursuant to any reopener condition contained in the new license, including any exercise by the Secretary of DOI relating to the Secretary's fishway prescription authority under § 18 of the FPA. No such petition, including the exercise of § 18 authority, may be filed that would, if granted, be materially inconsistent with this Settlement Offer, or cause other portions of the Settlement Offer to be reopened, unless the Party who files the petition has substantial evidence that a change in circumstances has occurred including any material change made by the Commission to the terms of this Settlement Offer which provides good cause for the filing of the petition. Before any Party files such a petition with the FERC, it shall provide at least 60 days written notice of its intention to do so to all other Parties and, promptly following the giving of notice, has consulted with the other Parties regarding the need for and the purpose of the petition. In the event such a petition is filed, the filing Party shall include with its filing documentation of its consultation with the other Parties and a summary of their recommendations and its response to those recommendations. The filing Party shall also serve a copy of its petition on all the other Parties.

## 2.6 License Amendments

The Parties agree that, except as provided herein, nothing in this Settlement Offer is intended to limit or restrict the ability of the Licensee to seek amendments of any new license. The Licensee may only seek a license amendment that would be materially inconsistent with the provisions of this Settlement Offer if it has substantial evidence that a change in circumstances has occurred which provides good cause for the filing of the amendment and has provided the Parties at least 60 days written notice of its intention to do so and, promptly following the giving of notice, has consulted with the Parties regarding the need for and the purpose of the amendment. For other license amendments which just relate to the license terms set forth in this Settlement Offer, the Licensee shall provide all Parties at least 30 days notice of the proposed amendment and, if requested to do so by any Party, shall consult with the Parties regarding the amendment and defer the filing for another 30 days. In any application for an amendment which relates to any of

the terms and conditions of this Settlement Offer, the Licensee shall document its consultation, summarize the positions and recommendations of the Parties, and provide its response to those positions and recommendations. The Licensee shall serve a copy of any application for amendment upon the Parties at the time of the filing. The Licensee will not oppose an intervention request filed in a timely manner by any Party in an amendment proceeding involving the license.

## 2.7 Fish Passage and Section 18

The Parties agree that fish passage measures as described in Section 3.4 will be implemented, but the new FERC license for the project should include the standard license article in which the Secretary of the Interior exercises [reserving the ability of the FERC to require fish passage in the future and should include the full reservation of the Secretary of the Interior's] § 18 authority, by reserving the Secretary's authority to prescribe the construction, operation, and maintenance of such fishways as deemed necessary.

## 2.8 Settlement Offer Amendments

The Parties agree that, except as provided herein, nothing in this Settlement Offer is intended to limit or restrict the ability of any Party to seek an amendment to this Settlement Offer during the effective period of the license with respect to matters not addressed in the license. Any Party seeking such an amendment may do so upon presenting substantial evidence that a material change in circumstances has occurred that provides good cause for seeking the amendment. Any such amendment proposal shall not be materially inconsistent with any license articles or the obligations of the Licensee pursuant to the license. Any Party proposing such an amendment to this Settlement Offer shall provide all Parties with at least 30 days written notice of the proposed amendment and, if requested to do so by any Party, shall consult with the Parties regarding the proposed amendment for at least another 30 days. No amendment will be effective if any Party objects to the amendment. Any Party that abstains may not object to and will be bound by any amendment in which all other Parties concur. After such notice and consultation, if all Parties either concur with or do not object to the proposed amendment,

the Party making the proposal shall secure signed agreements to the amendment from all Parties who concur with the proposal. The Licensee will file the amendment with the FERC for informational purposes.

#### 2.9 Filings Prior To Issuance Of New License

Prior to the issuance of the new license pursuant to this Offer of Settlement neither the Licensee nor any Party shall make any filing with the FERC seeking a modification of project works under license or of the operation of the project unless such a modification involves an emergency or is not materially inconsistent with this Settlement Offer and the Party who wishes to make the filing provides the other Parties at least 30 days notice of such a filing.

#### 2.10 Compliance With the National Historic Preservation Act

The Licensee will develop a Cultural Resources Management Plan, as needed, in consultation with the New York State Office of Parks, Recreation and Historic Preservation.

#### 2.11 Compliance With the Endangered Species Act

Consultation with the NYSDEC and the USFWS has established that, except for some transient individuals, there are no federally- or state-listed threatened or endangered species in the area of the Johnsonville or Schaghticoke developments at this time. However, any ground or vegetation disturbance in conjunction with recreational or other mitigation and enhancement effort will conform to an Endangered Species Management plan requiring the licensee to assess the presence of the Karner Blue butterfly or its obligate host species the Blue Lupine.

#### 2.12 Schaghticoke Unit Addition

The Parties agree to cooperate with the Licensee in any future amendment the Licensee may pursue in installing any additional generating unit(s) to the Schaghticoke

Development of the Hoosic River Project (FERC No. 2616) during the term of any new license provided such an amendment is consistent with the terms and conditions of this Settlement Offer.

## 2.13 License Application Proposals Withdrawn

The Parties agree that all license application proposals preceding this Settlement Offer are withdrawn and superceded by those specified in this Offer of Settlement. The withdrawn proposals include:

### 2.13.1 Johnsonville

- Proposal to provide no measures for fish protection or downstream movement.
- Proposal to limit impoundment fluctuations to 1 foot below the top of the flashboards or 1 foot below the top of the crest of the dams.
- Proposal of 40-cfs minimum baseflow in the Hoosic River below the Johnsonville powerhouse.
- The proposal to provide adjacent to the impoundment in the vicinity of Buskirk Bridge: (1) a formal recreational/educational trail system along the north shore downstream of the Buskirk covered bridge, including an elevated observation deck, interpretive signage, a wetland maintenance program and a picnic area.
- The proposal to provide a stone dust trail near the Johnsonville dam.

### 2.13.2 Schaghticoke

- Proposal to provide no measures for fish protection or downstream movement.
- Proposals to life extend the four existing Francis units and modifications of the two 15-cfs exciter units to function as the base-flow units.

- Proposal of a 40-cfs base flow to be provided by the combination of two 15-cfs units and the 10 cfs minimum bypass flow released from the dam.
- Proposal of a 10-cfs instream bypass flow to be provided at the dam discharging into the bypass reach.
- Proposals of the following recreational enhancements for the project.
  - A canoe put-in/take-out location for the Electric Lake portions of the Schaghticoke impoundment including; a gravel parking area and a ramp that extends to the water's edge.
  - A village waterfront green space for the area along the bypassed reach downstream of Routes 40 and 67 including; scenic overlooks and signage.
  - The proposal not to develop the Fisherman's Lane area.
  - The proposal not to develop a car-top boat-launch downstream of the Schaghticoke powerhouse.

**3.0 MEASURES WHICH THE LICENSEE WILL UNDERTAKE WITH RESPECT TO LICENSE CONDITIONS AND OTHER NON-LICENSE PROVISIONS OF SETTLEMENT**

**3.1 Impoundment Fluctuations**

Within fifteen (15) months of license issuance and acceptance, the Licensee shall limit impoundment fluctuations within the Johnsonville and Schaghticoke developments as specified in Table 3-1.

<b>Table 3-1: Hoosic River Hydroelectric Project Normal Impoundment Fluctuations</b>			
<b>Development</b>	<b>Permanent Crest of Dam (NGVD)</b>	<b>Flashboards</b>	<b>Normal Impoundment Fluctuation</b>
Johnsonville	346.00'	2.5 feet high wooden flashboards	0.25 feet (June 1 – September 30) and 0.5 feet (October 1 – May 31) measured in a downward direction from the permanent crest of dam or the top of flashboards.
Schaghticoke	267.35'		0.5 feet (year-round) measured in a downward direction from the permanent crest of dam or the top of flashboards/partial pneumatic flashboards.

Normal impoundment fluctuations specified in Table 3-1 shall be defined as the maximum drawdown limit associated with the operating range necessary to achieve normal operation. The normal impoundment fluctuation limit shall be measured in the downward direction from the permanent crest of each dam or from the top of the flashboards when in place. Water surface elevations higher than the elevation from which any downward fluctuation is measured are considered outside of the normal impoundment fluctuation zone, and variations of same are not considered as a utilization of the normal impoundment fluctuation.

Impoundment fluctuation limitations may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, including security and for short periods upon mutual agreement between the Licensee and the NYSDEC. If the

limitations are so modified, the Licensee shall notify the FERC as soon as possible, but no later than ten business days after each such incident.

#### 3.1.1 Partial Pneumatic Flashboards

Within 15 months of license issuance and acceptance, the Licensee will install pneumatic flashboards on the straight section of the spillway at the Schaghticoke Dam to facilitate pond level control. The pneumatic flashboard section will reduce the occurrence of failure of the conventional flashboards that will remain on the balance of the spillway.

The Licensee reserves the right to install pneumatic flashboards on the spillway of the Johnsonville dam in the future. Prior to pursuing this installation, the Licensee will consult with the other signatories to this agreement as to the scope and timing of this future installation.

#### 3.1.2 Justification for Impoundment Fluctuations Limitations

The Parties' review of pertinent historical USGS stream flow data indicates river flow frequently exceeds the hydraulic capacity of each development's turbines. As such, normal daily impoundment fluctuations due to hydropower operations are limited to those periods when river flow is less than the hydraulic capacity of each development. In addition, due to the flashy nature of river flow entering the project, the hydraulic capacity of each development is exceeded periodically throughout the year. The parties also reviewed the relative active storage capacity of each development and agreed to two seasons of normal daily impoundment fluctuation limits at the larger Johnsonville impoundment and a single year-round normal daily fluctuation limit at the Schaghticoke impoundment.



The normal daily impoundment fluctuations agreed upon for the Johnsonville and Schaghticoke Developments will enhance the existing shallow water littoral and wetland habitat.

### 3.2 Instream Flows

Within fifteen (15) months of license issuance and acceptance, the Licensee shall release the base-flows and minimum bypass flow specified in Tables 3-2 and 3-3.

<b>Table 3-2: Hoosic River Project Base Flow Schedule</b>			
<b>Site</b>	<b>Flow Magnitude</b>	<b>Annual Start Date</b>	<b>Annual End Date</b>
Johnsonville	220 cfs or inflow (whichever is less)	January 1	December 31
Schaghticoke	240 cfs or inflow (whichever is less)		

The base-flow shall be maintained in the river immediately downstream of the developments' powerhouse.

<b>Table 3-3: Hoosic River Project Schaghticoke Development Bypass Flow Schedule</b>		
<b>Flow Magnitude</b>	<b>Annual Start Date</b>	<b>Annual End Date</b>
60-cfs or inflow (whichever is less)	January 1	December 31

These instream flow requirements may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, including security and for limited periods upon mutual agreement between the Licensee and the NYSDEC. If the flows are so modified, the Licensee shall notify the FERC as soon as possible, but no later than ten business days after each such incident.

This minimum bypass release flow is considered the minimum allowable flow from the release location near the vicinity of the east end of the Schaghticoke Dam. That is, it is recognized that the actual release at any given time may be slightly above the

agreed-upon value. The degree to which a flow will be above the value indicated is a function of headpond elevation as a result of normal impoundment fluctuations (see Section 3.1). The Licensee shall develop appropriate structural designs for the provision of the bypass flow at the Schaghticoke development.

In addition, the parties agreed to a one time minor streambed modification in consultation with the USFWS and the NYSDEC near the east end of the Schaghticoke dam to ensure a portion of the bypass flow (approximately 5-cfs) is directed to the vicinity of the west shore of the upper bypass reach.

### 3.2.1 Justification

The 60-cfs minimum bypass release flow was agreed upon by the FERC and the USFWS and NYSDEC at the November 30, 1999, Section 10j meeting and it was assessed in the FERC's June 30, 2000 Environmental Assessment for the Hoosic River Project. The Parties have carefully reviewed alternative minimum flows to the Schaghticoke bypassed reach. A minimum bypass flow of 60-cfs would result in an increase in habitat for nearly all species and life stages.

Aquatic insect production should increase, and the reach should be better suited as nursery and adult habitat for all forage and game fish. After an initial acclimation period, the aquatic community associated with the bypassed reach would reach a new state of equilibrium that reflects the modified minimum flow regime. Flows to the bypassed reach in excess of the minimum flow would still occur when inflow to the project exceeds the hydraulic capacity of the turbines, which routinely occurs in the spring and occasionally from June through October. The relatively stable flow regime during this period (June through October) would coincide with the period when most young fish would be least mobile and should enhance their chances of survival (less energy would be required to find food, and they would not be as likely to be displaced downstream by high flows).

A 60-cfs minimum flow would enhance the use of riffle habitats by larger game fish and will provide increased habitat for invertebrates in the riffle areas.

With the establishment of this new, increased minimum flow regime in the bypassed reach over the existing leakage, the existing aquatic community would change.

A minimum flow of 60-cfs would provide 95.0 percent of the maximum Weighted Usable Area (WUA) for adult walleye, (one of two species that the State manages in this portion of the Hoosic River) and provides a net increase of 1.26 acres of WUA. For adult smallmouth bass, the other species managed by the NYSDEC in this portion of the Hoosic River, a minimum flow of 60-cfs would provide 71.7 percent of the maximum WUA. Increases in habitat occur with a 60-cfs minimum flow for forage species and invertebrates. The increase in average forage species WUA (averaged across all life stages) is 21.1 percent; the increase in average invertebrate WUA (averaged across all life stages) is 158.5 percent at 60-cfs.

The base instream flows downstream of the Johnsonville and Schaghticoke developments will enhance Hoosic River aquatic habitat during moderate to low flow periods in downstream reaches that were historically periodically dewatered due to hydropower operations. The agreed-upon instream base flow is designed to enhance the downstream river reaches. The base flows will enhance potential habitat for a wide variety of aquatic organisms including most life stages of game fish such as brown trout, smallmouth bass, and walleye; forage fish (longnose dace, fallfish, and white sucker); and benthic invertebrates (mayfly, stonefly, and caddisfly). The instream base flow also enhances fishing opportunity and fish movement.

### 3.3 Flow and Water Level Monitoring

The Licensee shall develop a stream-flow and water-level monitoring plan in consultation with the NYSDEC and the USFWS within twelve (12) months of the FERC license issuance and acceptance. The monitoring plan shall include all gages and/or equipment to:

- Measure the base-flow flow releases of the Johnsonville and Schaghticoke developments of the Hoosic River Project at appropriate locations.
- Measure the minimum flow release of the Schaghticoke development of the Hoosic River Project at the appropriate location.
- Measure headpond and tailwater elevations as needed.
- Provide an appropriate means of on-site visual verification of water levels.

All gaging and ancillary equipment required by the monitoring plan, including headpond and tailwater gages, shall be made operational and fully calibrated within fifteen (15) months of license issuance and acceptance.

The monitoring plan will contain provisions for the installation of binary staff gages at selected locations to permit on-site visual verification of headpond, tailwater, or bypass reach water levels to the nearest 0.1-foot. Binary staff gages will be visible to the general public. Access to staff gages shall be provided to the NYSDEC, the USFWS, and/or their authorized representatives.

The Licensee shall keep accurate and sufficient records of the impoundment elevations and all project flows to the satisfaction of the NYSDEC and shall provide such data in a format and at intervals as required by the NYSDEC. All records will be made available for inspection at the Licensee's principal business office in New York State within five (5) business days or will be provided in written form within 30 days of the Licensee's receipt of a written request for such records by the NYSDEC. Furthermore, the Licensee will provide to the NYSDEC a seven-day-per-week contact person to provide immediate verification of monitored flows and responses to questions about abnormal or emergency conditions.

The Licensee shall keep accurate and sufficient records of any uncontrollable station outage that causes a reduction in the required baseflow at or below the Johnsonville or the Schaghticoke powerhouse and minimum flow at or below the Schaghticoke dam. The Licensee will consult with the NYSDEC to include a plan for

reporting these types of incidents within the stream flow and water level monitoring plan.

### 3.4 Fish Protection, Passage and Movement

The Licensee shall implement the fish-protection passage and movement measures as specified in Table 3-4.

<b>Table 3-4: Hoosic River Hydroelectric Project Fish Movement and Protection Measures</b>			
<b>Development</b>	<b>Protection Measure</b>	<b>Downstream Movement Routes</b>	<b>Upstream Eel Conveyance System</b>
Johnsonville	1.5-inch diameter perforated plates installed within three (3) years of license issuance and acceptance or December 31, 2006 (whichever is later).	The sluice gate adjacent to the powerhouse.	An upstream eel conveyance system will be field located near the vicinity of the South side of the Johnsonville dam within three (3) years of license issuance and acceptance or by December 31, 2006 (whichever is later). The upstream eel conveyance system will be in place seasonally from June 15 through September 15 of each year.
Schaghticoke	1.5-inch diameter perforated plates installed within fifteen (15) months of license issuance and acceptance	A conveyance structure will be constructed in the vicinity of the east end of the Schaghticoke Dam	An upstream eel conveyance system will be placed in the vicinity of the east end of the Schaghticoke Dam within fifteen (15) months of license issuance and acceptance. The upstream eel conveyance system will be in place seasonally from June 15 through September 15 of each year.

The Licensee shall be required to provide the following measures and structures to facilitate fish movement at the Johnsonville Development.

The Licensee shall be required to (1) install protective measures no later than 2006 that include 1.5-inch diameter perforated plates to be placed seasonally from May 1 or when control of the river is achieved (whichever is later) until November 30 or when the temperature of the river decreases to 7° C or less (whichever is sooner) as measured at the Johnsonville tailrace, (2) provide a year-round 20-cfs minimum “fish friendly” flow release located at a sluice gate adjacent to the powerhouse, (3) install an upstream eel

conveyance system in the vicinity of the south end of the Johnsonville dam within three (3) years of license issuance and acceptance or by December 31, 2006 (whichever is later). This upstream eel conveyance system will be in place seasonally from June 15 through September 15 of each year through the term of the new license.

The Licensee shall not be required to (1) test the effectiveness of any, or all, components of existing and future protection or passage measures and/or structures, (2) make qualitative or quantitative determinations of fish entrainment and/or mortality, or (3) provide compensation for any fish entrainment and/or mortality.

The Licensee shall not be required to increase the level of protection and passage as agreed to by this Settlement Offer for the term of the license, unless prescribed by the U.S. Department of the Interior under Section 18 of the Federal Power Act (see Section 2.7).

The requirements of this commitment may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, including security and for limited periods upon mutual agreement between the Licensee, USFWS and NYSDEC. If the requirements of this commitment are so modified, the Licensee shall notify the FERC as soon as possible, but no later than ten (10) business days after each such incident.

#### 3.4.1 Justification

The Hoosic River Project is located in an area of transition between a cold water fishery in the headwaters (Green Mountains Region) and the cool/warm water fishery downstream (Hudson River Valley). Several, significant waterfalls are present within the Project's footprint which historically limited migration between these two regions. The existing trashracks at the Johnsonville Development have 2-inch clear spacing between vertical bars and its location does not create an area of high velocity in front of the intake (maximum approach velocities estimated at 0.8 fps). The existing trashracks at the Schaghticoke Development have 2 1/8-inch clear spacing between vertical bars and their location does not create an area of high velocity in front of the intake (maximum

approach velocities estimated at 1.5 fps). The existing trashracks at both developments are considered to be in good condition.

The overlays should prevent downstream migrant American eels, as well as many adults of other species from entering the turbines. These devices may also behaviorally deter smaller fish that generally have a higher survival rate during turbine passage. The above mentioned flows should provide adequate downstream migration routes for American eels and other species moving down river.

### 3.5 Recreation

The recreational opportunities provided by this Settlement Offer supplement the existing recreational opportunities on the Hoosic River which provide public access to, and use of, the impoundments, bypass reach, and adjacent lands associated with the Johnsonville and Schaghticoke developments.

Within fifteen (15) months of license issuance and acceptance, the Licensee shall implement all recreation enhancement commitments specified below.

#### 3.5.1 Recreational Enhancement Commitments (To be Included in the License)

The Licensee shall allow free public access to all lands within the FERC project boundary associated with each development covered by this Settlement Offer, with the exception of those lands and facilities specifically related to hydroelectric generation where public safety would be a concern. Lands and facilities where public access will be precluded may include, but are not necessarily limited to, dams, dikes, gates, intake structures, water conveyance structures, powerhouses, substations, transmission lines, and certain access roads leading to such facilities.

- (a) Access along Washington County Route 59 Historically, informal access to project waters has been provided via lands between Washington County

Route 59 and the Johnsonville impoundment near the Buskirk covered bridge. The Licensee will not preclude this informal access and will provide off-road parking for up to five (5) cars and some minimal signage directing users to a fishing and river access point (See Attached Schematic J-1).

- (b) Access at the Johnsonville Dam The licensee will provide a parking area for up to five (5) cars, a car-top boat launch and a canoe portage route with put-in/take-out locations upstream and downstream of the dam on the south side of the river (See Attached Schematic J-2). The licensee will not preclude access to the north side of the river along the access road to the powerhouse.
- (c) Access to Electric Lake The Licensee will neither preclude access at this location nor be required to construct any facilities, provide signage, or otherwise improve this area.
- (d) River Access at the Schaghticoke Powerhouse An access point will be designated in the vicinity of the Schaghticoke powerhouse with parking for up to five (5) cars within the FERC project boundary, and a car-top boat put-in/take-out location will be provided (See Attached Schematic S-1). Signage will be provided by the licensee strictly enforcing parking limitations to this location as to not impede normal project operation and emergency actions.
- (e) Whitewater Flows The Licensee and American Whitewater will conduct a whitewater feasibility study at the Schaghticoke Development of the Hoosic River Project during the spring of 2002 or when safe and appropriate flows for the whitewater feasibility study are available. The purposes of the study shall include determining minimum acceptable and optimal boating flows. Subsequent scheduled whitewater flow release(s) from the Schaghticoke Dam only (not Johnsonville), as outlined below, will be based on the results of this whitewater feasibility study. The scope



of this study will not entail more than four (4) different releases to be agreed upon by American Whitewater and the Licensee.

The Licensee will provide one (1) three-hour (excluding ramping) whitewater release event as defined by the Whitewater Feasibility Study, starting within one (1) year of license issuance and acceptance and continuing for two (2) years following the first whitewater release to establish familiarity with the whitewater resource and use trends among the paddling community. Flow release days will not be added or subtracted during the initial three (3) years after license issuance and acceptance and will not decrease below one release per year thereafter, unless unacceptable adverse ecological impacts are observed through repeatable scientific study.

Beginning in year four after license issuance and acceptance, the number of annual whitewater releases will be based on boater attendance during the previous year's whitewater release(s). A Boater Attendance Log for each release event will be used to determine whether to add to or subtract from the number of releases from the previous year. For the Boater Attendance Log, a boater is defined as a person with craft using the reach for boating purposes. A boater day is defined as use of the Schaghticoke bypass reach for any part of a given release day. A boat is defined as a kayak, open canoe, or similar craft. The bypass reach from the Schaghticoke dam to the "Big Eddy" (See Schematic S-1) will be open only to these types of crafts during all scheduled whitewater release events.

The number of scheduled whitewater release events will be increased or decreased in accordance with the following provisions. An additional release will be added to the whitewater release event schedule the year following exceedance of twenty-five (25) boaters for each event from the previous year. Should there be less than ten (10) boaters in attendance at

any scheduled event in a given year, then the number of events scheduled for the subsequent year shall be decreased by one.

The number of whitewater release events will not increase or decrease by more than one (1) release per year with a minimum of one (1) release and a maximum of five (5) releases in any given year. The initial release will occur on the first Wednesday on or after April 15<sup>th</sup> following license issuance and acceptance. Each release thereafter will alternate between a Saturday release and a Wednesday release for the term of any new license. Wednesday releases will start at 5:00 PM, excluding ramping. Saturday releases will start at 1:00 PM, excluding ramping. At no time will more than one (1) whitewater release be scheduled in any given week.

Any whitewater release events will terminate at least ½ hour before sunset (for safety reasons). Whitewater release start times will be adjusted to ensure a three-hour release time concluding ½ hour before sunset.

Every five (5) years from license issuance and acceptance, the Licensee and AW will reevaluate, at a minimum, the following aspects of the scheduled whitewater release event(s) to determine whether to modify annual releases and the release schedule for the succeeding five (5) year period:

1. Amount of whitewater usage and trends;
2. Timing/schedule of releases;
3. Boater conduct;
4. Types of craft used.
5. Put-in used.

The Licensee shall designate a contact person and AW and ADK shall jointly designate a contact person for any communication regarding whitewater releases on the Hoosic River, the scheduling of the five (5) year evaluation(s), and any other issues that may arise.

Boaters at each whitewater release event will be required to sign a Boater Attendance Log to enable the Licensee and AW to maintain a record of annual whitewater use for the purpose of conducting each five (5) year evaluation indicated above. AW will provide a representative to oversee the Boater Attendance Log

The whitewater release event(s) will be subject to the ramping rates as agreed upon with the NYSDEC and USFWS following the completion of the whitewater feasibility study. Ramping rates will not overlap with the three-hour whitewater release.

The whitewater release events(s) will equal the optimal flow as defined in the whitewater feasibility study or match inflow to the Johnsonville Development, whichever is less (i.e., Johnsonville and Schaghticoke pond storage will not be used to augment flows for whitewater purposes). Flows in excess of meeting the optimal boating flow as defined in the whitewater feasibility study are available for power generation at the Schaghticoke powerhouse.

If, on the scheduled whitewater release event day, flows in the Hoosic River are below the minimum acceptable boating flow at any time during the event as defined in the whitewater feasibility study, the Licensee will postpone and reschedule the whitewater release event one week from the originally scheduled release, inflows permitting.

If the Hoosic River inflows to the Johnsonville Development from April 15 through November 30 are consistently too low to achieve the minimum acceptable whitewater release boating flows as defined in the whitewater feasibility study, the Licensee will not be required to make up the unachievable whitewater flow release.

Access for any/all whitewater event days shall be subject to the provisions as outlined in the Settlement Offer in Section 3.5.2 (b).

All boaters will abide by the most current revision of the Safety Code of American Whitewater and American Whitewater's "Leave No Trace Policy" plus the conditions outlined in the Settlement Offer (Sections 3.5.1 (d) and 3.5.2 (c)) regarding access and parking.

- (f) Whitewater Access Whitewater recreation access during the scheduled whitewater release events, as described in Section 3.5.1(e), will be accommodated via the existing informal access path on the Licensee's property adjacent to the Hoosic River Gorge Property (See Schematic S-1). This access site will be gated with appropriate signage prohibiting vehicular access during times of the year other than the date(s) of the scheduled whitewater release events. The site shall otherwise remain as unimproved informal access in accordance with the provisions of Section 3.5.1, above. Erie will not be required to provide other improvements than those herein described to accommodate whitewater access.
- (g) Recreation Monitoring The Licensee shall not be required to monitor the use of recreational facilities included in this Settlement Offer beyond the requirements of the FERC's Form 80 reporting.
- (h) Operating Emergencies The Licensee may curtail or suspend recreation measures if required to by operating emergencies beyond the control of the Licensee, including security and for limited periods upon mutual agreement between the Licensee and the NYSDEC. If such suspension of measures occurs under emergency conditions, the Licensee shall notify the NYSDEC as soon as possible, but no later than ten business days after each such incident.

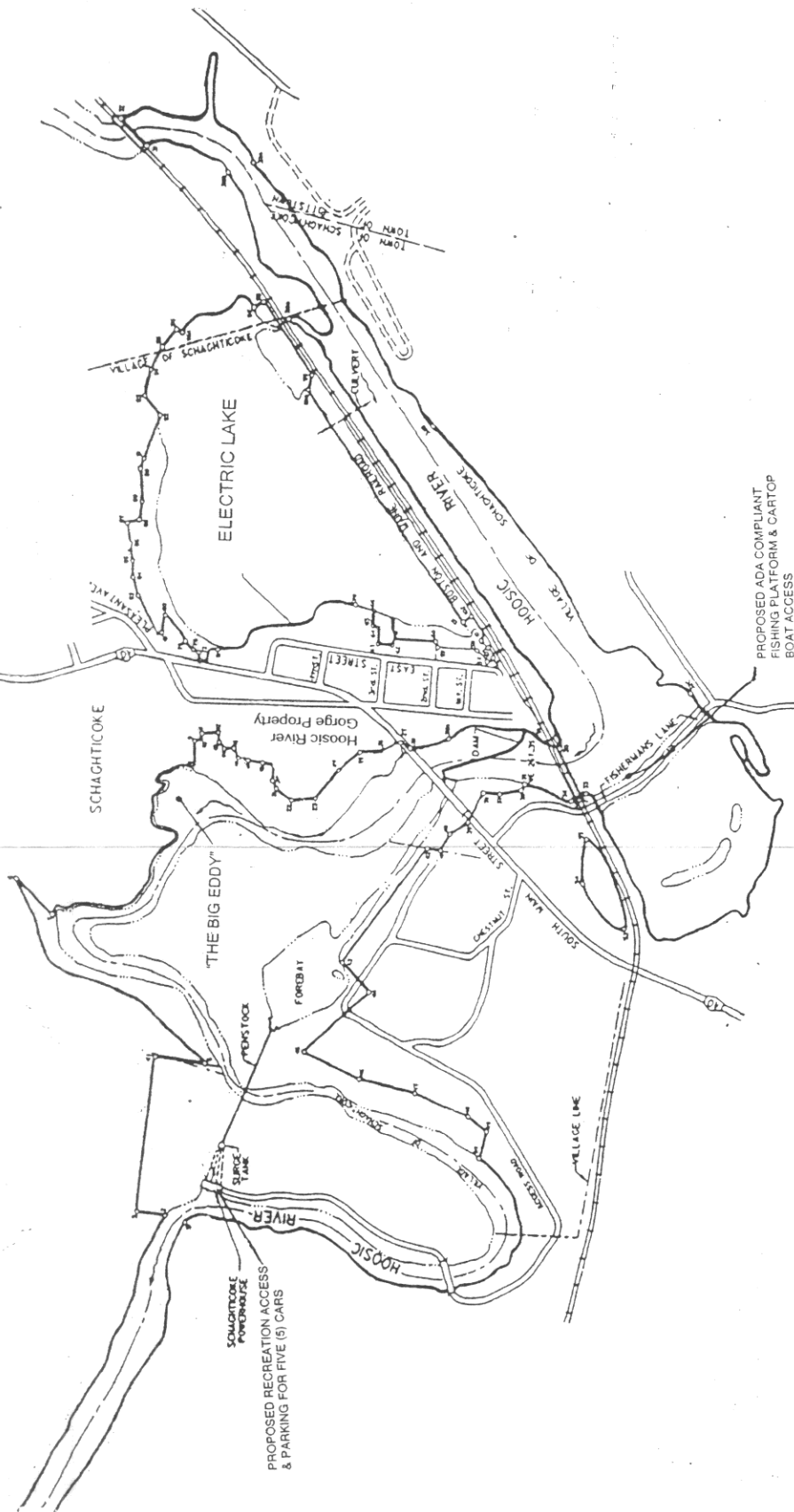
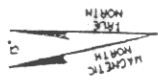
3.5.2 Recreation Enhancement Commitments (Not to be Included in License)

- (a) Fisherman's Lane Fishing and Boat Access The Licensee will develop the Fisherman's Lane facility to ensure that the design of the access and fishing platform will be accessible for people with disabilities and will permit recreational opportunities. Shoreline fishing and general access to the river and the Schaghticoke impoundment will also be provided at this location (See Attached Schematic S-1). The following features will be included in the development of the Fisherman's Lane facility by the Licensee:
- Signage and handicap parking will be provided.
  - An Americans with Disabilities Act (ADA) compliant fishing platform will be erected by Erie and will be conveyed to the Town of Schaghticoke for future maintenance
  - A cartop boat launch will be provided
- (b) Access to Schaghticoke Powerhouse Parking Area and Car-top Boat Take-out/Put-in Facilities Across Land Not Owned by the Licensee. The Licensee will ensure public access to the Schaghticoke powerhouse parking area and car-top boat take-out/put-in facilities. Access will be subject to signage installed by the Licensee prohibiting parking in all areas except the designated 5 car parking area and access will be limited to daylight hours only from March 15 through November 30 each year.
- (c) Dispute Resolution In the event that dispute arises relative to recreational enhancement commitments not included in the License specified in this Section 3.5.2, signatories agree to engage in good faith negotiations for a period of at least 90 days, if necessary, in an effort to resolve the dispute, with said negotiations to be initiated by the aggrieved party. A minimum of two meetings, scheduled and organized by the objecting party, shall be held to attempt to resolve the dispute during the 90-day period, if

necessary. In the event that resolution cannot be reached within the 90-day negotiating period, any signatory may seek relief in an alternate forum with jurisdiction and authority to address recreational enhancement commitments not included in the license.

This dispute resolution clause shall also apply to the Whitewater Agreement outlined in Section 3.5.1(e) as the FERC does not consider this type of agreement within the scope of its jurisdiction to enforce such a dispute resolution clause on other Parties to this settlement other than the Licensee. As such this clause will be enforced via this settlement offer, in particular Section 3.5.2(c) and will not be included as a license article in any new license for this project.

## **Attached Schematics**



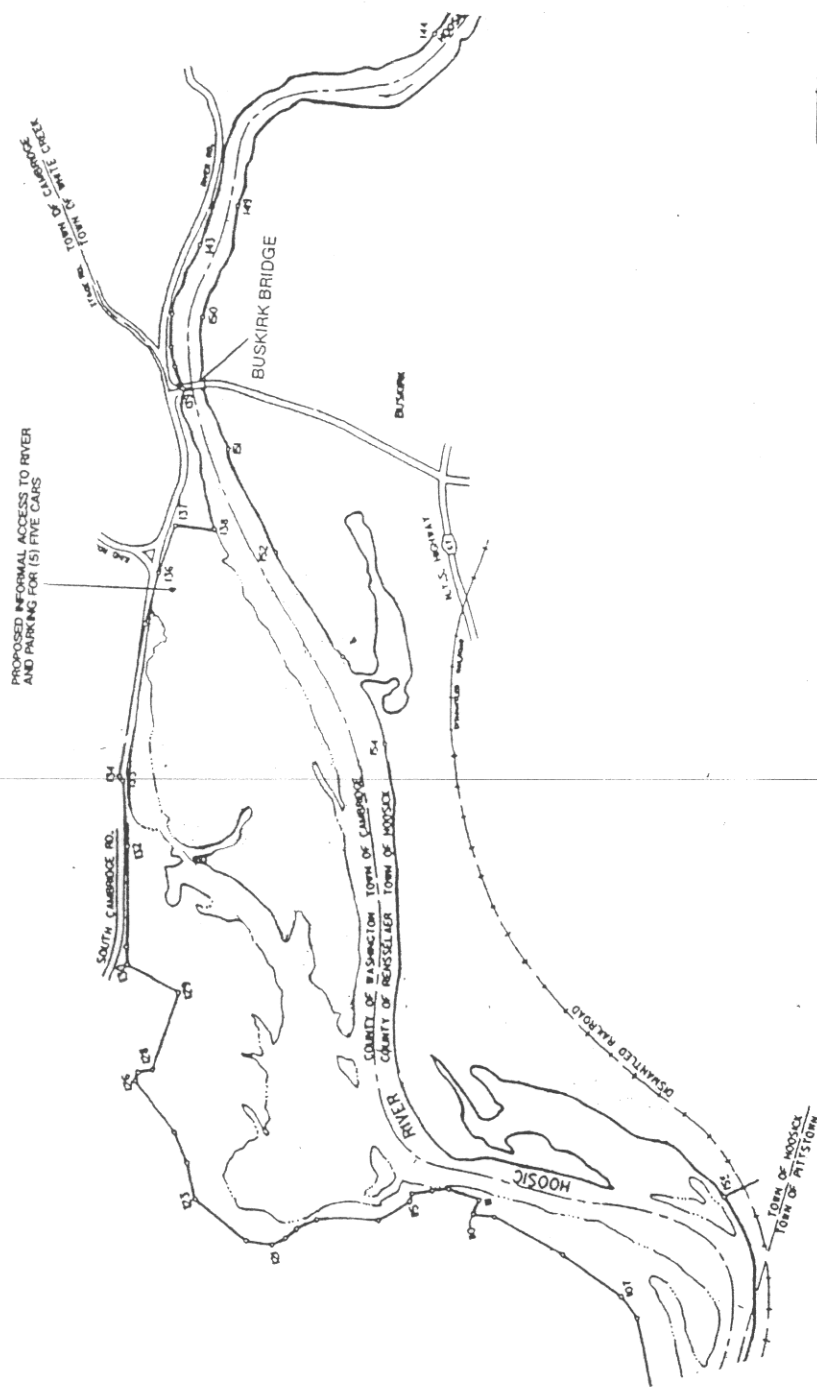
BAR BOULEVARD HYDROPOWER, LP  
LIVERPOOL, N.Y.

HOOSIC RIVER PROJECT  
SCHAGHTICOKE DEVELOPMENT  
Schematic S-1

SCALE: 1"=400'

0 200 400 600 800 1000 1200 1400 1600 1800 2000





8818 BOULEVARD HYDROPOWER, LLP  
LIVERPOOL, N.Y.

**HOOSIC RIVER PROJECT**  
**JOHNSONVILLE DEVELOPMENT**  
Schematic J-1

SCALE: 1"=400'



## HOOSIC RIVER OFFER OF SETTLEMENT

**Organization:** Adirondack Mountain Club

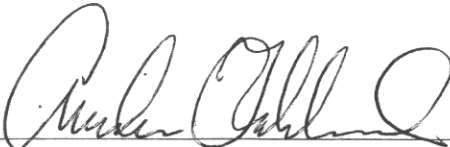
**By:** Betty Lou Bailey  
Betty Lou Bailey

**Title:** Chairman, Canoe Route Subcommittee  
Conservation Committee

**Date:** July 12, 2002

## HOOSIC RIVER OFFER OF SETTLEMENT

**Organization:** American Rivers

**By:**   
Andrew Fahlund

**Title:** Director of Hydropower Programs

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## HOOSIC RIVER OFFER OF SETTLEMENT

**Organization:** American Whitewater

**By:** John T. Gangemi  
John T. Gangemi

**Title:** Conservation Director

**Date:** July 3, 2002

## HOOSIC RIVER OFFER OF SETTLEMENT

**Organization:** Erie Boulevard Hydropower, L.P  
Acting through its General Partner,  
Reliant Energy

**By:** David J. Youlen  
David J. Youlen

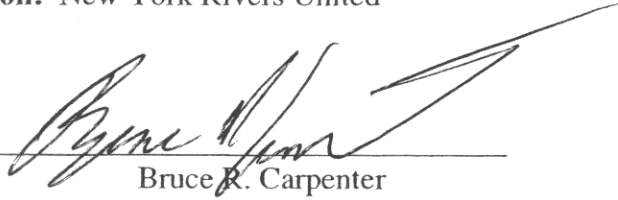
**Title:** Managing Director of Hydro

**Date:** 7/15/02

## HOOSIC RIVER OFFER OF SETTLEMENT

**Organization:** New York Rivers United

**By:**



Bruce R. Carpenter

**Title:** Executive Director

**Date:**

7/01/02

## HOOSIC RIVER OFFER OF SETTLEMENT

Organization: New York State Conservation Council

By: Howard Cushing Jr.  
Howard Cushing Jr.

Title: President

Date: 8/12/02



## HOOSIC RIVER OFFER OF SETTLEMENT

**Organization:** New York State Department of Environmental  
Conservation

**By:** \_\_\_\_\_



Peter Duncan

**Title:** Deputy Commissioner of Natural Resources

**Date:** \_\_\_\_\_

15 July 02

## HOOSIC RIVER OFFER OF SETTLEMENT

**Organization:** Rensselaer County Conservation Alliance

By:   
William Moxon

**Title:** President

**Date:** 7/2/02

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## HOOSIC RIVER OFFER OF SETTLEMENT

**Organization:** Town of Schaghticoke

**By:** Jean Carlson  
Jean Carlson

**Title:** Town Supervisor

**Date:** 8-5-02

## HOOSIC RIVER OFFER OF SETTLEMENT

**ORGANIZATION:** TROUT UNLIMITED

**By:** Thomas R. Matias  
Thomas R. Matias

**Title:** Counsel to the Committee on Hydro Relicensing  
New York State Council, Trout Unlimited

**Date:** July 3, 2002

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## HOOSIC RIVER OFFER OF SETTLEMENT

**Organization:** United States Department of the Interior  
U. S. Fish and Wildlife Service

By:   **ACTING**  
Dr. Mamie Parker

**Title:** Regional Director

**Date:** July 11, 2002

## HOOSIC RIVER OFFER OF SETTLEMENT

**Organization:** U.S. Department of the Interior  
National Park Service

**By:** Chapman I. Rust  
Marie Rust

**Title:** Regional Director, Northeast Region

**Date:** 8/5/02

## HOOSIC RIVER OFFER OF SETTLEMENT

**Organization:** Village of Schaghticoke

**By:**   
H. Charles Wanko

**Title:** Mayor

**Date:** 7/11/02

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