

## APPENDIX C

### INDIAN ORCHARD PROJECT

#### Fish Passage and Protection

The Facility is in compliance with mandatory fish passage prescriptions for upstream and downstream passage of anadromous<sup>32</sup> and catadromous fish<sup>33</sup> issued by resource agencies after December 31, 1986.

Section 30(c) of the Federal Power Act and Section 408 of the Energy Security Act require the inclusion in the Indian Orchard exemption from licensing, all terms and conditions that are prescribed by state and federal fish and wildlife agencies to prevent loss of, or damage to fish and wildlife resources.

With respect fish passage and protection,<sup>34</sup> the FWS specifically mandated the following conditions:

- The Exemptee agreed to construct, maintain and monitor upstream and downstream fish passage when prescribed by the FWS and/or MDFW. The Exemptee agreed to be responsible for the designs of the fish passage facilities which shall be developed in consultation with, and be approved by, the FWS, MDFW and the Connecticut River Atlantic Salmon Commission (CRASC). Furthermore, the Exemptee agreed to construct and have operational upstream and/or downstream passage facilities within two years after being notified of their need by the FWS and/or the MDFW.
- The Exemptee agreed to develop plans for monitoring, maintaining and operating the upstream and downstream fish passage facilities in consultation with FWS, MDFW and CRASC. Within two years after being notified of the need for passage facilities, these plans shall be finalized and approved.
- The FWS reserved the right to add and/or alter these terms and conditions as appropriate in order to carry out its responsibilities with respect to fish and wildlife resources. The Exemptee agreed, within 30 days of receipt, to file with the Commission any additional or modified mandatory terms and conditions.
- The Exemptee agreed to incorporate the aforementioned fish and wildlife conditions in any conveyance; by lease, sale or otherwise; of its interests so as to legally assure

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<sup>32</sup> A review of the FERC record shows that there are no migratory fish in the Chicopee River basin.

<sup>33</sup> A review of the FERC record makes no mention of eels in the Project vicinity.

<sup>34</sup> The lack of anadromous and catadromous fish in the Project vicinity is due in large part to the falls at Chicopee Falls (approximately 4.8 river miles downstream), which block natural migration, and the presence of CSOs, especially in the area of Chicopee Falls, which regularly overflow during the summer months and created unhealthy fish habitat.

compliance with said conditions for as long as the Project operates under an exemption from licensing.

To date, the Exemptee has not been notified by the FWS<sup>35</sup> and/or MDFW of the need to construct and have operational within two years upstream and/or downstream passage facilities.

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<sup>35</sup> On September 29, 2012, MDFW and FWS, respectively, were asked if the Project was in compliance with its Fish Passage and Protection. Both the MDFW and FWS responded that the Project was in compliance and, despite the fact the agencies could request appropriate passage at any time, there were no pending agency request for passage.