

APPENDIX D

INDIAN ORCHARD PROJECT

Watershed Protection

The Facility is in compliance with both state and federal resource agencies recommendations for a license-approved shoreland management plan regarding protection, mitigation or enhancement of shorelands surrounding the project.³⁶

In 1992, Commission staff determined that excavation for the construction of the minimum flow powerhouse could increase the potential for erosion and sedimentation and result in short-term turbidity for the duration of the construction. For these reasons, Article 14³⁷ was specifically included to ensure that the Exemptee, before engaging in any ground disturbance, would take protective measures to minimize erosion and sedimentation associated with the construction of the minimum flow unit powerhouse.

³⁶ A diligent review of federal and state agencies found no state or federal agency willing to take responsibility for watershed protection unless the Exemptee conducted ground disturbance activities. Specifically, EPA and USACE declined to respond in writing while FWS and MDFW responded in e-mails that this activity was not their responsibility.

³⁷ Article 14 states that “At least 90 days before the start of any land-disturbing, land-clearing, or spoil-producing activities, the Exemptee shall file with the Commission for approval, and with the New York Regional Office, a plan to control erosion, to control slope instability, and to minimize the quantity of sediment resulting from project construction and operation.

“The plan shall be based on actual site geological, soil, slope, drainage, and groundwater conditions and on project design, and shall include, at a minimum, the following four items: (1) a description of the actual site conditions; (2) measures to control erosion, to prevent slope instability, and to minimize the quantity of sediment resulting from project construction and operation; (3) detailed descriptions, functional design drawings, and topographic map locations of all control measures; and (4) a specific implementation schedule and details of monitoring and maintenance programs for the project construction period and for project operation.

“The Exemptee shall prepare the plan after consultation with the Soil Conservation Service and the Massachusetts Division of Fisheries and Wildlife. The Exemptee shall include with the plan documentation of consultation with the agencies and copies of agency comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the plan accommodates all of the agency comments and recommendations. The Exemptee shall allow a minimum of 30 days for the agencies to comment and make recommendations prior to filing the plan with the Commission. If the Exemptee does not adopt a recommendation, the filing shall include the Exemptee's reasons, based on geological, soil, and groundwater conditions at the site.

“The Commission reserves the right to require changes to the plan. No land-disturbing or land-clearing activities shall begin until the Exemptee is notified by the Commission that the plan is approved. Upon Commission approval, the Exemptee shall implement the plan, including any changes required by the Commission.”

In 1999, the Exemptee dropped plans to install a minimum flow generation unit at the spillway. Instead, CEEI made various other improvements to the Project, none of which involved in any land-disturbing, land-clearing or spoil-producing activities. Thus, it was not required to obtain any pre-construction approvals from the Soil Conservation Service, the Massachusetts Division of Fisheries and Wildlife or other federal and state agencies. Nonetheless, the Exemptee remains bound by these conditions.

In the future, if Essential Power proposes to engage in any land-disturbing, land-clearing, or spoil-producing activities, it will be required to prepare a plan after consultation with the Soil Conservation Service and the Massachusetts Division of Fisheries and Wildlife. The Exemptee shall include with the plan documentation of consultation with the agencies and copies of agency comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the plan accommodates all of the agency comments and recommendations. The Exemptee shall allow a minimum of 30 days for the agencies to comment and make recommendations prior to filing the plan with the Commission. If the Exemptee does not adopt a recommendation, the filing shall include the Exemptee's reasons, based on geological, soil, and groundwater conditions at the site.