

APPENDX 1-1

FERC Order Issuing License (Minor) Issued November 6, 1981

OD-ORDER, 17 FERC ¶62,208, Newfound Hydroelectric Company, Project No. 3107-001, (Nov. 06, 1981)

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Order Issuing License (Minor)

(Issued November 6, 1981)

William W. Lindsay, Director, Office of Electric Power Regulation.

The Newfound Hydroelectric Company has filed an application for a license under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Newfound Hydroelectric Project, FERC No. 3107. The project would be located on the Newfound River in Grafton County, New Hampshire.

Notice of the application has been published and comments have been received from interested Federal, State and local agencies. No protests or petitions to intervene have been received, and none of the agencies objected to issuance of the license.

The Proposal: The proposed project would consist of: (1) a diversion weir (presently breached) located adjacent to New Hampshire Route 3A in Bristol, New Hampshire; (2) a new 800-footlong water conveyance facility, leading to (3) a new powerhouse located approximately 800 feet downstream of the Water St. Bridge; and (4) appurtenant works. The installed capacity would be approximately 1,487 kW. Applicant estimates that the average annual generation would be 7,400 megawatt-hours.

Safety and Adequacy: The proposed diversion structure would utilize a concrete base surmounted by 5-foot high wooden flashboards supported by solid steel pins, spaced 3 feet from center to center. The flashboards would be designed to fail when overtopped by 1 foot of water. Under flood flows, failure of the flashboards will have essentially no effect on the streamflow regime of the river. The project structures would be low hazard. The spillway capacity is adequate. It is concluded that the project, under conditions of this license, will be safe and adequate.

Economic Feasibility: The project will be operated run-of-the-river and generate an estimated average of 7,400,000 kWh of energy annually at an estimated cost of 59.6 mills/kWh. Applicant proposes to sell all of the project power to the Public Service Company of New Hampshire. It is concluded that the project is economically feasible based on the current New Hampshire PURPA rate of 77 mills/kWh.

Environmental Considerations: No Federally-listed endangered or threatened plant or animal species have been identified within the project boundary.

The U.S. Fish and Wildlife Service has determined that the river does not provide suitable habitat for anadromous fish.²

The State Historic Preservation Officer (SHPO) has identified an inactive paper mill just outside of the project boundary as potentially eligible for inclusion on the National Register of Historic Places. The Applicant states that it will cooperate with SHPO to determine the precise nature of impacts on historic resources and appropriate mitigation measures. In the event that archeological resources are found during project construction, the Applicant would notify the SHPO, request his evaluation, and cooperate in mitigating any adverse impacts on those resources. In accordance with standard Commission practice,³ Article 19 of this license requires cultural resources protection measures in the event of any future

construction or development at the project, other than the project development considered and authorized here.

Construction would cause engine exhaust emissions, increased noise, soil erosion, and stream sedimentation, but these effects would be minor and transitory. The 5-cfs minimum flow released continuously below the diversion weir would mitigate any adverse effects of project operation. On the basis of the record, including agency comments and our staff's independent analysis, it is found that issuance of a license for this project, would not constitute a major Federal action significantly affecting the quality of the human environment.

Other Aspects of Comprehensive Development: Based on our staff's analysis, it is concluded that the project will make good

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use of the flow and fall of the Newfound River, is not in conflict with any planned or potential development, and will be best adapted to the comprehensive development of the Merrimack River Basin under present conditions upon compliance with the terms and conditions of the license.

License Term: The proposed construction of this project at the site of a breached weir is similar to relicensing an existing project at which a significant amount of new development is proposed. Therefore, consistent with the Commission's policy, a 50 year license term is reasonable in this instance. ⁴

Other Considerations: Applicant requested that its initial license application be treated as an application for exemption. The Commission, in issuing Order No. 106, on November 7, 1980, specifically afforded a project owner only a limited time to request that a license application be treated as one for exemption. In this case, notice of the application had been given, the period for filing protests or petitions to intervene had expired, and the application for license had been substantially processed at the time the request was filed. To grant the requested waiver would be inconsistent with Order No. 106 and would have in effect required the processing of a second application. In the preamble of Order No. 106, the Commission stated that pending applications could not be so revised if notice of application for license had expired. For these reasons, the Applicant's request that its license application be treated as an exemption application is denied.

The project would be located in the floodplain of the Corps Franklin Falls Flood Control Dam. The Corps requested a special article be included as part of the license freeing the Corps of responsibility for any flood damages to the project facilities up to elevation 395 feet National Geodetic Vertical Datum. Special Article 23 addresses this concern.

It is ordered that: (A) This license is issued to the Newfound Hydroelectric Company (Licensee) of Bristol, New Hampshire, under part I of the Federal Power Act (Act), for a period of 50 years, effective the first day of the month in which this order is issued, for the reconstruction, operation, and maintenance of the Newfound Hydroelectric Project No. 3107, located in Grafton County, New Hampshire, on the Newfound River, and affecting the interests of interstate or foreign commerce. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The Newfound Hydroelectric Project consists of:

(1) All lands, to the extent of the Licensee's interests in those lands, constituting the project area and enclosed by the project boundary. The project area and boundary are shown and described by certain exhibits that form part of the application for license and that are designated and described as:

Exhibit	FERC No.	Showing
K	3107--1	Site Plan
K	2	General Location

(2) Project works consisting of: (a) a diversion weir surmounted by wooden flashboards, totalling 10 feet in height; (b) a 0.23-acre reservoir with a storage capacity of 0.69 acre-feet; (c) a concrete intake channel; (d) a powerhouse containing two generating units (870 kW and 617 kW); a 6-foot diameter wooden penstock 420 feet long; (f) a 30-foot-wide tailrace extending 175 feet to the confluence of the Newfound and Pemigewasset Rivers; (g) a 160-foot-long underground cable from the powerhouse to an existing pole of the power purchaser, Public Service Company of New Hampshire; and (h) appurtenant works.

The location, nature and character of these project works are generally shown and described by the exhibits cited above and more specifically shown and described by certain other exhibits that also form a part of the application for license and that are designated and described as:

Exhibit	FERC No.	Showing
L	3107--	
1	3	Powerhouse Plan and Section
2	4	Profile and Detail (Diversion Weir, Penstock, Powerhouse)
3	5	Plan, Section and Elevation (Diversion Weir)
4	6	Electro--Mechanical Diagram

(3) All of the structures, fixtures, equipment, or facilities used or useful in the operation or maintenance of the project and located within the project boundary, all portable property that may be employed in connection with the project, located within or outside the project boundary, as approved by the Commission, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) Exhibits K and L, designated in ordering paragraph (B) above, are approved and made a part of the license.

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(D) Pursuant to Section 10(i) of the Act, it is in the public interest to waive the following Sections of Part I of the Act, and they are excluded from the license:

Section 4(b), except the second sentence; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act that are waived here; 10(c), insofar as it relates to depreciation reserves 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 16; 19; 20; and 22.

(E) This license is also subject to Articles 1 through 18 set forth in Form L-15 (revised October, 1975), entitled "Terms and Conditions of License for Unconstructed Minor Project Affecting the Interests of Interstate or Foreign Commerce," attached to (See 54 FPC 1883) and made a part of this license. The license is also subject to the following additional articles:

Article 19. The Licensee shall, prior to the commencement of any construction at the project, cooperate with the New Hampshire State Historic Preservation Officer (SHPO) to assess the significance of the Newfound Hydroelectric Building and its associated structures, and to avoid or mitigate impacts to these

facilities. The Licensee shall make available funds in a reasonable amount for any such assessment or mitigation measures as required. If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or other facilities at the project, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Licensee shall consult with the SHPO to develop a mitigation plan for the protection of significant archeological or historical resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historical work related to the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any such work found necessary.

Article 20. The Licensee shall commence construction of the proposed project within one year of the date of issuance of the license and shall complete construction within two years from the start of construction.

Article 21. The Licensee shall file with the Commission's Regional Engineer and the Director, Office of Electric Power Regulation, one copy each of the final contract drawings and specifications for pertinent features of the project, such as water retention structures, powerhouse, and water conveyance structures, 60 days prior to start of construction. The Director, Office of Electric Power Regulation may require changes in the plans and specifications to assure a safe and adequate project.

Article 22. The Licensee shall within 90 days of completion of construction, file in accordance with the Commission's Rules and Regulations revised Exhibit L drawings showing the project as-built.

Article 23. The Licensee shall have no claim under this license against the United States arising (1) from the effect of any changes made in the pool levels of the Franklin Falls Flood Control Dam and (2) from any flood damages to the project facilities up to elevation 395 feet National Geodetic Vertical Datum.

Article 24. The Licensee shall pay the United States the following annual charges, effective the first day of the month in which this license is issued:

For the purpose of reimbursing the United States for the cost of the administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 1980 horsepower.

Article 25. (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 other 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 uses and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, cancelling the permission to use and occupy the project lands

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and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters 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; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall

require multiple use and occupancy of facilities for access to project lands or waters. The Licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses 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 modifications of those standards, guidelines, or procedures.

(c) The Licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges and roads for which all necessary State and Federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the Licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The Licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary State and Federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary Federal and State water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary Federal and State approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the Licensee must file a letter to the Director, Office of Electric Power Regulation, 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 paragraphs (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.

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(2) Before conveying the interest, the Licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an

Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

(4) The Commission reserves the right to require the Licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

(F) This order is final unless a petition appealing it to the Commission is filed within 30 days from the date of its issuance, as provided in Section 1.7(d) of the Commission's regulations, 18 C.F.R. 1.7 (d) (1979), *as amended*, 44 Fed. Reg. 46449 (1980). The filing of a petition appealing this order to the Commission or an application for rehearing as provided in Section 313(a) of the Act does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission.

Failure of the Licensee to file a petition appealing this order to the Commission shall constitute acceptance of this license. In acknowledgment of acceptance of this license, the license shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

— Footnotes —

¹ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under 18 C.F.R. §375.308 (1980), *as amended* by 46 Fed. Reg. 14119 (1981).

² The New Hampshire State Water Supply and Pollution Control Commission issued a water quality certificate for the project, in accordance with Section 401 of the Federal Water Pollution Control Act.

³ See S.D. Warren, Project No. 2897, Order Denying Rehearing (issued Feb. 19, 1980).

⁴ Montana Power Company, Order Issuing New License (Major), Project No. 2301 (issued October 5, 1976).