

Low Impact Hydropower Institute Certification Questionnaire
Mahoning Creek Hydroelectric Project
Background Information

FERC License Articles - Status Update			
Article	Action Required	Page	Status Update
201	Annually compensate the US, effective upon commencement of project construction, for the cost of administration of Part I of the Federal Power Act and for the utilization of surplus water or water power from a government dam	21	Pending.
202	Within 45 days of the date of the license issuance, the licensee shall file the approved exhibit drawings in aperture card and electronic file formats	21-23	Complete
203	Pursuant to section 10(d) of the Act, after the first 20 years of operation of the project under license, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One-half of the project surplus earnings, if any, accumulated after the first 20 years of operations under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year after the first 20 years of operation under the license, the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts established in the project amortization reserved account shall be maintained until further order of the Commission.	24	Requirement Pending.
204	If the licensee's project is directly benefited by the construction work of another licensee, a permittee, or the United States of a storage reservoir or other headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed.	23-24	Requirement Pending.
301	The licensee shall commence construction of the project works within two years from the issuance date of the license and shall complete construction of the project within five years from the issuance date of the license.	24	Complete. Construction started within the required timeframe.
302	At least 60 days prior to start of construction, the licensee shall submit one copy of its plans and specifications and supporting design document to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer, and two copies to the Commission (one of these shall be a courtesy copy to the Director, D2SI). The submittal must also include as part of preconstruction requirements: a Quality Control and Inspection Program, Temporary Construction Emergency Action Plan, and Soil Erosion and Sediment Control Plan. The licensee may not begin construction until the D2SI – New York Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized start of construction.	24	Complete.

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303	<p>The design and construction of those permanent and temporary facilities, including reservoir impounding cofferdams and deep excavations, that would be an integral part of, or that could affect the structural integrity or operation of the Government project shall be done in consultation with and subject to the review and approval of the Corps' District Engineer. The Corps' review of the cofferdams will be in addition to the licensee's review and approval of the final plans and shall in no way relieve the licensee of responsibility and liability regarding satisfactory performance of the cofferdams. Within 90 days from the issuance date of the license, the licensee shall furnish the Corps and the Commission's Division of Dam Safety and Inspections – New York Regional Engineer, a schedule for submission of design documents and the plans and specifications for the project. If the schedule does not afford sufficient review and approval time, the licensee, upon request of the Corps, shall meet with the Corps and the Commission's staff to revise the schedule accordingly.</p>	24-25	Complete
304	<p>The licensee shall review and approve the design of contractor–designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the licensee shall file with the Director, Division of Dam Safety and Inspections (D2SI), the D2SI - New York Regional Engineer, and the Corps, one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.</p>	25	Complete
305	<p>The licensee shall within 90 days from the issuance date of the license, enter into an agreement with the Corps to coordinate its plans for access to and site activities on lands and property administered by the Corps so that the authorized purposes, including operation of the Federal facilities, are protected. In general, the agreement shall not be redundant with the Commission's requirements contained in this license, shall identify the facility, and the study and construction activities, as applicable, and terms and conditions under which studies and construction will be conducted. The agreement shall be mainly composed of reasonable arrangements for access to the Corps site to conduct studies and construction activities, such access rights to be conditioned by the Corps as may be necessary to protect the federally authorized project purposes and operations. Should the licensee and the Corps fail to reach an access agreement, the licensee shall refer the matter to the Commission for resolution.</p>	25	Complete. MCHC's MOU with the Corps is provided.
306	<p>The construction, operation and maintenance of the project works that, in the judgment of the Corps may affect the structural integrity or operation of the Corps project shall be subject to periodic or continuous inspections by the Corps. Any construction, operation and maintenance deficiencies or difficulties detected by the Corps inspection shall be immediately reported to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer. Upon review, the D2SI – New York Regional Engineer shall refer the matter to the licensee for appropriate action. In cases when construction, operation, or maintenance practices or deficiencies may create a situation posing imminent danger to the structural integrity and safety of the Corps project, the Corps inspector has the authority to stop construction or maintenance while awaiting the resolution of the problem. The licensee shall immediately inform the D2SI – New York Regional Engineer of the circumstances surrounding the cessation of construction, operation, or maintenance activities. The licensee shall not resume construction, operation, or maintenance activities until notified by the D2SI – New York Regional Engineer that the problem or situation has been resolved.</p>	25	Requirement is ongoing. No violations have occurred.

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307	The licensee shall, at least 60 days prior to start of construction, submit for approval an operating plan, describing (a) the designed mode of hydropower operation, (b) reservoir flow diversion and regulation requirements for operation of the Corps project during construction as established by the Corps, and (c) integration of the operation of the hydroelectric facility into the Corps' emergency action plan. In addition, the licensee, prior to start of power plant operation, shall enter into an operating Memorandum of Agreement (MOA) with the Corps describing the detailed operation of the power facilities acceptable to the Corps. The MOA shall specify any restrictions needed to protect the primary purposes of the Corps project for navigation, recreation, water quality, and flood control. The Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer shall be invited to attend meetings regarding the agreement. The MOA shall be subject to revision by mutual consent of the Corps and licensee as experience is gained by actual project operation. Should the licensee and the Corps fail to reach an agreement, the matter will be referred to the Director, Office of Energy Projects for resolution. Copies of the regulating plan and signed MOA between the Corps and the licensee and any revision thereof shall be furnished to the Director, Office of Energy Projects, and the D2SI – New York Regional Engineer.	26	In Progress
308	The licensee shall have no claim under this license against the United States arising from the effect of any changes made in the operation or reservoir levels of the Corps project.	26	NA
309	The licensee shall provide the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Office two copies of all correspondence between the licensee and the Corps. The D2SI – New York Regional Engineer shall not authorize construction of any project work until the Corps' written approval of construction plans and specifications, quality control and inspection program, and temporary emergency action plan have been received by the Regional Engineer.	26	Complete
310	Within 90 days of completion of all construction activities authorized by this license, the licensee shall file for Commission approval, revised Exhibits A, F, and G including the fishing pier and access ramp within the project boundary, to describe and show those project facilities as-built. A courtesy copy shall be filed with the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer; the Director, D2SI; and the Director, Division of Hydropower Administration and Compliance.	26-27	Requirement is Pending. Construction is not yet complete.
311	At least 90 days before starting construction, the licensee shall file with the Commission, for approval, three copies of a project financing plan. The plan must show that the licensee has acquired the funds, or commitment for funds, necessary to construct the project in accordance with this license. The licensee shall not start any project construction or ground-disturbing activities that are inseparably associated with the project, before the project financing plan is approved.	27	Complete
401	The licensee shall operate the project and only use flows released by the Corps or directed to be released by the Corps within the constraints established by the Corps according to Article 308.	27	Requirement is Pending. The project is not yet operational.
402	At least 90 days before commencing project operation, the licensee shall prepare and file for Commission approval a water quality monitoring plan.	27	Complete
403	At least 60 days before starting project construction, the licensee shall prepare and file for Commission approval a plan showing the licensee's proposed intake structure design for limiting fish entrapment.	28	Complete

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404	At least 90 days before the start of any land-disturbing or land-clearing activities, the licensee shall file with the Commission, for approval, a wetland protection plan for avoidance and protection of wetlands located near project construction activities.	28-29	Complete
405	Within 6 months of the date of issuance this license, the licensee shall prepare and file for Commission approval a recreation and aesthetics plan.	29	Complete
406	The licensee shall implement the “Programmatic Agreement Between the Federal Energy Regulatory Commission and the Pennsylvania State Historic Preservation Officer for Managing Historic Properties that may be Affected by Issuing a License to Mahoning Creek Hydroelectric Company, LLC for the Continued Operation of the Mahoning Creek Hydroelectric Project Armstrong County, Pennsylvania (FERC No. 12555)”, executed on November 16, 2010. Pursuant to the requirements of this Programmatic Agreement (PA), the licensee shall file, for Commission approval, a HPMP within one year of the issuance date of this order. In the event that the PA is terminated, the licensee shall continue to implement the provisions of its approved Historic Properties Management Plan (HPMP). The Commission reserves the authority to require changes to the HPMP at any time during the term of the license.	30	Pending. The HPMP was submitted as required and all required protocols are being followed.
407 (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, to the extent it has interests in such lands and waters, for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies, for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.	30-31	Not Applicable at this time.

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407 (b)	<p>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 that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.</p>	31	Ongoing Requirement.
407 (c)	<p>The licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (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. If no conveyance was made during the prior calendar year, the licensee shall so inform the Commission and the Regional Director in writing no later than January 31 of each year.</p>	31-32	Not Applicable at this time.

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407 (d)	<p>The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Energy Projects, 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.</p>	32	Not Applicable at this time.
407 (e)	<p>The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article: (1) Before conveying the interest, the licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer. (2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value. (3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters. (4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.</p>	32-33	Not Applicable at this time.

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407 (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.	33	Not Applicable at this time.
407 (g)	The authority granted to the license under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.	33	Not Applicable at this time.