

**LOWER PENOBSCOT RIVER
MULTIPARTY SETTLEMENT
AGREEMENT**

June 2004

LOWER PENOBSCOT RIVER MULTIPARTY SETTLEMENT AGREEMENT

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LOWER PENOBSCOT RIVER MULTIPARTY SETTLEMENT AGREEMENT

This Multiparty Settlement Agreement (the “Agreement”) is hereby entered into by PPL Maine, LLC (“PPL Maine”), PPL Great Works, LLC (“PPL Great Works”), PPL Generation, LLC (“PPL Generation”) (for the limited purposes set forth in Sections XIII(c) and XIV hereof); the Penobscot River Restoration Trust (the “Trust”); the Penobscot Indian Nation (“PIN”); the United States Department of the Interior acting through its bureaus the Fish and Wildlife Service (“FWS”), the Bureau of Indian Affairs (“BIA”), and the National Park Service (“NPS”) (collectively “DOI”); the Maine State Planning Office, the Maine Atlantic Salmon Commission, the Maine Department of Inland Fisheries and Wildlife, and the Maine Department of Marine Resources (collectively the “Maine Agencies”); American Rivers, Inc. (“AR”), the Atlantic Salmon Federation (“ASF”), the Maine Audubon Society (“MAS”), the Natural Resources Council of Maine (“NRCM”), and Trout Unlimited (“TU”) (AR, ASF, MAS, NRCM, and TU, hereinafter referred to collectively as the “Conservation Interests”); (except for PPL Generation, each a “Party” and collectively the “Parties”).

WHEREAS, PPL Maine (on behalf of itself, its parent corporation and PPL Great Works), PIN, DOI, the Maine Agencies, AR, ASF, NRCM, and TU entered into a Lower Penobscot River Conceptual Agreement (“CA”) in August, 2003 in which the designated negotiating representatives of those parties agreed to recommend the provisions of the CA to their respective principals and, upon receiving authorization, to proceed as promptly as possible to negotiate and finalize a comprehensive settlement agreement, as set forth in the CA, which provides that PPL Maine and PPL Great Works shall, in exchange for valuable consideration, grant a not-for-profit corporation an option to purchase and thereafter decommission and remove Veazie and Great Works and decommission and remove or alter Howland as provided herein

(collectively the “Designated Projects”), upon receipt of necessary regulatory approvals and otherwise in accordance with this Agreement;

WHEREAS, PPL Maine, PPL Great Works, PPL Generation and the Trust are executing among themselves a separate Lower Penobscot River Option Agreement (“Option Agreement”), a copy of which is attached as Exhibit 1, that establishes the terms of the Option;

WHEREAS, BIA, PIN, and PPL Maine are executing among themselves a separate settlement agreement (the “PIN Agreement”), a copy of which is attached as Exhibit 2, regarding (1) Milford and Milford’s impacts on PIN lands, resources, and other interests, and (2) the non-habitat impacts on PIN lands, resources, and other interests of the one-foot increase in the authorized maximum elevation of the reservoir at West Enfield contemplated in this Agreement;

WHEREAS, the Trust and PPL Great Works recognize that removal of the Great Works dam will influence certain operational aspects of the Georgia Pacific Corporation’s (“GPC”) paper mill that is located immediately adjacent to Great Works. The Trust and PPL Great Works will work with GPC to accomplish the removal of the Great Works dam in a manner consistent with legal obligations to GPC;

WHEREAS, the purchase price for the Designated Projects represents, in the view of the Parties, fair compensation for the economic value of the Designated Projects;

WHEREAS, implementation of this Agreement will significantly enhance fishery restoration efforts in the Penobscot River Basin and will resolve to the Parties’ satisfaction all pending fish passage issues associated with the Designated Projects and other hydroelectric projects in the Penobscot River Basin currently owned or operated by PPL Maine, while implementation of this Agreement and the separate PIN Agreement will resolve to the Parties’

satisfaction all issues raised in the requests for rehearing filed by PPL Maine's predecessor in interest, DOI, PIN, ASF, MAS, Maine Council of the Atlantic Salmon Foundation ("MCASF"), and TU of the Federal Energy Regulatory Commission's ("FERC") April 20, 1998 orders for Basin Mills, Veazie, Milford, Orono, and Stillwater;

WHEREAS, MCASF is a not-for-profit corporation which, in addition to ASF, MAS, and TU, filed a request for rehearing of certain aspects of FERC's above-mentioned April 20, 1998 orders, and has authorized ASF to withdraw its request for rehearing of said orders so long as ASF does the same;

WHEREAS, PPL Maine is the indirect owner of the managing general partner of Bangor Pacific Hydro Associates ("BPHA"), the licensee of West Enfield, and has obtained written authorization from the indirect owner of the only other general partner of BPHA to act on behalf of BPHA to file all applications and take all other actions required of BPHA in this Agreement in association with West Enfield;

WHEREAS, the Parties understand that: this Agreement is not related to the issue of whether the run of Atlantic salmon on the Penobscot River should be included within the Maine population of Atlantic salmon that is listed as endangered under the Endangered Species Act; by enhancing upstream and downstream fish passage and restoring habitat, the actions contemplated under this Agreement will improve significantly the prospect of recovery of Atlantic salmon, as well as other migratory fish populations, in the Penobscot River Basin; and implementation of this Agreement is unlikely to affect the responsibilities or rights of others if the Penobscot run of Atlantic salmon is included within the listed endangered population;

WHEREAS, this Agreement contains provisions to significantly enhance hydroelectric energy production at remaining facilities owned or operated by PPL Maine and

thereby replace substantially all of the hydroelectric energy lost through the removals or alterations of Great Works, Howland, and Veazie;

WHEREAS, the Parties have commenced and intend to continue to explore with affected communities, businesses, and other persons ways in which the benefits of the proposed removals or alteration can be maximized, and potential impacts minimized or mitigated;

WHEREAS, the Conservation Interests and PIN are committed to securing, with the appropriate coordination and support of the other Parties, funding necessary to carry out the purposes of this Agreement;

WHEREAS, the Parties believe that the provisions contained in this Agreement are in the best interests of the Parties, and DOI and the Maine Agencies believe (without pre-determining the outcome of notice and comment procedures) that such provisions are consistent with the missions, goals, and, where applicable, the statutory obligations of DOI and the Maine Agencies;

WHEREAS, the Conservation Interests, DOI, the Maine Agencies, and PIN (collectively, the “Restoration Interests”) recognize and commend PPL Generation, PPL Maine, and PPL Great Works for their environmental stewardship and commitment to restoration of fisheries of the Penobscot River, as evidenced by its willingness to execute this Agreement;

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

I. Definitions

(a) **“Applicable Laws and Regulations”** means all duly promulgated federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or

administrative orders, permits and other duly authorized actions or legal requirements of any Governmental Authority.

- (b) **“Basin Mills”** means the dam and appurtenant property and facilities proposed by PPL Maine’s predecessor in interest under FERC Project No. 10981.
- (c) **“BPHA”** means Bangor Pacific Hydro Associates.
- (d) **“Closing”** means the transfer of all right, title and interest in the Designated Projects from PPL Maine and PPL Great Works to the Trust pursuant to the terms of the Option Agreement.
- (e) **“DEP”** means the Maine Department of Environmental Protection.
- (f) **“Effective Date”** means the date upon which the last Party executes this Agreement.
- (g) **“FERC”** means the Federal Energy Regulatory Commission.
- (h) **“FPA”** means the Federal Power Act, 16 U.S.C. § 791a *et seq.*
- (i) **“Great Works”** means the dam and appurtenant property and facilities owned by PPL Great Works under FERC Project No. 2312.
- (j) **“Governmental Authority”** means any federal, state, local or other governmental regulatory, legislative, or administrative agency, court, commission, department, board, or other governmental subdivision with jurisdiction over any of the Parties, their respective facilities, or the respective services they provide, and which is exercising, or is entitled to exercise, any authority over any of the Parties, their respective facilities, or the respective services they provide under the terms of this Agreement.
- (k) **“Howland”** means the dam and appurtenant property and facilities owned by PPL Maine under FERC Project No. 2721.

- (l) **“Medway”** means the dam and appurtenant property and facilities owned by PPL Maine under FERC Project No. 2666.
- (m) **“Milford”** means the dam and appurtenant property and facilities owned by PPL Maine under FERC Project No. 2534.
- (n) **“NEPA”** means the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*
- (o) **“Option”** means the option to purchase the Designated Projects as described in Section III(a)(1) of this Agreement.
- (p) **“Orono”** means the dam and appurtenant property and facilities owned by PPL Maine under FERC Project No. 2710.
- (q) **“PIN Agreement”** means the agreement, attached hereto as Exhibit 2, executed by PIN, BIA and PPL Maine regarding the impacts of operational changes at Milford and West Enfield.
- (r) **“Restoration Interests”** means collectively the Conservation Interests, DOI, the Maine Agencies, and PIN.
- (s) **“Regulatory Application”** means any application, petition, or other request for a license, permit, certification, or other regulatory approval or action filed by any Party with any Governmental Authority as required by this Agreement or by Applicable Laws and Regulations.
- (t) **“Stillwater”** means the dam and appurtenant property and facilities owned by PPL Maine under FERC Project No. 2712.
- (u) **“Veazie”** means the dam and appurtenant property and facilities owned by PPL Maine under FERC Project No. 2403.

- (v) “**West Enfield**” means the dam and appurtenant property and facilities owned by BPHA under FERC Project No. 2600.

II. Regulatory Approvals And Related Activities

(a) Each Party shall file all Regulatory Applications required of it by this Agreement and Applicable Laws and Regulations. Each Party also shall file with FERC, DEP, DOI, and any other Governmental Authority appropriate pleadings, as required of it by this Agreement, supporting the Regulatory Applications filed by other Parties; *provided, however*, that, on matters not specifically addressed in this Agreement, DOI and the Maine Agencies reserve the right to make specific comments and recommendations pursuant to their statutory and regulatory authorities that are consistent with the terms and intent of this Agreement.

(b) Attachment A hereto describes the Parties’ agreement as to PPL Maine and PPL Great Work's obligations regarding upstream and downstream fish passage measures at their hydroelectric projects during each phase of this Agreement. DOI shall submit to FERC at the times identified herein modifications of its prescriptions for fishways consistent with the provisions of Attachment A. In each instance where DOI so proposes to modify its prescriptions for fishways, consistent with the provisions of Attachment A, it shall (1) comply with its policy for notice and comment before submitting any modified prescriptions to FERC, and (2) thereafter file the modified prescriptions resulting from the notice and comment process for fishways with FERC for inclusion in the respective licenses.

III. Grant And Exercise Of Option

(a) PPL Maine, PPL Great Works, PPL Generation and the Trust shall, on the Effective Date, execute the Option Agreement attached hereto as Exhibit 1. As expressly set forth in the Option Agreement:

- (1) The Trust will receive an option from PPL Maine and PPL Great Works to purchase the Designated Projects (“Option”);
- (2) The Option may be exercised by the Trust for a period of five years, beginning on the Effective Date, by means of the Trust providing written notification to PPL Maine and PPL Great Works; *provided, however*, that the Trust may not exercise the Option unless final orders/approvals that are no longer subject to administrative or judicial appeal granting/approving the applications/requests set forth in Section IV have been issued and without alteration or change in any term or provision of the applications/requests that materially prejudices any Party, unless such alteration or change is deemed acceptable to the Parties in accordance with the provisions of Section XII;
- (3) Exercise of the Option shall contractually bind the Trust to purchase the Designated Projects, which PPL Maine and PPL Great Works shall sell to the Trust. The Trust and PPL Maine and PPL Great Works shall not be so bound if the conditions precedent to closing, as described Section V(d), are not achieved;
- (4) At any time prior to its exercise of the Option, the Trust may terminate the Option, upon written notification to PPL Maine and PPL Great Works of its intent to do so;
- (5) The purchase price for the Designated Projects shall be \$24 million if the Option is exercised before the end of its third year, \$25 million if the Option is exercised during its fourth year, and \$26 million if the Option is

exercised during its fifth year; *provided, however*, that, if Closing occurs more than one year after the written notification to exercise the Option is provided to PPL Maine and PPL Great Works, the purchase price shall be escalated by three (3) percent per annum, accrued and compounded daily, beginning on the day following such one-year period and continuing until Closing occurs; and

(6) The purchase price shall be paid by the Trust to PPL Maine and PPL Great Works at Closing.

(b) Closing shall occur within 60 days (unless extended by mutual agreement of PPL Maine, PPL Great Works, and the Trust) of the completion of the events described in Section V(d) of this Agreement.

(c) Subject to the unanimous approval of the Restoration Interests, the Trust may assign all of its rights and obligations under this Agreement and the Option Agreement to another not-for-profit corporation or governmental entity. Prior to any such assignment, the Restoration Interests and the Trust shall consult with PPL Maine and PPL Great Works regarding the proposed assignment.

IV. Actions After Execution Of The Agreement

Contemporaneously with the execution of this Agreement, the Parties shall take the following actions:

(a) The Parties shall make an initial joint filing at FERC explaining the overall structure of this Agreement and submitting a copy of this Agreement for informational purposes only. This initial joint filing at FERC shall also include the following Regulatory Applications requesting that FERC take the following actions:

- (1) Suspend the FERC relicensing proceedings, including the NEPA analyses, for Howland and Great Works until the Option has been exercised, has expired, or has been terminated; and
- (2) Extend, until the Option has been exercised and the Designated Projects are purchased, or the five-year Option period expires, or has been terminated, whichever is earlier, and for appropriate periods of time to permit the Parties to comply with the provision of Sections V, VI, and VII, the requirements (i) that PPL Maine initiate and complete the installation of an additional turbine/generating unit at Milford, including the requirement that PPL Maine file progress reports regarding the installation of the additional generating unit; and (ii) that PPL Maine submit a final recreation plan for Veazie.

(b) DOI shall submit to FERC modified fishway prescriptions for Veazie, Milford, Stillwater, and Orono consistent with the pertinent provisions of Attachment A, for inclusion in the licenses for such projects as articles. DOI shall inform FERC that the requirements contained in the modified fishway prescriptions for Milford, Stillwater and Veazie are to replace the fish passage related articles of the Milford (Articles 407, 408, and 409) and Stillwater (Articles 406, 407, and 408) licenses and modify the fish passage related articles of the Veazie (Articles 407, 408, and 409) license. These prescriptions shall address PPL Maine's responsibilities for fish passage (1) upon the Effective Date of this Agreement, and (2) upon acquisition of the Designated Projects by the Trust, all as defined in Attachment A.

(c) PPL Maine shall file (or shall cause BPHA to file, as appropriate) Regulatory Applications at FERC (1) requesting that FERC amend the appropriate articles of the licenses for

Milford, Stillwater, and West Enfield to incorporate the pertinent fish passage and minimum flow requirements as provided for in Attachment A, and (2) requesting an amendment to the licenses for Milford and West Enfield to implement the relevant provisions of the PIN Agreement, with the Restoration Interests filing supportive pleadings. The Regulatory Application to be filed at FERC hereunder with respect to Milford shall also include requests that FERC delete Article 410 from the license and modify the time deadlines specified in Articles 301 and 305 thereof to “as ordered by the Commission.” The Regulatory Applications to be filed at FERC hereunder with respect to Milford and Stillwater shall also include requests that FERC amend Article 411 of the Milford license and Article 409 of the Stillwater license by adding at the end of each thereof before the period the following: “that are consistent with the Lower Penobscot River Multiparty Settlement Agreement dated June 2004”.

(d) PPL Maine shall file (or shall cause BPHA to file, as appropriate) Regulatory Applications at FERC requesting (1) that the licenses for West Enfield, Stillwater, and Medway each be amended to increase the authorized maximum elevation of the project reservoir by one foot ("Headpond Increases"), and (2) requesting that FERC issue to PPL Maine a new 40-year license for Orono at its current authorized installed capacity of 2,332 kW incorporating the pertinent fish passage and minimum flow requirements provided for in Attachment A, with the Restoration Interests filing supportive pleadings. The Regulatory Application to be filed at FERC hereunder with respect to the new 40-year license for Orono shall also include a request that FERC limit any article reserving FERC’s authority to require the licensee to construct, operate, and maintain such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce under Section 18 of the FPA to fishways “that are consistent with the Lower Penobscot River Multiparty Settlement Agreement dated June 2004”. The Regulatory

Applications to be filed at FERC hereunder shall also include a request that FERC add to or include in each such license an article requiring the licensee to comply with the provisions of the Contingent Mitigation Fund contained in Attachment B hereto.

(e) PPL Maine shall file a Regulatory Application at FERC requesting that FERC modify the time deadlines specified in Articles 306 and 406 of the Veazie license to “as ordered by the Commission” and amend Article 410 of the Veazie license by adding at the end thereof before the period the following: “that are consistent with the Lower Penobscot River Multiparty Settlement Agreement dated June 2004”, with the Restoration Interests filing supportive pleadings.

(f) (1) PPL Maine and PPL Great Works shall file, and PPL Maine shall have BPHA file, with DEP any Regulatory Applications required by Applicable Laws and Regulations to be filed with DEP in association with the Regulatory Applications required by Section IV(a), (b), (c), (d), and (e), with the Restoration Interests filing supportive pleadings.

(2) Notwithstanding the requirement in the opening paragraph of this Section IV regarding contemporaneous filings, at the times determined appropriate by PPL Maine and PPL Great Works, PPL Maine and PPL Great Works shall file (or shall cause BPHA to file, as appropriate) any Regulatory Applications required by Applicable Laws and Regulations to be filed with any other Governmental Authority in association with the Regulatory Applications required by Section IV(a), (b), (c), (d), and (e), with the Restoration Interests filing supportive pleadings.

(g) If FERC, DEP, DOI, or any other Governmental Authority takes action in response to any Regulatory Application made in accordance with this Section IV in a manner that materially prejudices a Party and that Party elects to terminate this Agreement in accordance

with Section XII, all Regulatory Applications made in accordance with this Section IV shall be withdrawn by the Party making such application, or other appropriate action shall be taken by the Party making such application to rescind any approvals that may have been granted pursuant to any such Regulatory Application, and the provisions of this Agreement shall be void. Each Party submitting a Regulatory Application pursuant to this Section IV (a), (b), (c), (d), (e), and (f)(1) shall notify FERC and DEP that a failure by FERC or DEP to grant any of said Regulatory Applications will cause all such Regulatory Applications to be withdrawn and may result in the termination of this Agreement pursuant to Section XII.

(h) Within 30 days following the later of (1) issuance by FERC and DEP of a final order(s), that is no longer subject to administrative or judicial appeal approving all the Regulatory Applications filed pursuant to Section IV (a), (b), (c), (d), (e), and (f)(1) and incorporating as license articles/provisions those provisions requested as part of such Regulatory Applications, and any relevant provisions contained in the PIN Agreement, and (2) resolution of any administrative and judicial appeals of such orders in a manner that is no longer subject to appeal, all without alteration or change in any term or provision thereof in a manner that materially prejudices any Party, the following Parties shall take the following actions:

- (1) PPL Maine, DOI, PIN, ASF, MAS, and TU shall file with FERC notices of withdrawal of the requests for rehearing filed by such entities and MCASF (or their predecessors) of FERC's April 20, 1998 orders for Basin Mills, Veazie, Milford, Orono, and Stillwater; and
- (2) DOI shall file with FERC a notice withdrawing, without prejudice to its position, its asserted conditions/requests under Sections 4(e) and 10(e) of the FPA that it submitted for Milford.

The Parties agree that all issues relating to DOI's authority under Sections 4(e) and 10(e) of the FPA as to Milford shall be rendered moot as a result of the withdrawal referenced in Section IV(h)(2) above.

V. Actions After Exercise Of The Option

(a) As expressly set forth in the Option Agreement, and within thirty (30) days from the date the Trust delivers written notice to PPL Maine and PPL Great Works that the Option is being exercised, PPL Maine, PPL Great Works and the Trust shall file the following Regulatory Applications at FERC:

- (1) PPL Maine and the Trust shall file joint Regulatory Applications (i) requesting a transfer of the licenses for Howland and Veazie (pursuant to Part I of the FPA) and requesting a transfer of all jurisdictional transmission facilities included with such licenses (pursuant to § 203 of the FPA) from PPL Maine to the Trust and (ii) requesting that the Trust be substituted as the applicant on the pending application for a new license for Howland;
- (2) PPL Great Works and the Trust shall file joint Regulatory Applications (i) requesting a transfer of the license for Great Works (pursuant to Part I of the FPA) and requesting a transfer of all jurisdictional transmission facilities included with such license (pursuant to § 203 of the FPA) from PPL Great Works to the Trust and (ii) requesting that the Trust be substituted as the applicant on the pending application for a new license for Great Works;

(3) The Trust shall file a Regulatory Application requesting authority to either (i) surrender the licenses for the Designated Projects and for FERC authorization to decommission and remove them, with PPL Maine and PPL Great Works filing supporting pleadings; or (ii) surrender the licenses for Great Works and Veazie and for FERC authorization to decommission and remove them, and, in accordance with Section XI, to decommission Howland and construct a fish bypass system at Howland in accordance with Section XI, with PPL Maine and PPL Great Works filing a supportive pleading. The application to FERC pursuant to this subsection (3) shall also include (i) a notice of withdrawal of the pending applications for new licenses for Howland and Great Works effective upon issuance of FERC orders in accordance with the requests referenced in subsections (1), (2), and (3) hereof; and (ii) a statement of the financial resources that the Trust has or anticipates having to acquire, decommission and remove or alter the Designated Projects and the anticipated costs of these actions.

(b) Contemporaneously with the filing of the requests with FERC referenced in subsections (a) hereof, the Parties making such filings shall file with DEP and any other Governmental Authority all additional Regulatory Applications required by Applicable Laws and Regulations to implement the transfer and decommissioning (or decommissioning and construction) actions described in Section V(a), with PPL Maine or PPL Great Works, as appropriate, when not a requesting party, filing a supportive pleading.

(c) For all Regulatory Applications filed pursuant to Sections V(a) and (b), the Restoration Interests shall file timely supportive pleadings. In addition, for all Regulatory

Applications and supportive pleadings filed pursuant to Sections V(a) and (b), the Trust, PPL Maine or PPL Great Works, as appropriate, and the Restoration Interests shall all request the relevant Governmental Authority to consider the Regulatory Applications on an expedited basis; *provided, however*, that (1) no Party shall request that any such Governmental Authority waive any public notice or comment period in considering any such Regulatory Application and (2) the Maine Agencies shall not be required to request that any state or local Governmental Authority consider any Regulatory Application on an expedited basis.

(d) As expressly set forth in the Option Agreement, Closing shall occur within sixty (60) days (unless extended by mutual agreement of PPL Maine, PPL Great Works and the Trust), following the later of (1) issuance of final orders or approvals, that are no longer subject to administrative or judicial appeal, by FERC, DEP and any other Governmental Authority, approving the Regulatory Applications filed pursuant to Section V(a) and (b) of this Agreement; or (2) resolution of any administrative or judicial appeals of the final orders and approvals referenced herein in a manner that is no longer subject to appeal; all without alteration or change in any term or provision of the Regulatory Applications filed pursuant to Section V(a) and (b) in a manner that materially prejudices any Party, unless such alteration or change is deemed acceptable to the Parties in accordance with the provisions of Section XII. A FERC order approving a Regulatory Application filed pursuant to subsection (a)(1) or (2) that requires PPL Maine or PPL Great Works, as the case may be, to remain a co-licensee or to be directly or indirectly responsible for the decommissioning or removal of the Designated Projects or the costs thereof shall constitute material prejudice to PPL Maine or PPL Great Works under Section XII(a), and in such event Closing shall not occur and this Agreement shall terminate without PPL Maine or PPL Great Works, as the case may be, following the procedures set forth in Section

XII(a)(1) and (2), unless PPL Maine or PPL Great Works, as the case may be, in its sole discretion, notifies the other Parties to the contrary.

VI. Actions After Closing

After Closing the following Parties shall take the following actions:

(a) As expressly set forth in the Option Agreement, promptly after receipt of the instruments of conveyance (“Conveyance Documents”) for the Designated Projects, the Trust shall file the Conveyance Documents with FERC, together with any other document required by Applicable Laws and Regulations to be filed, accepting the licenses for the Designated Projects. The Trust shall make any filings with DEP and any other Governmental Authority that may be required by Applicable Laws and Regulations regarding notification of the transfer of the Designated Projects.

(b) At the earliest time practicable, consistent with this Agreement and all FERC, DEP, and other Applicable Laws and Regulations, the Trust shall (1) decommission and remove Veazie and Great Works; and (2) decommission and, according to the requirements in Section XI of this Agreement, either remove or alter Howland.

(c) In the event that PPL Maine pursues an energy enhancement specified in Section VI(d), PPL Maine shall remove and take ownership of the appropriate existing turbine/generating unit(s) associated with that energy enhancement from the powerhouses at Veazie and Great Works as expressly set forth in the Option Agreement.

(d) Subject to the conditions stated in Section VI(f) and (g) herein, as soon after Closing as it is reasonably able to do so PPL Maine shall file the following Regulatory Applications at FERC, with the Restoration Interests filing supportive pleadings:

- (1) A notification that it intends to proceed with the installation of the previously-authorized additional turbine/generating unit at Milford using a 1,500 kW turbine/generating unit removed from Veazie.
- (2) A request to amend the appropriate provisions of the Orono license to authorize PPL Maine to construct a second powerhouse containing four turbine/generating units removed from Great Works with a total installed capacity of approximately 5,277 kW, and to extend the term of the license to 50 years.
- (3) A request to amend the appropriate provisions of the Stillwater license to authorize PPL Maine to construct a second powerhouse containing four turbine/generating units removed from Great Works with a total installed capacity of approximately 2,720 kW, and to extend the term of the license to 50 years.
- (4) A request to amend the appropriate provisions of the Medway license to authorize PPL Maine to increase the installed capacity by approximately 700 kW through the installation of a turbine/generating unit removed from Veazie.
- (5) A request to amend the appropriate provisions of the Ellsworth license, Project No. 2727, to authorize PPL Maine to increase the installed capacity by approximately 500 kW through the addition at the Graham Lake development of a turbine/generating unit removed from Veazie.

(e) Contemporaneously with the filing at FERC of the Regulatory Applications referenced in subsection (d) hereof, PPL Maine shall file with DEP and any other Governmental

Authority, all Regulatory Applications required by Applicable Law and Regulations, with the Restoration Interests filing supportive pleadings.

(f) PPL Maine shall not be required to pursue an energy enhancement referenced in Sections VI(d)(1) and (4), notwithstanding PPL Maine's determination that these energy enhancements are currently economic and therefore would be constructed today, if PPL Maine determines that any such enhancement would be uneconomic because of significant changes in the regulatory and competitive conditions applicable to wholesale generators, the cost of construction, the prices of electricity, or other PPL Corporation capital commitments.

(g) PPL Maine shall not be required to pursue an energy enhancement referenced in Sections VI(d)(2), (3) and (5), notwithstanding PPL Maine's determination that these energy enhancements are currently economic and therefore would be constructed today, if PPL Maine determines, within three months of Closing, in its discretion, that such enhancement is no longer desirable because of changes in the regulatory and competitive conditions applicable to wholesale generators, the cost of construction, the prices of electricity, other PPL Corporation capital commitments, or other relevant factors. If PPL Maine makes such a determination not to pursue the energy enhancement(s), then PPL Maine shall promptly offer to third parties the opportunity to pursue such energy enhancement(s) on terms comparable to those that would have applied if PPL Maine had itself chosen to pursue such energy enhancement(s); *provided, however,* that any such third party must apply for and obtain all necessary regulatory approvals, including FERC approval, and must reach agreement with PPL Maine as to appropriate lease, water rights use, right-of-way and operating issues to permit both parties to reasonably and fairly operate together on the site of the energy enhancement. PPL Maine shall assist and support any such third party in obtaining the necessary regulatory approvals, including FERC approval, to

pursue such energy enhancement(s). Unless otherwise agreed to by PPL Maine and the third party, the agreement(s) between PPL Maine and a third party regarding the latter's construction and operation of an energy enhancement must be consistent with the following criteria:

- (1) PPL Maine shall be entitled to compensation for: any actual damages to its property and facilities resulting from the third party's construction and operation of the energy enhancement; any loss in the economic value of the existing generation at PPL Maine's project resulting from the third party's construction and operation of the energy enhancement; any increased operation, maintenance, and capital costs incurred by PPL Maine as a result of the third party's construction and operation of the energy enhancement; the fair market value of any property sold by PPL Maine to the third party; and a proportionate share of PPL Maine's operation, maintenances, and capital costs (including a reasonable rate of return on investment) of the PPL Maine project facilities jointly used by the third party's energy enhancement.
- (2) PPL Maine and the third party will provide each other with access rights over or through the other's property reasonably necessary for the entity to construct, operate, and maintain its project or energy enhancement and to comply with all Applicable Laws and Regulations, subject to reasonable restrictions regarding security and safety and commercially reasonable requirements regarding liability, insurance, and related matters.
- (3) PPL Maine and the third party will mutually agree on operating requirements that will permit PPL Maine's project and the energy

enhancement to operate in a coordinated manner to maximize the total economic generation at the site but subject to PPL Maine's right to determine when water available at the site may be used for generation purposes; *provided, however*, that PPL Maine shall not take any action regarding allocation of flows between the Main Stem and Stillwater branches of the Penobscot River which is inconsistent with subsection (h) below and the relevant provisions in Attachment A.

(h) Upon receipt by PPL Maine of all necessary approvals of the Regulatory Applications referenced in subsections (d) and (e) hereof, and consistent with any requirements contained in such approvals, PPL Maine shall implement the energy enhancements so approved. Upon construction of either or both of the second powerhouses at Orono and Stillwater by either PPL Maine or a third party, PPL Maine shall reallocate the flows between the Main Stem and Stillwater branches of the Penobscot River consistent with the provisions contained in Attachment A. PPL Maine hereby represents that it is the successor in interest to all of the parties to the decree allocating flows between the Main Stem and Stillwater branches issued in 1911 by the Circuit Court of the United States, District of Maine.

VII. Actions If the Trust Does Not Acquire The Designated Projects

If FERC, DEP, DOI, and all other Governmental Authorities take all actions requested by the Parties in Section IV in a manner which does not materially prejudice any Party as set forth in Section XII, and if the Trust thereafter either terminates or does not exercise the Option, or if, subsequent to exercise of the Option, the Trust does not acquire the Designated Projects:

(a) The following actions shall be taken:

- (1) The Parties shall jointly file a Regulatory Application at FERC requesting that the relicensing proceedings for Howland and Great Works be resumed;
- (2) DOI shall submit to FERC modified fishway prescriptions, consistent with the pertinent provisions of Attachment A;
- (3) PPL Maine, or PPL Great Works, as appropriate, and the other Parties shall file pleadings supporting DOI's modified fishway prescriptions submitted pursuant to subsection (2) above; and
- (4) Contemporaneously with the filing at FERC of supportive pleadings referenced in subsection (3) above, PPL Maine or PPL Great Works, as appropriate, shall file with DEP and any other Governmental Authority, all Regulatory Applications required by Applicable Laws and Regulations in order to implement the modified fishway prescriptions submitted pursuant to subsection (2) above, with the Restoration Interests filing supportive pleadings.

(b) Subject to the conditions agreed to in Attachment B (contingent mitigation fund), PPL Maine (and, as appropriate, BPHA) shall be entitled to operate West Enfield, Stillwater, and Medway consistent with the approved Headpond Increases and reduced minimum flows (as to Stillwater and Orono) and to operate Orono under the new license consistent with Section IV(c) and (d) and with Applicable Laws and Regulations. All other Parties hereto shall not challenge or contest such regulatory approvals, and agree not to request that FERC or any other Governmental Authority (1) reverse or overturn such Governmental Authority's prior authorization or approval of such operations or (2) limit or condition such prior approval or

authorization in a manner that would prevent PPL Maine from being able to operate the project economically.

VIII. Contingent Mitigation Fund

If the Option is not exercised or Veazie and Great Works are not decommissioned and removed by the Trust, a Contingent Mitigation Fund shall be established and funded for the purpose of providing monetary compensation to mitigate for the impacts to habitat that may be caused by PPL Maine's implementation of provisions in Attachment A governing minimum bypass flows at the Orono and Stillwater projects and the Headpond Increases at the Medway, West Enfield, and Stillwater projects, in accordance with Attachment B.

IX. Endangered Species Act ("ESA")

The following provisions describe ESA-related actions that certain Parties shall take or refrain from taking (1) upon execution of this Agreement and (2) in the event that the Option is exercised:

(a) Assurances to PPL Maine and BPHA from DOI. Upon exercise of the Option, DOI agrees to negotiate with PPL Maine (and BPHA, as appropriate) for an appropriate instrument under the ESA regulations, such as, but not limited to, an incidental take permit under § 10 of the ESA or a Candidate Conservation Agreement with Assurances, that recognizes the benefits to Atlantic salmon that shall be realized from PPL Maine's voluntary action in entering into and implementing this Agreement, and provides assurances that, if the Designated Projects are acquired in accordance with this Agreement, further actions shall not be required by PPL Maine at its remaining facilities on the Penobscot River, or by BPHA at West Enfield, in the event that the Penobscot run of Atlantic salmon is included in the listed endangered population in Maine. DOI's final approval of such an instrument depends upon compliance with Applicable

Laws and Regulations, including public notice and any environmental analysis that may be required under NEPA. The PIN, the Maine Agencies, and the Conservation Interests agree to support the application(s) of PPL Maine (and BPHA, as appropriate) for such an instrument.

(b) Other Assurances from DOI. DOI shall consider appropriate instrument(s) under the ESA regulations for individual property owners in the Penobscot basin who commit to take voluntary conservation measures to benefit Atlantic salmon. Such instruments may include assurances, if necessary and warranted, that participating property owners may engage in land uses that may involve incidental take of Atlantic salmon. The nature and terms of any such instruments shall depend on the specific circumstances of the individual property owner, and DOI's final approval of any such instrument depends upon compliance with Applicable Laws and Regulations, including public notice and any environmental analysis that may be required under NEPA. DOI shall provide technical assistance to property owners who lack resources or expertise to develop such instruments, and may assist or train property owners to implement conservation measures. After exercise of the Option, DOI would be willing to consider an application from interested State, Tribal, or local agencies regarding creation of umbrella programs under the ESA regulations for recognition of voluntary conservation measures to benefit Atlantic salmon taken by individual property owners in the Penobscot basin.

(c) Assurances to PPL Maine, PPL Great Works, and BPHA from the Conservation Interests. In the event that the Penobscot run of Atlantic salmon is added to the listed endangered population in Maine, the Conservation Interests agree that, until the occurrence of (1) the exercise of the Option and the acquisition of the Designated Projects; (2) the termination

of this Agreement; or (3) the expiration or termination of the Option Agreement, the Conservation Interests shall not file a citizen suit against PPL Maine, PPL Great Works, or BPHA asserting a claim that PPL Maine, PPL Great Works, or BPHA is illegally taking Atlantic salmon in violation of § 9 of the ESA, nor shall the Conservation Interests encourage any other person or entity to either file similar claims or take any other action against PPL Maine, PPL Great Works, or BPHA under the ESA in relation to Atlantic salmon on the Penobscot River. In addition, provided that licensing proceedings for Great Works and Howland are stayed as a result of Regulatory Applications filed pursuant to Section IV(a)(1) of this Agreement, the Conservation Interests further agree not to initiate any administrative or legal action seeking to apply the consultation requirements of the ESA (16 U.S.C. § 1536) for Great Works or Howland until the Option is exercised and the Designated Projects are acquired, the termination of this Agreement, or, alternatively, until the Option expires or is terminated.

X. Commitment By PPL To Properly Maintain Designated Projects

PPL Maine and PPL Great Works commit to properly maintain the Designated Projects prior to the acquisition of the Designated Projects by the Trust, as expressly set forth in the Option Agreement.

XI. Additional Provisions Governing Howland

(a) It is the intent of the Restoration Interests, working with the Trust, the Town of Howland, and other interested persons, and subject to any order issued by FERC, and other applicable legal requirements and provisions in this Agreement, to achieve fish passage at Howland by construction of a bypass system that would substantially or entirely maintain the existing dam structure and impoundment (“Proposed Bypass”).

(b) The decision of the Trust to pursue construction of the Proposed Bypass will require a prior determination by the FWS, the Maine Departments of Inland Fisheries and Wildlife and Marine Resources, the Maine Atlantic Salmon Commission (“Resource Agencies”), and PIN, based upon a review of the complete administrative record, that the Proposed Bypass will provide safe, timely and effective fish passage sufficient to allow the fisheries management goals and objectives of the Resource Agencies and PIN to be met. Said administrative record shall include engineering design plans for the proposed bypass system, the results of consultation with the Town of Howland, the Conservation Interests, the Trust, and other interested persons, and any other information necessary to make a decision as to whether the Proposed Bypass provides safe, timely and effective fish passage. If the Resource Agencies and PIN decide that the Proposed Bypass will provide safe, timely and effective fish passage, the Resource Agencies and PIN shall thereafter support issuance of necessary regulatory approvals for construction and maintenance of the Proposed Bypass.

(c) Upon receipt of the commitment of support from the Resource Agencies and PIN pursuant to subsection (b) above, the Trust shall seek all necessary regulatory approvals to construct the proposed bypass pursuant to Section V(a) and (b) if the Trust determines that:

- (1) In addition to the commitment of support from the Resource Agencies and PIN pursuant to subsection (b) above, there is sufficient support for constructing the Proposed Bypass from the Town of Howland as well as others whose support is necessary for construction and implementation of the Proposed Bypass;

- (2) All necessary property interest, ownership, liability, and operational issues related to construction and operation of the proposed bypass are resolvable;
- (3) Receipt of the necessary regulatory approvals is reasonably achievable; and
- (4) Adequate funding for construction and implementation of the proposed bypass is available. The Conservation Interests commit their best efforts to raise these funds, and the Resource Agencies and PIN commit their best efforts to provide ongoing technical support.

(d) Subject to the support of the Resource Agencies and PIN as set forth in subsection (b) above, and the determination by the Trust that the criteria set forth in subsection (c) above have been met, the Trust shall cause the Proposed Bypass to be constructed consistent with all required approvals from any Governmental Authority and all Applicable Laws and Regulations.

(e) In the event that the Trust does not pursue construction of the Proposed Bypass due to a determination by the Resource Agencies or PIN, pursuant to subsection (b), that the Proposed Bypass will not provide safe, timely and effective fish passage sufficient to allow the fisheries management goals and objectives of the Resource Agencies and PIN to be met, or due to the determinations made by the Trust pursuant to subsection (c) above, its Regulatory Applications submitted pursuant to Section V(a) and (b) shall request removal of Howland dam. If the Trust's Regulatory Applications, submitted pursuant to Section V(a) and (b), request authorization to construct the Proposed Bypass in lieu of removing Howland dam but the regulatory authorities deny the request to construct the Proposed Bypass and instead order removal of Howland dam, the Trust shall remove Howland dam consistent with any approvals

from any Governmental Authority, Applicable Laws and Regulations, and other conditions above.

- (f) If the Trust elects to construct the Proposed Bypass pursuant to this section:
 - (1) The Trust shall submit final design drawings, consistent with the conceptual engineering designs in subsection (b) hereof, for approval by the Resource Agencies and PIN.
 - (2) The Trust shall conduct monitoring of the effectiveness of the Proposed Bypass, in consultation with the Resource Agencies and PIN, and make minor adjustments, as necessary, for a period of 15 years from installation of the fish passage facility at Milford. No major adjustments will be required during this monitoring period. For purposes of this Section XI, the term “major” shall mean an adjustment or recommendation which requires the Trust to expend in excess of five-thousand dollars (\$5,000) during any one calendar year.
 - (3) The Trust shall meet with the Resource Agencies, PIN, and other interested parties on a yearly basis, or as appropriate, to discuss the progress of the monitoring.
 - (4) At the close of the 15-year monitoring period set forth in subsection f(2) above, the Resource Agencies, PIN, and the Trust shall publish for public comment a report on the effectiveness of the bypass system.
 - (5) Thereafter, based upon the results of the monitoring, other biological or engineering information related to the effectiveness of the bypass system,

and any comments or data submitted by the Trust, the Town of Howland, or other interested parties, the Resource Agencies and PIN shall:

- i. recommend, or, in the case of FWS, recommend and grant final approval of the Proposed Bypass; or
 - ii. recommend modification(s) to the Proposed Bypass, which may be minor or major but must be feasible for the Trust given cost and technological concerns, and which may include extending the 15-year monitoring period, if necessary, to ensure effectiveness of the modification(s); or
 - iii. recommend removal of Howland if the record supports a finding that the bypass system cannot provide safe, timely and effective fish passage, even with any modification(s) proposed pursuant to subsection (ii) above, and therefore cannot meet identified management goals of the Resource Agencies and PIN.
- (6) If the Resource Agencies and PIN recommend modification(s) of the Proposed Bypass which are consistent with the provisions of subsection (ii) above, the Trust shall implement such modification(s) subject to any necessary approvals of any Governmental Authority and Applicable Laws and Regulations.
- (7) If following the 15-year monitoring period (including any extensions pursuant to subsection (ii) above), the Resource Agencies and PIN conclude that removal of Howland is necessary in order to provide safe, timely and effective fish passage at Howland, the Trust shall seek the

necessary approvals from each Governmental Authority for removal of the dam, and shall remove the dam.

(g) The Trust may assign, transfer or sell its ownership interest in Howland to another entity, subject to the unanimous approval of the Resource Agencies and PIN, which approval shall be granted if the assignment, transfer or sale includes all rights and obligations of the Trust in Section XI of this Agreement and if the assignee has the legal, financial and technical ability to carry out the responsibilities of the Trust under said Section XI. Prior to any such assignment, the Resource Agencies, PIN and the Trust shall consult with PPL Maine regarding the proposed assignment.

XII. Dispute Resolution

(a) If FERC, DOI, DEP, or any other Governmental Authority denies any of the Regulatory Applications submitted pursuant to this Agreement, except for any Regulatory Application filed pursuant to Section VI(d) or (e), or in approving or granting such Regulatory Applications alters or changes any term or provision thereof in a manner that materially prejudices any Party, including if a court of competent jurisdiction issues a decision or order relating to a Regulatory Application or other action required of the Parties pursuant to this Agreement that would materially prejudice any Party, the Parties shall take the following actions:

- (1) PPL Maine or PPL Great Works, as the licensee, or on behalf of BPHA as licensee, upon its own initiative or upon the request of any other Party, shall promptly call together and meet with the other Parties to evaluate, on an expedited basis, the effect of the Governmental Authority's action on the Parties' interests and to determine the appropriate response. The Parties shall assess together in good faith with due consideration for the

time frames specified by Applicable Laws and Regulations for seeking rehearing, administrative reconsideration, or further judicial review, as appropriate, whether to seek such action, or whether actions different from those set forth in this Agreement should be undertaken and, as appropriate, corresponding Regulatory Applications submitted to FERC, DEP, DOI, or any Governmental Authority, in order to achieve the purposes of this Agreement. The Parties shall file all necessary protective pleadings required by Applicable Laws and Regulations during this process of assessment, to protect the opportunity to seek rehearing or other administrative reconsideration of agency action or judicial review *provided, however*, that prior approval of the State of Maine's Attorney General may be required for the Maine Agencies to file any such protective pleadings and the prior approval of the Department of Justice may be required for DOI to file any such protective pleadings.

- (2) If the Parties do not mutually agree that one or more proposals different from those set forth in this Agreement should be submitted to FERC, DEP, DOI, or other Governmental Authorities, any Party that has been materially prejudiced by any such action by a Governmental Authority may seek rehearing or administrative reconsideration of the agency action, as appropriate (an "Administrative Appeal") as provided for by Applicable Laws and Regulations, and the remaining Parties shall join in such an Administrative Appeal to the extent that a Party is permitted by Applicable Laws and Regulations to do so, subject to the prior approval

and support provisions set forth below. If the agency's final decision on rehearing or reconsideration continues to materially prejudice a Party, such Party may seek judicial review of such agency action, and all other Parties shall join in the petition or complaint seeking such judicial review ("Judicial Appeal") to the extent that a Party is permitted by law to do so; *provided, however*, that prior approval of the State of Maine's Attorney General is required for the Maine Agencies to join in any Judicial Appeal and the prior approval of the Department of Justice is required for DOI to join in any Judicial Appeal. If a Party is not permitted by Applicable Laws and Regulations to join either an Administrative or Judicial Appeal filed by any other Party, it shall provide all reasonable support permitted by Applicable Laws and Regulations. If a Party is unable to participate in any Administrative or Judicial Appeal, such Party shall not oppose any relief sought by the Parties in a manner that is inconsistent with the terms and intent of this Agreement. If a Party (1) is materially prejudiced and does not pursue an Administrative or Judicial Appeal as provided herein after completion of the actions specified in subsection (a)(1) hereof, or (2) remains materially prejudiced by the Governmental Authority's action after the conclusion of the Administrative or Judicial Appeal, such Party may elect, upon 30-days prior written notice to all other Parties, to terminate this Agreement, which renders those provisions of this Agreement pertaining to Regulatory Applications that have not yet been granted void as to all Parties. Except as otherwise provided in Section

IV(g), all actions and activities covered by Regulatory Applications that have been granted pursuant to any provision of this Agreement prior to the date the Agreement is terminated according to this Section XII, including PPL Maine's activities referenced in Section VII(b), shall remain in effect and shall not be deemed nullified or affected in any way by such voiding, and PPL Maine and PPL Great Works shall continue to comply with the pertinent fish passage provisions of Attachment A, to the extent such fish passage provisions are not inconsistent with any order issued by FERC or any other Governmental Authority.

(b) If any dispute arises under this Agreement among any of the Parties that is not settled promptly in the ordinary course of business, the disputing Parties shall first seek to resolve such dispute by negotiating promptly in good faith. If the Parties are unable to resolve the dispute within 20 business days (or such period as the Parties shall otherwise agree) following the date one Party notifies the other(s) of the existence of such dispute (the "Dispute Notice Date"), then the disputing Parties shall employ the services of a mutually acceptable mediator; *provided, however,* that the Party or Parties seeking to mediate the dispute shall arrange to retain the mediator. The use of mediation will not be construed under the doctrine of laches, waiver or estoppel to affect adversely the rights of any Party, and, except as otherwise provided by law, any mediation discussions shall be deemed to be confidential settlement discussions and not admissible in any subsequent proceedings. If the disputing Parties are not able to resolve any dispute arising out of or relating to this Agreement within 90 days of the Dispute Notice Date, the disputing Parties may pursue any remedy available to the Parties under Applicable Laws and Regulations. Prior to the termination of the mediation process, a disputing Party shall be entitled

to take such legal action as is necessary to preserve or retain its ability to pursue any remedy lawfully available to it in the event that the dispute is not resolved through mediation.

XIII. Efforts of the Parties

(a) PPL Maine and PPL Great Works commit to providing public support for the goals of this Agreement, including the basic goal of restoration of the fish populations of the Penobscot River.

(b) Upon reasonable prior request by any Party, each of the Parties, to the extent permitted by Applicable Laws and Regulations, agrees to meet with potential sources of public and private funds for the purchase, removal, or alteration of the Designated Projects in order to express support for this Agreement and the restoration of the fish populations and other ecological values of the Penobscot River.

(c) PPL Generation commits to provide PPL Maine and PPL Great Works, from appropriate levels of the PPL corporate organization, reasonable support necessary for PPL Maine and PPL Great Works to fulfill their obligations under subsections (a) and (b).

(d) DOI, the Maine Agencies, and PIN commit to continue providing appropriate technical assistance and support in furtherance of the objectives of this Agreement.

(e) If a third party files an administrative or judicial challenge to a regulatory approval or authorization received by any Party in accordance with this Agreement (“Third Party Challenge”), the Parties shall participate in or intervene in the Third Party Challenge, to the extent the Parties are permitted by Applicable Laws and Regulations to do so, to defend the validity and terms of the regulatory action at issue to the extent that the regulatory action is in accordance with this Agreement or otherwise acceptable to the Parties under Section XII; *provided, however*, that prior approval of the State of Maine’s Attorney General is required for

the Maine Agencies to join in any judicial Third Party Challenge and prior approval of the Department of Justice is required for DOI to join in the same. If a Party is materially prejudiced by a term or condition which results from any Third Party Challenge, such Party may appeal such term or condition in accordance with Section XII while defending terms or conditions resulting from the Third Party Challenge that are consistent with this Agreement or otherwise acceptable to the Parties under Section XII.

(f) In the manner and, at a minimum, to the extent required under Applicable Laws and Regulations, the Parties shall continue to coordinate with each other and continue to work with municipalities, businesses, individuals, and other potentially affected entities to further assess and maximize the benefits of and, to the extent appropriate, minimize or mitigate for potential adverse effects to property or other legal rights or interests of these entities due to changes to hydro power projects pursuant to this Agreement.

XIV. Miscellaneous.

(a) **Incorporation of Attachments/Entire Agreement**

Attachment A (fish passage measures) and Attachment B (contingent mitigation fund) are hereby incorporated by reference into this Agreement as if fully restated herein. This Agreement, including its Attachments, constitutes the entire agreement between the Parties and PPL Generation with respect to its subject matter, and supercedes all prior and contemporaneous representations, understandings, and agreements with respect to the subject matter of this Agreement. Except as expressly provided in connection with documents incorporated by reference, no amendment to this Agreement shall be valid unless in writing and signed by all Parties and PPL Generation.

(b) **Exhibits Not Incorporated**

Exhibit 1 (Option Agreement) and Exhibit 2 (PIN Agreement) (collectively, the “Exhibits”) are attached to this Agreement for informational purposes only and are not hereby incorporated by reference.

(c) **Binding Effect**

This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties and PPL Generation hereto.

(d) **Governing Law**

Except for provisions of this Agreement which are governed exclusively by federal law, including, but not limited to, the FPA, this Agreement shall be construed and governed in accordance with the laws of the State of Maine, without regard to Maine’s conflict of law principles.

(e) **Multiple Counterparts**

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

(f) **Authority**

By executing this Agreement, each Party and PPL Generation makes the following representations, warranties and covenants:

- (1) **Good Standing.** With regard to the non-governmental Parties and PPL Generation, such entity is duly organized, validly existing and in good standing under the laws of the state or province in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the entity is located; and that it has the

corporate power and authority to own its properties and to carry on its business as now being conducted.

- (2) **Authority.** Such entity has the right, power and authority to enter into this Agreement, to become a signatory hereto and to perform its obligations hereunder; and that this Agreement is a legal, valid and binding obligation of such entity, enforceable against such entity in accordance with its terms.
- (3) **No Conflict.** The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such entity, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such entity or any of its assets.

(g) **No Waiver**

No failure by a Party or PPL Generation, at any time, to enforce any right of remedy available to it under this Agreement shall be construed to be a waiver of such entity's right to enforce each and every provision of this Agreement in the future. Any waiver of any rights under this Agreement must be provided in writing.

(h) **No Third Party Beneficiaries**

Nothing in this Agreement is intended to confer on any person other than the Parties and PPL Generation and, where permitted, their assigns, any rights or remedies under or by reason of this Agreement.

(i) **Non-Appropriation of Funds**

Nothing in this Agreement shall be construed to require the State of Maine or any of its agencies to expend any monies beyond those appropriated and allocated for the purpose for which they are to be expended, as solely determined by the commissioner or other department head of the agency involved. The Parties and PPL Generation further acknowledge that nothing in this Agreement shall be construed as obligating any federal agency to expend in any fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this Agreement for the fiscal year or to involve any federal agency in any contract or obligations for the future expenditure of money in excess of such appropriations or allocations. DOI, through the execution of this Agreement, is not obligated to seek any specific appropriations and may oppose efforts to seek funding from Congress for this project, if such funding would involve an offset to DOI's existing budget or the cutback and/or curtailment of current programs.

(j) **Compliance with Applicable Law**

The performance by the Parties and PPL Generation of this Agreement will be subject to all Applicable Laws and Regulations.

(k) **No Precedent**

This Agreement establishes no precedents with regard to any issue addressed herein, or with regard to PPL Generation or any Party's participation in future relicensing or other proceedings, and that neither PPL Generation nor any of the Parties to this Agreement will cite it as establishing any principles except with respect to the matters to which the Parties and PPL Generation have herein agreed.

Signed:

American Rivers, Inc.

By: Rebecca R. Wodden

Print: Rebecca R. Wodden

Its: RW

Date: 6/8/04

Atlantic Salmon Federation

By: _____

Print: _____

Its: _____

Date: _____

Bureau of Indian Affairs

By: _____

Print: _____

Its: _____

Date: _____

Fish and Wildlife Service

By: _____

Print: _____

Its: _____

Date: _____

Signed:

American Rivers, Inc.

By: _____

Print: _____

Its: _____

Date: _____

Atlantic Salmon Federation

By: Bill Taylor

Print: BILL TAYLOR

Its: President

Date: June 14/04

Bureau of Indian Affairs

By: _____

Print: _____

Its: _____

Date: _____

Fish and Wildlife Service

By: _____

Print: _____

Its: _____

Date: _____

Signed:

American Rivers, Inc.

By: _____

Print: _____

Its: _____

Date: _____

Atlantic Salmon Federation

By: _____

Print: _____

Its: _____

Date: _____

Bureau of Indian Affairs

By: Aurene M. Martin

Print: AURENE M. MARTIN

Its: Principal Deputy Assistant Secretary-Indian Affairs

Date: June 15, 2004

Fish and Wildlife Service

By: _____

Print: _____

Its: _____

Date: _____

Signed:

American Rivers, Inc.

By: _____

Print: _____

Its: _____

Date: _____

Atlantic Salmon Federation

By: _____

Print: _____

Its: _____

Date: _____

Bureau of Indian Affairs

By: _____

Print: _____

Its: _____

Date: _____

Fish and Wildlife Service

By: Craig Manson

Print: **Craig Manson**

Its: **Assistant Secretary**

Date: 6-18-04

National Park Service

By: *Craig Manson*

Print: **Craig Manson**

Its: Assistant Secretary

Date: *6-18-04*

Natural Resources Council of Maine

By: _____

Print: _____

Its: _____

Date: _____

Maine Atlantic Salmon Commission

By: _____

Print: _____

Its: _____

Date: _____

Maine Audubon Society

By: _____

Print: _____

Its: _____

Date: _____

National Park Service

By: _____

Print: _____

Its: _____

Date: _____

Natural Resources Council of Maine

By: Everett B. Carson

Print: Everett B. Carson

Its: Executive Director

Date: June 8, 2004

Maine Atlantic Salmon Commission

By: _____

Print: _____

Its: _____

Date: _____

Maine Audubon Society

By: _____

Print: _____

Its: _____

Date: _____

National Park Service

By: _____

Print: _____

Its: _____

Date: _____

Natural Resources Council of Maine

By: _____

Print: _____

Its: _____

Date: _____

Maine Atlantic Salmon Commission

By: Patrick C. Kelihen

Print: Patrick C. Kelihen

Its: Executive Director

Date: 6/14/2004

Maine Audubon Society

By: _____

Print: _____

Its: _____

Date: _____

National Park Service

By: _____

Print: _____

Its: _____

Date: _____

Natural Resources Council of Maine

By: _____

Print: _____

Its: _____

Date: _____

Maine Atlantic Salmon Commission

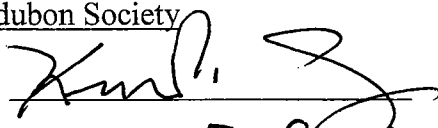
By: _____

Print: _____

Its: _____

Date: _____

Maine Audubon Society

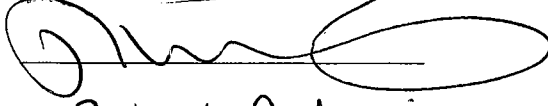
By: 

Print: Kevin P. Carlier

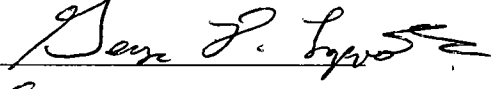
Its: Executive Director

Date: 6.7.04

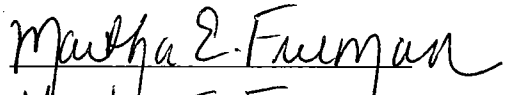
Maine Department of Inland Fisheries and Wildlife

By: 
Print: Roland D. Martin
Its: Commissioner
Date: June 10, 2004

Maine Department of Marine Resources

By: 
Print: George D. Lapointe
Its: Commissioner
Date: 14 June 2004

Maine State Planning Office

By: 
Print: Martha E. Freeman
Its: Director
Date: June 14, 2004

Penobscot Indian Nation

By: _____
Print: _____
Its: _____
Date: _____

Maine Department of Inland Fisheries and Wildlife

By: _____

Print: _____

Its: _____

Date: _____

Maine Department of Marine Resources

By: _____

Print: _____

Its: _____

Date: _____

Maine State Planning Office

By: _____

Print: _____

Its: _____

Date: _____

Penobscot Indian Nation

By: Barry Dana

Print: Barry Dana

Its: Chief

Date: 6/15/04

Penobscot River Restoration Trust

By: [Signature]

Print: ANDREW GOODE

Its: Resident

Date: 6/22/04

PPL Generation, LLC

By: _____

Print: _____

Its: _____

Date: _____

PPL Great Works, LLC

By: _____

Print: _____

Its: _____

Date: _____

PPL Maine, LLC

By: _____

Print: _____

Its: _____

Date: _____

Penobscot River Restoration Trust

By: _____

Print: _____

Its: _____

Date: _____

PPL Generation, LLC

By: James H. Miller

Print: James H. Miller

Its: President

Date: 6/8/04

PPL Great Works, LLC

By: James H. Miller

Print: James H. Miller

Its: President

Date: 6/8/04

PPL Maine, LLC

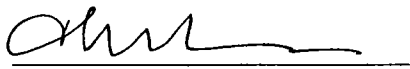
By: James H. Miller

Print: James H. Miller

Its: President

Date: 6/8/04

Trout Unlimited

By: 

Print: Charles Gauvin

Its: President / CEO

Date: June 13, 2004

ATTACHMENT A
TO LOWER PENOBSCOT RIVER CONCEPTUAL AGREEMENT

This Attachment, in combination with the Agreement, constitutes the agreement of the Parties with respect to fish passage issues at the Veazie, Great Works, Milford, Orono, Stillwater, Howland, West Enfield, Medway and Ellsworth Projects. This Attachment addresses fish passage actions to be undertaken after the Effective Date of the Agreement, as well as those to be undertaken upon purchase of Veazie, Great Works, and Howland (“Designated Projects”), as contemplated in the Agreement, and those to be undertaken should the Designated Projects not be purchased.

I. PROJECT-SPECIFIC AGREEMENTS

a. Project: Veazie

1) Upon the Effective Date of the Agreement: The licensee will continue to operate the project without modifications in existing generating facilities or fish passage facilities, including full responsibility for their operation and maintenance. DOI will amend its prescription to delay the requirement to construct fish passage, consistent with subsection a(3), below.

2) Upon Acquisition of Designated Projects by the Trust: The license will be transferred to the Trust and the dam removed in compliance with required federal and other governmental approvals.

3) If Designated Projects are not acquired in accordance with the Agreement: The licensee will continue to operate the project. The licensee will implement the specific requirements of the current DOI fishway prescription (May 20, 1997- attached hereto and incorporated herein by reference) as follows, to the extent not already implemented. In the event that the Option is not exercised or is terminated prior to the expiration of the Option period, no later than six months following the five-year anniversary date of the Effective Date of the Agreement the licensee will file facility design drawings with FERC (and as necessary with Maine DEP), based upon the current DOI fishway prescription. The licensee will (consistent with what DOI will prescribe pursuant to subsection a(1)) have the fishways fully operational within eighteen months of FERC approval of the design drawings. In the event that subsequent to the exercise of the Option the Designated Projects are not acquired, no later than six months following the completion of the dispute resolution process pursuant to Section XII of the Agreement and a final determination by a court or administrative agency that prevents acquisition of the Designated Projects, the licensee will file facility design drawings with FERC (and as necessary with Maine DEP) based upon the current DOI fishway prescription. In said filing, the licensee will propose to FERC (consistent with what DOI will prescribe pursuant to subsection a(1)) to have the fishways fully operational within eighteen months of FERC approval of the design drawings. Changes to the constructed fish passage facilities shall be governed by the provisions in Section II.c of this Attachment.

b. Project: Great Works

- 1) Upon the Effective Date of the Agreement:** The licensee will continue to operate the project without modifications in existing generating facilities or fish passage facilities, including full responsibility for their operation and maintenance.
- 2) Upon Acquisition of the Designated Projects by the Trust:** The license is to be transferred to the Trust and the dam removed in compliance with all required federal and other governmental approvals.
- 3) If Designated Projects are not acquired in accordance with the Agreement:** The licensee will continue to operate the project, and will proceed with its relicensing application. This Agreement does not restrict the Parties' actions in that proceeding.

c. Project: Milford

- 1) Upon the Effective Date of the Agreement:** The licensee will continue to operate the project without modifications in existing generating facilities or fish passage facilities, except that the licensee will provide for upstream passage of eels by promptly filing at FERC an amendment to its license to authorize installation of a new upstream eel fishway. DOI will simultaneously amend its prescription to require said eel fishway and to modify/delay all other fish passage requirements until after acquisition of the Designated Projects, when the requirements of subsection c(2), below, come into effect. Upon receiving approval to install the upstream fishway for eels, the licensee will assess the appropriate location for the siting of the new upstream eel fishway, and upon approval of its proposed location by the resource agencies and PIN, the licensee shall complete installation and initial testing, and have the fishway fully operational prior to the beginning of the third upstream eel migration season (approximately May 1) following the Effective Date of the Agreement.
- 2) Upon Acquisition of Designated Projects by the Trust:** The licensee will retain the license and continue to operate the project. The licensee will install a new state-of-the-art fish lift (below) and downstream passage as prescribed in the attached May 20, 1997 Prescription (attached hereto and incorporated by reference), to the extent not already implemented, and will discontinue use of the existing Denil fishway.

State of the Art Fish Lift

In general, this facility will consist of:

- i) A shore-based fish lift with a single entrance immediately downstream from the powerhouse; an exit channel to include fish counting station and facilities for sorting, trapping-and-trucking (similar to the Cataract Project, FERC #2528, on the Saco River). The exit channel would pass through the basement of powerhouse. This fish lift would require an attraction flow of 210 cfs, an operation control center computer module (similar to that at the Cataract Project), and a separate underground viewing facility for public use (similar to what exists

at the fishway at the Brunswick Project, FERC #2284, on the Androscoggin River.)

ii) A rubber dam at the spillway crest, installed on the 390-ft. section of spillway between the mid-river ledge outcrop and the east abutment. This rubber dam will enhance passage at the single fish lift and avoid the need for a west shore fishway.

iii) Alteration of the log sluice and removal of the supporting ledge outcrop to enhance attraction of fish to fish lift entrance. Removal of the ledge outcrop will be completed by the licensee no later than 10 years from the effective date of the Agreement.

3) If the Designated Projects are not acquired in accordance with the Agreement:

The licensee will continue to operate the project. The licensee will implement, by filing for license amendments in conjunction with appropriate simultaneous DOI filings, the specific requirements of the current DOI fishway prescription (May 20, 1997- attached hereto and incorporated herein by reference) as follows, to the extent not already implemented. In the event that the Option is not exercised or is terminated prior to the expiration of the Option period, no later than six months following the five-year anniversary date of the effective date of the Agreement, the licensee will file facility design drawings with FERC (and as necessary with Maine DEP), based upon the current DOI fishway prescription. In said filing, the licensee will propose to FERC (consistent with what DOI will prescribe) to have the fishways fully operational within eighteen months of FERC approval of the design drawings. In the event that subsequent to the exercise of the Option the Designated Projects are not acquired, no later than six months following the completion of the dispute resolution process pursuant to Section XII of the Agreement and a final determination by a court or administrative agency that prevents acquisition of the Designated Projects, the licensee will file facility design drawings with FERC (and as necessary with Maine DEP) based upon the current DOI fishway prescription. In said filing, the licensee will propose to FERC (consistent with what DOI will prescribe) to have the fishways fully operational within eighteen months of FERC approval of the design drawings. Changes to the constructed fish passage facilities shall be governed by the provisions in Section II.c of this Attachment.

d. Project: Orono

1) Upon the Effective Date of the Agreement: The licensee will file for new 40-yr license to: redevelop the existing 2.3 MW powerhouse; operate the project with a 200 cfs minimum flow in the bypass reach below the dam, subject to the provisions in the Agreement regarding the contingent mitigation fund; install an upstream fishway for eels; and install permanent downstream passage. No upstream fish passage is required at this time, other than the new fishway for eels. DOI will prescribe, and the licensee will install, downstream passage as previously prescribed on May 20, 1997 (attached hereto and incorporated herein by reference) by DOI as part of the Basin Mills licensing proceeding, adding 2-week shutdowns at night for downstream eel migration if shown to be necessary by effectiveness studies, but in no case earlier than the expiration of the safe harbor period delimited in section II(c) below. Upon receiving approval to install the

upstream fishway for eels, the licensee will assess the appropriate location for the siting of the new upstream eel fishway, and upon approval of its proposed location by the resource agencies and PIN, the licensee shall complete installation and initial testing, and have the fishway fully operational prior to the beginning of the third upstream eel migration season (approximately May 1) following the Effective Date of the Agreement.

2) Upon Acquisition of Designated Projects by the Trust: The licensee will retain the license, and as soon after Closing as it is reasonably able to do so, will file for an amendment to authorize installation of a fish trapping facility at the Orono project spillway, and will continue operation of the fishway for eels and downstream passage as prescribed. DOI will file appropriate simultaneous filings. The licensee will consult with, and receive approval from the agencies and PIN prior to filing the design plans for the trap with FERC. However, PPL and the agencies and PIN agree that the design of the trap would be similar to that in use on the Effective Date of the Agreement at PPL Maine's Ellsworth project on the Union River. The purpose of the trap would be to gain access to any fish that are attracted to spill or minimum flow releases at the dam. The licensee will have no obligation to install additional upstream fish passage facilities for anadromous species on the Stillwater Branch during the term of the licenses for the Orono and Stillwater projects. The licensee will also, as soon after closing as it is reasonably able to do so, and subject to the conditions in Section VI of the Agreement, file for an amendment to authorize a second powerhouse (5.3 MW) at Orono dam.

The licensee will be responsible for operating and maintaining the trap, and for "short-distance" transfer of trapped fish (i.e., to the headpond above the Stillwater Dam, the tailwater below Orono Dam, or the main stem Penobscot River at the confluence with the Stillwater Branch). The licensee will be responsible for monitoring the fish captured at the trap, and will notify the agencies and PIN of the species and numbers of fish trapped each year, in connection with the annual meeting described in Section II.a of this Attachment. The agencies and PIN will be responsible for "long-distance" transfer of trapped fish to upstream spawning habitat or to a hatchery. The licensee will provide the agencies and PIN with access to the trap, and will work cooperatively with the agencies and PIN to achieve efficient handling procedures, which might include the sharing of trap and transport equipment.

If information collected by the licensee demonstrates that more fish are arriving at the Orono Project than might be accommodated by the fish trapping measures in place, the licensee will convene a special meeting with the Restoration Interests to discuss the scope of the problem, if any, and discuss reasonable solutions.

To the extent that the Parties are in general agreement that resolution requires minor operational adjustments, the licensee agrees to implement those measures or modifications in cooperation with the Restoration Interests, subject to any necessary regulatory approvals.

To the extent that the Parties are in general agreement that resolution of identified problems can only be addressed by construction of new or additional facilities or by major modifications in operations, the licensee agrees to cooperate and petition the FERC

for the appropriate license amendments, provided that the licensee receives the funding for such modifications.

3) If Designated Projects are not acquired in accordance with the Agreement: The licensee will continue to operate the project with a single 2.3 MW powerhouse, and will complete construction, if necessary, and otherwise operate the upstream eel fishway and prescribed downstream passage pursuant to subsection d(1). The licensee will implement, by filing for license amendments in conjunction with appropriate simultaneous DOI filings, the current (May 20, 1997 -attached hereto and incorporated herein by reference) DOI prescription for upstream fish passage as follows, to the extent not already implemented. In the event that the Option is not exercised or is terminated prior to the expiration of the Option period, no later than twelve months following the five-year anniversary date of the Effective Date of the Agreement the licensee will file for approval by FERC drawings of permanent upstream fish passage. In said filing, the licensee will propose to FERC (consistent with what DOI will prescribe) to have the fishways fully operational within eighteen months of FERC approval of the design drawings. In the event that subsequent to the exercise of the Option the Designated Projects are not acquired, no later than twelve months following the completion of the dispute resolution process pursuant to Section XII of the Agreement and a final determination by a court or administrative agency that prevents acquisition of the Designated Projects, the licensee will file for approval by FERC drawings of permanent upstream fish passage. In said filing, the licensee will propose to FERC (consistent with what DOI will prescribe) to have the fishways fully operational within eighteen months of FERC approval of the design drawings. Changes to the constructed fish passage facilities shall be governed by the provisions in Section II.c of this Attachment.

e. Project: Stillwater

1) Upon the Effective Date of the Agreement: The licensee will file for an amendment to: authorize increasing the headpond by 1 foot; change the bypass minimum flow from 195 to 70 cfs, subject to the provisions in the Agreement regarding the contingent mitigation fund; and install upstream fish passage for eels. DOI will make appropriate simultaneous supportive filings with FERC, including altering its fishway prescription to require upstream passage for eels only, and downstream passage as described herein and upon acquisition, as described in subsection e(2), below, adding 2-week shutdowns at night for downstream eel migration if shown to be necessary by effectiveness studies, but in no case earlier than the expiration of the safe harbor period delimited in section II(c) below. The licensee will continue to operate the existing downstream passage facilities, and will reduce trashrack spacing to 1-inch no later than one year from the Effective Date of the Agreement. Upon receiving approval to install the upstream fishway for eels, the licensee will assess the appropriate location for the siting of the new upstream eel fishway, and upon approval of its proposed location by the resource agencies and PIN, the licensee shall complete installation and initial testing, and have the fishway fully operational prior to the beginning of the third upstream eel migration season (approximately May 1) following the Effective Date of the Agreement.

2) Upon Acquisition of Designated Projects by the Trust: The licensee will retain the license, and as soon after closing as it is reasonably able to do so, will file for an amendment to authorize installation of a second powerhouse (2.7 MW) at the spillway, subject to the conditions in Section VI of the Agreement. The licensee will continue to operate the fishway for eels, but there will be no additional requirement for upstream fish passage facilities. The licensee will implement, to the extent not already implemented, the downstream fish passage measures contained in the current DOI Prescription (May 20, 1997 -- attached hereto and incorporated by reference).

3) If Designated Projects are not acquired in accordance with the Agreement: The licensee will continue to operate the project with the existing powerhouse, and will complete construction, if necessary, and otherwise operate the upstream eel fishway pursuant to subsection e(1). Except as noted below, the licensee will implement, by filing for license amendments in conjunction with appropriate simultaneous DOI filings, the specific requirements of the current DOI fishway prescription (May 20, 1997- attached hereto and incorporated herein by reference), as follows, to the extent not already implemented. In the event that the Option is not exercised or is terminated prior to the expiration of the Option period, no later than twelve months following the five-year anniversary date of the Effective Date of the Agreement, the licensee will file facility design drawings with FERC (and as necessary with Maine DEP) based upon the current DOI fishway prescription. In said filing, the licensee will propose to FERC (consistent with what DOI will prescribe) to have the fishways fully operational within eighteen months of FERC approval of the design drawings. In the event that subsequent to the exercise of the Option the Designated Projects are not acquired, no later than twelve months following the completion of the dispute resolution process pursuant to Section XII of the Agreement and a final determination by a court or administrative agency that prevents acquisition of the Designated Projects, the licensee will file facility design drawings with FERC (and as necessary with Maine DEP) based upon the current DOI fishway prescription. In said filing, the licensee will propose to FERC (consistent with what DOI will prescribe) to have the fishways fully operational within eighteen months of FERC approval of the design drawings. Changes to the constructed fish passage facilities shall be governed by the provisions in Section II(c) of this Attachment.

DOI will consider deferral of installation of an upstream fishway for anadromous fish at the spillway of the Stillwater Project if studies financed and conducted by the licensee demonstrate that safe, timely, and effective fish passage of target species is occurring, as described below, with only the powerhouse fishway. (The licensee would continue to operate a separate upstream fishway for American eel at the Stillwater Project.) Before conducting the studies, the licensee will consult with, and receive approval by DOI, other resource agencies, and PIN on the methods and schedule for conducting the assessment of the need for a spillway fishway. The licensee subsequently will file its study plans with FERC for approval. If DOI, after consultation with other resource agencies and PIN, concludes based on the results of the studies that target upstream passage efficiencies can be achieved with a single fishway at the powerhouse, it will exercise its reserved authority, subject to its regulatory process, to allow the licensee to satisfy its upstream fish passage obligation with said single fishway.

Criteria for studies on the need for a spillway fishway at the Stillwater Project:

Study goals: Document upstream passage at the Stillwater Project using a single fishway installed at the powerhouse.

Target species: Atlantic salmon; American shad; river herring (alewife, blueback herring).

Study initiation and duration: Studies to be initiated within one year of the expiration or termination of the Option (i.e., the Designated Projects are not acquired). Studies will be carried out for three years for each species (overall duration will depend upon availability of species).

Target efficiency: 95% upstream passage efficiency (as measured by passage at Stillwater of marked fish of each target species, released at or above the Orono dam).

f. Project: Howland

1) Upon the Effective Date of the Agreement: The licensee will continue to operate the project without modifications in existing generating facilities or fish passage facilities, including full responsibility for their operation and maintenance.

2) Upon Acquisition of Designated Projects by the Trust: The license will be transferred to the Trust and the project decommissioned; either the spillway will remain and fish bypass system constructed and operated in accordance with Section XI of the Agreement, or the dam will be removed, in accordance with Section XI of the Agreement.

3) If Designated Projects are not acquired in accordance with the Agreement: The licensee will continue to operate the project, and will proceed with its relicensing application. This agreement does not restrict the Parties' actions in that proceeding.

g. Project: West Enfield

1) Upon the Effective Date of the Agreement: The licensee will file for a license amendment to authorize increasing the West Enfield headpond by 1 foot, subject to the provisions in the Agreement regarding the contingent mitigation fund. The licensee will provide for upstream passage of eels upon execution of the Agreement, by filing to amend its license to authorize installation of an eel fishway. Upon receiving approval to install the upstream fishway for eels, the licensee will assess the appropriate location for the siting of the new upstream eel fishway, and upon approval of its proposed location by the resource agencies and PIN, the licensee shall complete installation and initial testing, and have the fishway fully operational prior to the beginning of the third upstream eel migration season (approximately May 1) following the Effective Date of the Agreement.

2) Upon Acquisition of Designated Projects by the Trust: The licensee will continue to operate the project with modified headpond, and with existing and new fish passage (for eels).

3) If Designated Projects are not acquired in accordance with the Agreement: The licensee will continue to operate the project with modified headpond, and with existing and new fish passage (for eels).

4) Current Fishway Prescription: There was no formal fishway prescription provided by DOI as part of the West Enfield licensing proceeding; however, existing upstream and downstream fish passage facilities were installed and are being operated according to DOI criteria and specifications.

h. Project: Medway

1) Upon the Effective Date of the Agreement: The licensee will file for a license amendment to authorize increasing the Medway headpond by 1 foot, subject to the provisions in the Agreement regarding the contingent mitigation fund. The licensee will continue to operate the existing fish passage for eels.

2) Upon Acquisition of Designated Projects by the Trust: The licensee will continue to operate the project with modified headpond, and as soon after closing as it is reasonably able to do so, will install an additional 0.7 MW turbine, subject to the conditions in Section VI of the Agreement, and will continue to operate the existing fish passage for eels.

3) If Designated Projects are not acquired in accordance with the Agreement: The licensee will continue to operate the project with modified headpond, and with existing fish passage for eels.

i. Project: Ellsworth

1) Upon the Effective Date of the Agreement: The licensee will continue to operate the project without modifications in existing generating facilities or license conditions.

2) Upon Acquisition of Designated Projects by the Trust: As soon after closing as it is reasonably able to do so, the licensee will file for a license amendment to install a new 0.7 MW turbine at Graham Lake dam, subject to the conditions in Section VI of the Agreement. If not already in place, the licensee will file a license amendment application proposing to install downstream fish passage at Graham Lake dam, along with the new turbine, and will continue to operate existing upstream and downstream fish passage at Ellsworth dam pursuant to the Union River Comprehensive Fishery Management Plan in collaboration with Union River Stakeholder Group, which includes DOI and other agencies.

3) If Designated Projects are not acquired in accordance with the Agreement: The licensee will continue to operate the project with existing generating facilities and license conditions.

II. AGREEMENTS NOT SPECIFIC TO ONE PROJECT

a. Implementation of fish passage measures and fishery management activities

The licensee of each of the Projects subject to the Agreement will develop and submit for approval by DOI and any other governmental agency with approval authority all fishway design plans and installation schedules as described above in paragraphs that are specific to individual projects. The licensee will be fully responsible for operations and maintenance activities associated with fish passage facilities at its projects. The FWS, the Maine Departments of Inland Fisheries and Wildlife and Marine Resources and the Maine Atlantic Salmon Commission ("resource agencies") and PIN will be fully responsible for carrying out any routine fishery management activities, including but not limited to counting, sorting, trapping and trucking (except as provided specifically for the Orono project, as described above) that they deem appropriate. The licensee will provide the resource agencies and PIN with access to the projects and to the passage facilities for purposes of carrying out routine fishery management activities. The licensee will be responsible for conducting all fishway effectiveness studies in accordance with approved plans developed in consultation with the resource agencies and PIN.

Operations and maintenance activities associated with fish passage facilities include, but are not limited to the following: repair and replacement of baffles; operation and maintenance of gates and associated equipment (drive motors, gate stems and guides); maintenance in constant working order of all equipment providing for attraction and conveyance flows (gravity pipes, debris racks); and daily evaluations of all facility components to ensure proper operation. In addition, the licensee will develop a manual of standard operating procedures for each of the fishways at its projects, following consultation with the resource agencies and PIN. Each manual will describe in detail the operations and maintenance activities associated with fish passage facilities to be carried out each year, and will identify provisions for access to the projects by resource agencies and PIN. The licensee, the resource agencies and PIN agree to exchange and maintain current information on key personnel contacts in case of emergencies. The licensee will convene a meeting each year with the resource agencies and PIN to discuss fish passage operations, and to share information on fish restoration activities on the Penobscot River.

b. Flow reallocation

Allocation of flows between the main stem of the Penobscot River and its Stillwater Branch are established in a 1911 court decree, and in the current FERC license and 401 Water Quality Certification for the Milford Project. Under the court decree, the total Penobscot River flow above Milford (as measured at the Sunkhaze gage) is incrementally allocated between the main stem and Stillwater Branch. Currently, up to 30 percent of the total river flow may be routed into the Stillwater Branch, following a specific schedule (rule curve) in the court decree.

The current FERC license and Maine DEP 401 Water Quality Certification for the Milford Project require a release of 3,800 cfs or inflow, whichever is less, with the

following distribution: 3,268 cfs in the main stem from the Milford powerhouse, and 532 cfs in the Stillwater, measured as 60 cfs from Gilman Falls dam, and 472 cfs from the west channel breachway at Gilman Falls. The distribution of flows between the main stem and Stillwater Branch required in the FERC license and DEP 401 is consistent with the allocation in the court decree.

If the energy enhancements at the Orono or Stillwater projects contemplated in Section VI of the CA are built by PPL or a third party, the Parties agree that PPL will reallocate the flows between the main stem Penobscot and Stillwater Branch, by modifying the current Milford license and taking any action necessary to modify the 1911 court decree, as follows: (based on total river flows as measured at the Sunkhaze gage):

- River flows greater than 5446 cfs: 60 % main stem; 40 % Stillwater Branch up to the limit of project operational control of flows (approximately 15,000 cfs), at which point flows will revert to the historic allocation (i.e., approximately 70% main stem, 30% Stillwater Branch).
- River flows between 5446 and 3800 cfs, May 1 – October 31: no change from existing court decree allocation.
- River flows between 5446 and 3800 cfs, November 1 – April 30: reallocate up to 40% total river flow into the Stillwater Branch, while complying with minimum flows in current FERC license and Maine DEP 401 Certification.
- River flows below 3800 cfs: comply with minimum flows in current FERC license and Maine DEP 401 Certification.

All changes in allocation between the main stem and Stillwater Branch will be made in accordance with ramping procedures agreed to by PPL, the resource agencies and PIN.

c. Safe Harbor

If the Designated Projects are not acquired by the Trust pursuant to the Agreement, the Restoration Interests will not request that FERC require the licensee to make any "major changes" in the fish passage facilities constructed by the licensee at Veazie, Milford, Orono, and Stillwater pursuant to the provisions contained in Sections I.a.3), I.c.3), I.d.3), and I.e.3) of this Attachment for a period of 10 years after installation and "certification" of the facilities. Certification will consist of affirmation by DOI that the licensee has designed and installed the facilities as prescribed, completed a year of testing and fine tuning, and that the facilities are ready for routine operations.

If the Designated Projects are acquired by the Trust, the Restoration Interests will not request that FERC require the licensee to make any "major changes" in the fish passage facilities constructed by the licensee at the Milford, Stillwater, and Orono Projects for a period of 10 years after installation and "certification" of the facilities. Certification will consist of affirmation by DOI that the licensee has designed and installed the facilities as prescribed, completed a year of testing and fine tuning, and that the facilities are ready for routine operations.

For purposes of this provision, “major changes” shall mean changes in facilities or operations requiring an expenditure by the licensee(s) of more than an aggregate of \$50,000 in any one calendar year, for modifications at all the projects covered by the safe harbor. Routine operations and maintenance expenditures shall not be counted against this \$50,000, which will be measured in 2004 dollars. Turbine shutdowns for downstream passage of eels will not be required, if at all, until after the expiration of the 10-yr. safe harbor.

**MAY 20, 1997 DOI FISHWAY PRESCRIPTIONS
FOR VEAZIE, MILFORD, ORONO, AND STILLWATER**

Veazie

Upstream Fishways

Veazie Plant A

Prescription #1 - Modify the existing vertical slot fishway pools and baffles to enhance the passage of anadromous fish and minimize injury to American shad. Modifications shall include rounding of exposed edges of the baffle slots and adding aluminum baffle slot plates as designated by the U.S. Fish and Wildlife Service.

Prescription #2 - Add a new gated spillway entrance on the east side of the fishway and a downward opening gate at the existing fishway entrance.

Prescription #3 - Provide for up to 100 cfs of attraction flow at each of the Plant A fishway entrances (200 cfs total) as soon as possible.

Prescription #4 - Construct fish counting facilities at the upstream end of the Plant A fishway.

Prescription #5 - The Plant A fishway shall be operational at river flows up to 40,000 cfs as measured at the Eddington gaging station.

Prescription #6 - To provide for effective (safe, timely, convenient) upstream passage of juvenile American eels at the Veazie development, construct a separate eel fishway at the existing Plant A upstream fish passage facility, or other suitable location.

Veazie Plant B

Stage 1

Prescription #1 - Construct either a vertical slot fishway (with pools 10.5 feet W x 11 feet L x 9 inch drop per pool), or a fish lift (with 1,650 gallon ultimate hopper capacity) at the powerhouse, with a fish collection gallery, trapping and trucking facilities, and a fish counting station in the exit channel - if Plant C is not built according to the schedule in any license the Commission may issue for the Basin Mills Project.

Stage 2

Prescription #1 - If not already in existence, construct a fishway, either vertical slot or fish lift, at the Plant B powerhouse in accordance with U.S. Fish and Wildlife Service approved functional design plans prepared during Stage 1, if

effectiveness studies of the fishway at Plant C provide evidence that a fishway at Plant B is needed.

Veazie Plant C

Prescription #1 - Construct an upstream fishway at the powerhouse of either the vertical slot (with pools 10.5 feet W x 11 feet L x 9 inch drop per pool) or fish lift (with 1,650 gallon ultimate hopper capacity) design, with a fish collection gallery, trapping and trucking facilities, and a fish counting station in the exit channel.

Prescription #2 - The powerhouse fish collection gallery is to have 3 or 4 gated entrances as determined by hydraulic model studies of the Plant C tailrace, which are to be designed and undertaken by the Licensee in consultation and cooperation with the U.S. Fish and Wildlife Service, other fishery agencies, PIN, and interested parties. The entrances shall discharge up to 280 cfs total attraction flow.

Prescription #3 - Plant C fish passage facilities shall be operational at river flows up to 40,000 cfs as measured at the Eddington gaging station.

Prescription #4 - Plant C shall be operated as the first plant on line and last off line during the upstream migration period at the Veazie development.

Prescription #5 - As soon as is possible after completion of the stage one fish passage facilities at Plant C, the licensee shall conduct (at its expense) an evaluation of the effectiveness of the Plant C fishway for passing fish upstream at the Veazie development. The evaluation shall be designed and conducted in consultation and cooperation with the U.S. Fish and Wildlife Service, other fishery agencies, PIN, and interested parties to assist the Department in determining any need to modify the existing fishways and/or to construct new upstream fishways at Plant B if none exist.

Downstream Fishways

Veazie Plant A

Prescription #1 - Install trashracks with a 1-inch clear opening at the Plant A powerhouse and operate the units to guide downstream migrants to the bypass at Plant B.

Veazie Plant B

Stage 1

Prescription #1 - Install trashracks with 1-inch clear opening, and provide both a gated surface and bottom bypass at the Plant B powerhouse. Provide a bypass flow of up to 200 cfs during the downstream migration period.

Stage 2

Prescription #1 - Install angled trashracks with 1-inch clear opening at the Plant B intake to guide downstream migrants to the bypass, if studies provide evidence that the existing trashracks are not effective for guiding fish to the bypass.

Veazie Plant C

Prescription #1 - Install either 1-inch trashracks, angled bar racks, or louvers at the Plant C powerhouse turbine intake and appropriate gated surface and bottom bypasses discharging up to 240 cfs during the downstream migration period. The type, location and size of the gated bypasses and fish screening facilities will be determined by hydraulic model studies of the powerhouse forebay. These studies are to be undertaken by the Licensee in consultation and cooperation with the U.S. Fish and Wildlife Service, other fishery agencies, PIN, and interested parties. If so indicated by the results of initial effectiveness studies at Veazie Plant C, evaluate restricted generation at night over a two-week period to enhance downstream passage of adult American eels.

Milford

Upstream Fishways

Prescription #1 - Modify the existing Denil fishway adjacent to the powerhouse at the Milford Project as described in BHE's filing, dated January 12, 1990 (Response to Commission's AIR, Items 10 through 13), with the following changes:

- a) add a spillway entrance near the existing log sluice; and
- b) install additional timber baffles in the upstream end of the fishway to facilitate operation at high headpond levels.

Prescription #2 - Install a new fishway on the west end of the spillway, adjacent to the shoreline. Fishway type is to be a conventional Denil (4 feet W x 1-on-8 slope), vertical slot fishway (pools 8 feet W x 10 feet L x 9 inch drop per pool), or a fish lift (with 800 gallon ultimate hopper capacity).

Prescription #3 - All upstream fishways at the Milford Project should be operational for river flows up to 40,000 cfs as measured at the USGS gaging station at Eddington.

Prescription #4 - Provide attraction flows for the upstream fishways as follows:

- a) Existing powerhouse fishway:
Two powerhouse entrances = 210 cfs total
Spillway entrance = 100 cfs
- b) New west side spillway fishway = 100 cfs.

Prescription #5 - Replace the existing and new Denil fishways at the Milford Project with larger capacity facilities, consisting of either a vertical slot fishway (pools 11 feet W x 11 feet L x 9 inch drop per pool), or a fish lift/elevator system (with 1700 gallon ultimate hopper capacity), when the annual numbers of fish using the Denil fishways exceed 20,000 American shad or 200,000 river herring (alewife and blueback herring), or a combination of the two, with one shad equivalent to ten river herring (e.g., 10,000 shad plus 100,000 river herring).

Prescription #6 - Construct a separate fishway at the existing upstream fish passage facility at the powerhouse, or other suitable location at the Milford Project, to enhance the upstream passage of American eels.

Prescription #7 - Fishway designs for the Milford Project shall include the following two additional effectiveness measures, which are necessary for carrying out fishway operation and maintenance activities, and monitoring and evaluating activity inside the fishway:

- 1) access walkways and railings along the entire length of the existing and future fishways for safety purposes;
- 2) a side mounted vertical fish counting window at the powerhouse and spillway fishways for enumerating fish runs.

Downstream Fishways

Prescription #1 - Provide a downstream fishway at the Milford Project as described in BHE's filing dated January 12, 1990, (Response to Commission AIR, Items 10-13), with the following changes:

- a) Reduce the clear bar spacing at the outer trashrack from 4 inches to 1 inch over the upper 12 feet of rack. (If the Licensee elects to use 1 inch spacing on the inner trashrack, the bars on the outer trashrack can remain 4 inch clear opening. However, two additional entrance ports will be required along the inner rack.)
- b) Install twin 4 feet-wide (8 feet total) weirs at the outer trashrack capable of passing up to 280 cfs. The location of the weirs is to be west of the edge of the new generating Unit #2. Attraction flow to the downstream fishway is to range up to 280 cfs.
- c) Include a gated bottom intake to the downstream migrant facilities to provide for the downstream passage of American eels. If so indicated by the results of initial effectiveness studies at Milford, evaluate restricted generation at night over a two-week period to enhance downstream passage of adult American eels.

Prescription #2 - Design and install the downstream migrant conduit at the Milford powerhouse so that the discharge jet does not impact vertical walls.

Orono

Upstream Fishways

Prescription #1 - Construct either a vertical slot fishway (pools 8 feet W x 10 feet L x 9 inch drop per pool), Denil fishway (4 feet W x 1-on-8 slope), or a fish lift (with 600 gallon hopper capacity) at the Orono Dam.

Prescription #2 - Provide up to 50 cfs attraction flow at the fishway entrance.

Downstream Fishways

Prescription #1 - Install trashracks with 1-inch clear opening at the powerhouse turbine intake, and a gated surface and bottom bypass discharging up to 70 cfs during the downstream migration period. (This prescription would apply only if the Orono powerhouse is relicensed, and not decommissioned.)

A. Stillwater

Upstream Fishways

Powerhouse

Prescription #1 - Construct either a vertical slot fishway (pools 8 feet W x 10 feet L x 9 inch drop per pool), Denil fishway (4 feet W x 1-on-8 slope), or a fish lift (with 600 gallon hopper capacity) at the powerhouse.

Prescription #2 - Provide up to 50 cfs attraction flow at the fishway entrance.

Spillway

Prescription #1 - Construct either a vertical slot fishway (pools 8 feet W x 10 feet L x 9 inch drop per pool), a Denil fishway (4 ft. W x 1-on-8 slope), or a fish lift (with 600 gallon hopper capacity) at the spillway.

Prescription #2 - Provide up to 50 cfs attraction flow at the fishway entrance of the spillway.

Downstream Fishways

Prescription #1 - Install trashracks with a 1-inch clear opening at the powerhouse turbine intake and gated surface and bottom bypasses discharging up to 70 cfs during the downstream migration period.

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ATTACHMENT B
TO LOWER PENOBSCOT RIVER CONCEPTUAL AGREEMENT

The Parties agree to the following provisions pertaining to the establishment and funding of a Contingent Mitigation Fund (“Mitigation Fund”) to provide mitigation for habitat impacts of certain PPL Maine activities if Veazie and Great Works are not acquired and their dams removed by the Trust:

1. Purpose of the Contingent Mitigation Fund. The purpose of the Mitigation Fund is to provide for monetary compensation to mitigate for the impacts to habitat that may be caused by PPL Maine’s implementation of provisions in Attachment A governing minimum bypass flows at Orono and Stillwater and the Headpond Increases at Medway, West Enfield and Stillwater (“Habitat Impacts”) if Veazie and Great Works are not acquired or their dams are not removed by the Trust either because:

- A. The Trust either terminates or does not exercise the Option, or;
- B. Subsequent to exercise of the Option, the Trust does not acquire Veazie and Great Works or remove their dams.

For purposes of the Agreement, the Parties agree that the Habitat Impacts will occur.

2. Establishment. If the Trust either terminates or does not exercise the Option, or if, subsequent to exercise of the Option, the Trust does not acquire Veazie and Great Works or remove their dams, the Trust shall contemporaneously provide notice to the Restoration Interests and PPL Maine. Within 30 days of such notice, and following consultation with PPL Maine and the Conservation Interests, the Maine Agencies, FWS, BIA, NOAA Fisheries, and PIN shall by mutual agreement provide for the establishment of the Mitigation Fund and designation of a third party to manage it.

3. Valuation of Habitat Impacts; Annual financial obligation. Beginning on the date each minimum bypass flow change and Headpond Increase provided for in Attachment A occurs, and continuing for each calendar year thereafter during the term of the current FERC license for each respective project (including as may be extended through the issuance of annual licenses) (“current license”), the Payor shall incur a corresponding annual financial obligation to the Mitigation Fund in the following amounts (with such amounts to be pro rated for the first calendar year in which such an obligation arises after initiation of the bypass flow change or Headpond Increase to reflect payment for only the portion of the year the habitat impact existed): West Enfield headpond increase - \$13,000; Stillwater headpond increase - \$1,000; Medway headpond increase - \$1,000; Orono minimum bypass flow - \$1,000; Stillwater minimum bypass flow - \$1,000 (hereinafter individually “annual financial obligation” and collectively “annual mitigation obligation”). The amount of each aforementioned annual financial obligation shall be adjusted annually in accordance with the Consumer Price Index (“CPI”), with said adjustment beginning in the calendar year following the Effective Date of the Agreement. The annual financial obligation for the calendar year in which the

current license for the respective project expires shall be pro rated to reflect the portion of the year during which the current license was in effect.

4. Schedule for Payment into the Mitigation Fund. No payment by the Payor of its annual mitigation obligation into the Mitigation Fund shall be due unless and until the Trust either terminates or does not exercise the Option, or if, subsequent to exercise of the Option, the Trust does not acquire Veazie and Great Works or remove their dams. Acquisition of Veazie and Great Works and removal of their dams by the Trust shall extinguish permanently all annual mitigation obligations of the Payor. If the Trust either terminates or does not exercise the Option, or if, subsequent to exercise of the Option, the Trust does not acquire Veazie and Great Works or remove their dams, the Payor shall have the following duties:

- A. The Payor shall pay into the Mitigation Fund an amount of money equal to the sum of the annual mitigation obligations incurred by the Payor to date. The Payor shall pay one half of this sum into the Mitigation Fund within 30 days after the end of the calendar year in which the Trust either terminates or does not exercise the Option, or if, subsequent to exercise of the Option, the Trust does not acquire Veazie and Great Works or remove their dams. The Payor shall pay the other half of this sum into the Mitigation Fund within 30 days after the end of the following calendar year; and
- B. The Payor shall pay into the Mitigation Fund the annual mitigation obligation incurred for each calendar year after the Trust either terminates or does not exercise the Option, or if, subsequent to exercise of the Option, the Trust does not acquire Veazie and Great Works or remove their dams, within 30 days after the end of the calendar year in which it is incurred.

For the purpose of paragraph 3. and this paragraph 4., the term "Payor" shall be deemed to be (1) PPL Maine if Veazie and Great Works are not acquired by the Trust or (2) the Trust, or its successor or assign, if Veazie and Great Works are acquired but their dams are not removed by the Trust.

5. Disposition of monies in Mitigation Fund. Monies in the Mitigation Fund shall be expended, as determined by mutual agreement of PIN, BIA, FWS, NOAA Fisheries and the Maine Agencies, for:

- A. Replacing the fish and wildlife habitat lost or degraded by the Habitat Impacts;
- B. Compensating for loss or degradation of fish and wildlife habitat due to the Habitat Impacts by means other than replacement; and
- C. Supporting efforts directed at restoring to the Penobscot River fisheries and the habitat on which these fisheries rely.