

68 FERC ¶ 61,178

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Elizabeth Anne Moler, Chair;
Vicky A. Bailey, James J. Hoecker,
William L. Massey, and Donald F. Santa, Jr.

James River-New Hampshire
Electric, Inc.)

Project No. 2326-002

ORDER ISSUING NEW LICENSE

(Issued August 1, 1994)

James River-New Hampshire Electric, Inc. (James River) filed a license application under Part I of the Federal Power Act (FPA) for the continued operation and maintenance of the 3,220 kilowatt (kW) Cross Power Project, located on the Androscoggin River, in Coos County, New Hampshire. The Androscoggin River is a navigable waterway of the United States. 1/ James River proposes no new capacity and no new construction. We will issue the license.

BACKGROUND

Notice of the application has been published in the Federal Register. Motions to intervene in this proceeding were filed by the City of Berlin, New Hampshire (Berlin), the Town of Gorham, New Hampshire (Gorham), and a coalition of groups consisting of Conservation Law Foundation, Inc., Appalachian Mountain Club, American Rivers, Inc., and Trout Unlimited (Conservation Law). American Whitewater Affiliation and New England FLOW (American Whitewater) filed a late motion to intervene, which was granted by notice issued June 10, 1993.

On October 19, 1992, the Commission issued a Notice of Intent to prepare an Environmental Impact Statement (EIS) for this project. The Commission's staff issued a Final Impact Statement (FEIS) on November 30, 1993. The comments received from interested agencies and individuals have been fully considered in the FEIS in determining whether to issue the license. The staff also prepared a Safety and Design Assessment (SDA), which is available in the Commission's public file for this project.

1/ Public Service Company of New Hampshire, 27 FPC 826 (1962).

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Concurrently with this order, we are issuing an Order Granting Applications for New License, which discusses issues common to seven projects on the Androscoggin River. The discussion in that order is incorporated by reference herein.

PROJECT DESCRIPTION

The existing project consists of a 467-foot-long and 25-foot-high dam, a reservoir with a surface area of 22 acres, a powerhouse containing five generating units with a total installed capacity of 3,220 kW, a 20-foot-long transmission line, and appurtenant facilities. The project has an annual generation of 19.20 GWh. A more detailed project description can be found in ordering paragraph B(2) and in the FEIS.

APPLICANT'S PLANS AND CAPABILITIES

In accordance with Sections 10 and 15 of the FPA, we have evaluated James River's record as a licensee for these areas: (1) conservation efforts; (2) compliance history and ability to comply with the new license; (3) safe management, operation and maintenance of the project; (4) ability to provide efficient and reliable electric service; (5) need for power; (6) transmission line improvements; and (7) project modifications.

1. Section 10(a)(2)(C): Conservation Efforts

James River is a wholly owned subsidiary of James River Paper Company, Inc., which uses virtually all of its electricity. James River is not a public utility and has no retail customers. Its only demand-side consumer is the parent paper company. In view of these facts, Section 10(a)(2)(C) does not apply to James River.

2. Section 15(a)(2)(A): Compliance History and Ability to Comply with the New License

We have reviewed James River's license application in an effort to judge its ability to comply with the articles, terms and conditions of any license issued, and with other applicable provisions of this part of the FPA. Based on that review, we believe James River has or can acquire the resources and expertise necessary to carry out its plans and comply with all articles, terms and conditions of a new license.

3. Section 15(a)(2)(B): Safe Management, Operation, and Maintenance of the Project

When river flows at the Cross Power Project are less than or equal to the station hydraulic capacity, all flows are routed through the project turbines, such that the normal headpond elevation is maintained. When river flows at the project exceed

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the maximum turbine capacity, the excess flow is released over the dam. During flood flows, turbine operation is maintained to the extent possible, and excess flow is spilled over the dam. Available river flows at the Cross Power Project are affected by the extensive storage reservoirs located upstream of the project, which are operated by the Union Water Power Company and the Androscoggin Reservoir Company and provide a relatively constant flow through the year. Because of this regulated operation, there are generally no large, spontaneous increases or decreases in river flow.

The Cross Power Project is currently classified with a rating of significant hazard potential, according to the Commission's regulations. The Cross Power Project currently maintains the Commission's Emergency Action Plan requirements, as described in 18 CFR, Subpart C of Part 12. However, upon reviewing James River's submittal of the "Stability and Hydraulic Evaluation Report", on September 27, 1991, the New York Regional Office revised the hazard classification to a high hazard potential in a letter dated June 11, 1993. James River's stability and hydraulic evaluation shows that the spillway and the unregulated sections of the dam do not comply with all the engineering criteria and standards as specified in FERC's Engineering Guidelines. Currently, the Cross Power Project has an Emergency Action Plan (EAP) that identifies the Watson Street, the Cascade Mill complex and the Cascade Flats Road areas to be notified in the event of an emergency situation at Cross Power dam.

Based on the high hazard classification of the dam, the project will continue to be subject to the requirements of Part 12 of the Commission's regulations. The project will be safe and adequate once the Part 12 Safety Report matters have been resolved and upon compliance with the terms and conditions of any order for remedial work that this Commission may issue.

4. Section 15(a)(2)(C): Ability to Provide Efficient and Reliable Electric Service

The project is operated to derive maximum energy benefit from the river flow and is, therefore, operating in an efficient and reliable manner.

5. Section 15(a)(2)(D): Need for Power

The purpose of James River's electric generating resources is to supply electric power--capacity and energy--to meet a portion of James River Paper Company's requirements. The pulp and paper products industry is highly competitive, and is an energy-intensive industry. James River's competitive position depends heavily on the availability of a reliable source of low-cost electric power.

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6. Section 15(a)(2)(E): Transmission Line Improvements

James River's existing transmission system is operated to carry electricity from James River's six existing hydroelectric projects and other generating facilities to the Burgess and Cascade paper mills. The transmission system is designed to function with the project out-of-service, such that no operational or circuit loading impacts would occur. Therefore, the existing transmission system is sufficient, and no changes to the service affected by the project operation would be necessary whether the Commission issues a license for the project or not.

7. Section 15(a)(2)(F): Project Modifications

James River proposes to modify the existing project operation of the Cross Power Project to enhance environmental and aesthetic resources affected by the project. James River doesn't propose any additional generating capacity for the project. The project, as presently constructed and as James River proposes to operate it, fully develops and uses the economical hydropower potential of the site.

8. Section 15(a)(3)(A) and (B): Compliance Record

James River has complied with the terms and conditions of the existing license and has made timely filings with the Commission.

WATER QUALITY CERTIFICATION

The New Hampshire Department of Environmental Services granted James River a water quality certificate for the Cross Power Project on December 13, 1991. The water quality certificate requires that a water quality monitoring program be implemented if it is determined that Class B dissolved oxygen standards are being violated.

SECTION 18 - RESERVATION OF AUTHORITY TO PRESCRIBE FISHWAYS

The Department of the Interior requests that any license issued for the Cross Power Project include a reservation of authority for Interior to prescribe the construction, operation, and maintenance of fishways pursuant to Section 18 of the FPA. Article 403 of this license reserves authority to the Commission to require the licensee to construct, operate and maintain such fishways as may be prescribed by Interior pursuant to Section 18 of the FPA.

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RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

Section 10(j) of the FPA requires the Commission to include license conditions, based on recommendations of federal and state fish and wildlife agencies, for the protection of, mitigation of adverse impacts to, and enhancement of fish and wildlife resources. Pursuant to Section 10(j) of the FPA, the Commission's staff made a determination that the recommendations of the federal and state fish and wildlife agencies are consistent with the purposes and requirements of Part I of the FPA and applicable law. Staff has addressed the concerns of the federal and state fish and wildlife agencies in the FEIS and the license includes conditions consistent with the recommendations of the agencies.

COMPREHENSIVE PLANS

Section 10(a)(2) of the FPA requires the Commission to also consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. Under Section 10(a)(2) of the FPA, federal and state agencies filed 12 comprehensive plans that address various resources in New Hampshire. Of these, the staff identified and reviewed eight plans relevant to this project. 2/ No conflicts were found.

COMPREHENSIVE DEVELOPMENT

Sections 4(e) and 10(a)(1) of the FPA require the Commission to give equal consideration to all uses of the waterway on which a project is located. When the Commission reviews a project, the recreational, fish and wildlife resources, and other nondevelopmental values of the involved waterway are considered equally with power and other developmental values. In determining whether, and under what conditions, a hydropower

2/ Wild and scenic rivers for New Hampshire, New Hampshire Office of State Planning, 1977; New Hampshire outdoors, 1988-1993: State comprehensive outdoor recreation plan, New Hampshire Office of State Planning, 1989; New Hampshire wetlands priority conservation plan, New Hampshire Office of State Planning, 1989; Public access plan for New Hampshire's lakes, ponds, sand rivers, New Hampshire Office of State Planning, 1991; New Hampshire rivers management and protection plan, State of New Hampshire, 1991; North American Waterfowl Management Plan, U.S. Fish and Wildlife Service, 1986; The nation-wide rivers inventory, National Park Service, 1982; Fisheries USA: The recreational fisheries Policy of the U.S. Fish and Wildlife Service, U.S. Fish and Wildlife Service, undated.

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license should be issued, the Commission must weigh the various economic and environmental tradeoffs involved in the decision.

Based on an independent review and evaluation of the existing Cross Power Project, agency recommendations, and the no-action alternative as documented in the FEIS, we have selected issuing a new license for the Cross Power Project with additional enhancement measures as the preferred option. We have selected this option because: (1) the required measures would protect and enhance the water quality, fishery resources and aesthetics; and (2) the electricity generated from a renewable resource would be beneficial because it would continue to replace the use of fossil-fueled, steam-electric generating plants, thereby conserving nonrenewable energy resources and reducing atmospheric pollution.

The existing Cross Power Project has an installed capacity of 3.22 MW and generates about 19.20 GWh of energy per year. The annual operating cost of the existing project is about \$1,022,000 (53.21 mills/kWh). The 30-year levelized annual value of the project's power, based on the cost of purchased power, is about \$2,903,000 (151.18 mills/kWh), in 1994 dollars. Therefore, the levelized net annual economic benefit of the existing project without any enhancement measures would be about \$1,881,000 (97.97 mills/kWh). We conclude that the existing project would continue to be economically beneficial when compared to the alternative cost of fossil fuel and capacity in the region.

SUMMARY OF FINDINGS

Background information, analysis of impacts and support for related license articles are contained in the FEIS.

The design of this project is consistent with the engineering standards governing dam safety. The project will be safe if operated and maintained in accordance with the requirements of this license. Analysis of related issues is provided in the SDA.

We conclude that the project would not conflict with any planned or authorized development, and would be best adapted to comprehensive development of the waterway for beneficial public uses.

The Commission orders:

(A) This license is issued to James River-New Hampshire Electric, Inc. (Licensee), for a period of 30 years, effective the first day of the month in which this license is issued, to operate and maintain the Cross Power Project. This license is subject to the terms and conditions of the FPA, which is

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incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the Licensee's interests in those lands shown by Exhibit G:

<u>Exhibit G-</u>	<u>FERC No. 2326-</u>	<u>Showing</u>
1	8	Project Location Plan
2	9	Project Area Map 1

(2) Project works consisting of: (a) a dam, about 467 feet long, with a maximum height of 25 feet, with (1) a 103-foot-long non-overflow section, (2) a 276-foot-long by 25-foot-high spillway, having a crest elevation of 918.2 feet (USGS), topped with 3.5-foot-high flashboards, (3) an unused 38-foot-long wastegate structure, with two gates, about 15.5 feet wide and 9 feet wide, which presently functions with flashboards as an extension of the uncontrolled spillway, and (4) a retaining wall of about 50.5 feet long; (b) a gatehouse, integral with the dam, about 19 feet wide by 124 feet long; (c) a concrete and brick powerhouse, about 47 feet wide by 146 feet long, equipped with five hydroelectric generator units, having a total rated capacity of 3,220 kilowatts (kW), driven by four 950-horsepower (hp) Allis-Chalmers horizontal-type turbines, and one 1,160-hp American Hydro horizontal "Seagull"-type turbine, totaling a maximum hydraulic capacity of 2,600 cubic feet per second (cfs), at a design head of about 20 feet; (d) a reservoir with a surface area of about 22 acres, at a water surface elevation of 921.7 feet (USGS); (e) a 22-kilovolt (kV), 20-foot-long primary transmission line; and (f) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibits A and F shown below:

Exhibit A - The following sections of Exhibit A filed September 27, 1991:

The turbines and generators as described on pages A-3 through A-7.

Exhibit F - The following Exhibit F drawings filed on September 27, 1991:

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<u>Exhibit</u>	<u>FERC No.</u>	<u>Showing</u>
F-1	2326-1	Dam Plan and Elevation
F-2	2326-2	Dam Sections
F-3	2326-3	Powerhouse Floor Plan
F-4	2326-4	Powerhouse Sections
F-5	2326-5	Powerhouse Sections
F-6	2326-6	Powerhouse Elevations
F-7	2326-7	Powerhouse Elevations

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

(C) The Exhibits A, F, and G described above are approved and made part of the license.

(D) This license is subject to the articles set forth in Form L-3, (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the U.S.," and the following additional articles.

Article 201. The Licensee shall pay the United States an annual charge, effective the first day of the month in which this license is issued, for the purpose of reimbursing the United States for the cost of administration of Part I of the FPA as determined by the Commission. The authorized installed capacity for that purpose is 4,290 horsepower.

Article 202. Pursuant to Section 10(d) of the Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The Licensee shall set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the Licensee shall deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The Licensee shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The Licensee shall maintain the amounts established in the project amortization reserve account until further order of the Commission.

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The specified reasonable rate of return used in computing amortization reserves shall be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly includable in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios shall be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10 year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 203. If the Licensee's project was directly benefitted by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed. The benefits will be assessed in accordance with Subpart B of the regulations.

Article 204. The Commission reserves authority, in the context of a rulemaking proceeding, a statement of policy, or a proceeding specific to this license, to require the Licensee to conduct studies, make financial provisions, or otherwise make reasonable provisions for decommissioning of the project. The terms of this article shall be effective unless the Commission, in Docket No. RM93-23, finds that the Commission lacks statutory authority to require such actions, or otherwise determines that the article should be rescinded.

Article 205. The Commission reserves authority, in the context of any licensing, relicensing, or license or exemption amendment proceeding involving the upstream Androscoggin River Basin projects located at Mooselookmeguntic Lake, Richardson Lake, the Azisobos Project No. 4026, the Errol Project No. 3133, the Pontook Project No. 2861, or the Kennebago Project No. 4413, to require the Licensee, in a proceeding specific to this license, to conduct studies, modify minimum flow releases, or otherwise make reasonable provisions for modifying project facilities or operation as necessary to mitigate or avoid cumulative effects identified in environmental analyses of these upstream projects.

Article 401. The Licensee shall operate the project in a run-of-river mode for the protection of fish and wildlife resources and water quality in the Androscoggin River. The Licensee shall at all times act to minimize the fluctuation of

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the reservoir surface elevation by maintaining a discharge from the project so that, at any point in time, flows, as measured immediately downstream from the project tailrace, approximate the sum of inflows to the project reservoir. Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the Licensee, or for short periods upon mutual agreement between the Licensee, the New Hampshire Fish and Game Department, and the U.S. Fish and Wildlife Service. If the flow is so modified, the Licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 402. Within six months from the effective date of this license, the Licensee shall file with the Commission for approval, a plan to monitor run-of-river operation of the project, as stipulated by article 401, and to describe how flows will be maintained below the project when the impoundment is refilled after any maintenance and/or repairs.

The plan shall include, but not be limited to, a schedule for installing the monitoring equipment, the proposed location, design, and calibration of the monitoring equipment, the method of flow data collection, and a provision for providing flow data to the consulted agencies, within 30 days from the date of the agencies request for the data.

The Licensee shall prepare the plan after consultation with the U.S. Geological Survey, the U.S. Fish and Wildlife Service, the New Hampshire Fish and Game Department. The Licensee shall include with the plan documentation of consultation and copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The Licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations prior to filing the plan with the Commission. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the monitoring plan. Upon Commission approval, the Licensee shall implement the monitoring plan, including any changes required by the Commission.

If the results of monitoring indicate that changes in project structures or operation are necessary to ensure run-of-river operation, the Commission may direct the licensee to modify project structures or operations.

Article 403. Authority is reserved to the Commission to require the licensee to construct, operate, and maintain, or

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provide for the construction, operation, and maintenance of, such fishways as may be prescribed by the Secretary of the Interior.

Article 404. Within six months of the effective date of this license, the Licensee shall file with the Commission for approval, a plan to monitor dissolved oxygen (DO) levels and temperature of the Androscoggin River upstream and downstream of the project. The purpose of this monitoring plan is to ensure that stream flows, as measured immediately upstream of the impoundment, downstream of the project dam, and downstream of the project tailrace, maintain a DO content of no less than 75 percent saturation.

The monitoring plan shall include a schedule for:

- (1) implementation of the monitoring plan;
- (2) consultation with the appropriate federal and state agencies concerning the results of the monitoring; and
- (3) filing the results, agency comments, and Licensee's response to agency comments with the Commission.

The Licensee shall prepare the monitoring plan after consultation with the New Hampshire Department of Environmental Services, the New Hampshire Fish and Game Department, and the U.S. Fish and Wildlife Service. The Licensee shall include with the monitoring plan documentation of consultation and copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The Licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations prior to filing the monitoring plan with the Commission. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the monitoring plan. Upon Commission approval, the Licensee shall implement the monitoring plan, including any changes required by the Commission.

If the results of monitoring indicate that changes in project structures or operations are necessary to ensure maintenance of the state DO standard, the Commission may direct the Licensee to modify project structures or operations.

Article 405. The Licensee shall implement the provisions of the "Programmatic Agreement Among the Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, and the New Hampshire Division for Historic Preservation, for Managing Historic Properties Likely to be Affected by Continuing

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to Operate the Sawmill Project, Project No. 2422, Cross Power Project, Project No. 2326, Cascade Project, Project No. 2327, Gorham Project, Project No. 2311, Shelburne Project, Project No. 2300, J. Brodie Smith Project, Project No. 2287, and Gorham Project, Project No. 2288, All Located on the Androscoggin River" executed on November 18, 1993. The Commission reserves the authority to require changes to the Cultural Resources Management Plan or plans at any time during the term of the license.

Article 406. Within six months from the effective date of this license, the Licensee shall develop and file, for Commission approval, a recreation plan that includes, but not limited to:

(1) provisions for installing signs showing where public access is permitted;

(2) provisions for improving the appearance of the powerhouse and gatehouse buildings and grounds so that they no longer give the appearance of being in disrepair and in need of maintenance and;

(3) a schedule for completing items (1) and (2).

The Licensee shall prepare the plan after consultation with the City of Berlin, Parks and Recreation Department and the National Park Service. The Licensee shall include with the plan, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies, comments are accommodated by the plan. The Licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission.

Article 407. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure

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compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the Licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The Licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the Licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the Licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the Licensee's costs of administering the permit program. The Commission reserves the right to require the Licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The Licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges and roads for which all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-

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project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the Licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The Licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d) (7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the Licensee must submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the Licensee to file an application for prior approval, the Licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

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(1) Before conveying the interest, the Licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the Licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

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

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

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

(g) The authority granted to the Licensee under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

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(F) The Licensee shall serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to that filing. Proof of service on these entities must accompany the filing with the Commission.

(G) This order is final unless a request for rehearing is filed within 30 days of the date of issuance of this order, as provided in Section 313 of the FPA. The filing of a request for rehearing does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically ordered by the Commission. The Licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

(S E A L)


Linwood A. Watson, Jr.
Acting Secretary.

Document Content(s)

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