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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 ) Project No. 2311-001  
Electric, Inc. )

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 4,800 kilowatt (kW) Gorham 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 initially proposed the replacement of two existing generator exciters with a new unit with a rated capacity of 1,300 kW which would increase the total rated capacity from 4,800 kW to 6,100 kW. By amendment dated November 29, 1993, James River deleted its proposed new turbine. There will be no change in the operation of the Gorham Project which will continue to have a rated capacity of 4,800 kW. We will issue the license pursuant to the amended application.

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), the United States Department of the Interior (Interior), the United States Environmental Protection Agency (EPA), and a coalition of groups consisting of Conservation Law Foundation, Inc., Appalachian Mountain Club, American Rivers, Inc., and Trout Unlimited (Conservation Law). The New Hampshire Department of Fish and Game (Fish and Game) and American Whitewater Affiliation and New England FLOW (American Whitewater) filed late motions to intervene which were 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 Environmental Impact Statement (FEIS) for this project on November 30, 1993. The comments received from interested agencies and individuals have been fully considered in the FEIS in determining whether to

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

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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.

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 775-foot-long dam, with a 133-foot-long west earthen dike, an 18-foot-high spillway section topped with 6-foot-high flashboards, a 3,350-foot-long power canal, a reservoir with a surface area of 45 acres, a powerhouse containing 4 generating units with a total rated capacity of 4,800 kW, a 50-foot-long transmission line, and appurtenant facilities. The project has an annual generation of 29.1 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.

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

Available river flows at the Gorham Project are affected by the extensive storage reservoirs upstream of the project. The storage reservoirs are operated by the Union Water Power Company and the Androscoggin Reservoir Company. Due to the large storage capacity of these upstream storage facilities, the majority of the flows can be stored and released for consistent use throughout the year; therefore, the Gorham Project's operation during low, average and high water years does not change significantly. Since changes in the river flow at the Gorham Project tend to be gradual, downstream warning devices are not required at this project.

The Gorham Project is currently classified with a rating of low hazard potential according to the Commission's regulations and is exempt from the Commission's Emergency Action Plan requirements as described in 18 CFR, Subpart C of Part 12. None of the proposed changes to the operation of the project or downstream development should affect the exempt status of the Gorham Project.

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 the 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.

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.

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

James River proposes to modify the existing project operation of the Gorham Project to enhance environmental and aesthetic resources affected by the project. We conclude that these enhancements can be accomplished in a cost effective manner.

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 certification for the Gorham Project on October 26, 1993. The water quality certification 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 Gorham 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 405 of the 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.

**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. The 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.

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### 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, 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 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 Gorham Project, agency recommendations, and the no-action alternative as documented in the FEIS, we have selected issuing a new license for the Gorham 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.

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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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Fish and Game does not object to the amendment to the application as long as we would still adopt the mitigation measures recommended by the FEIS, with the exception of the fish passage facilities, for which Fish and Game has not perceived a present need. 3/ However, it requests that we conduct further environmental analysis since the amendment could affect the cumulative balancing discussion in the FEIS.

Conservation Law opposes the amendment on the grounds that James River should be required to demonstrate that it is maximizing hydropower production from its existing facilities. It contends that the cost of the new turbine is less than the current long-range marginal cost of utility power production in New Hampshire and that the new turbine will not cause significant additional environmental impacts. Conservation Law argues that we should require energy efficiency improvements to current hydro operations when there are no unacceptable environmental impacts, so that the cost of a licensee's unwillingness to invest in hydropower efficiencies does not fall on fishery or recreational resources.

In submitting the amendment, James River contended that the expansion was not feasible because the fish passage mitigation measures recommended by the FEIS would increase the cost of producing project power above the cost of power purchased from Public Service. Conservation Law argues that the FEIS recommendation for fish passage facilities was not based primarily on the project's increased hydraulic capacity; therefore, the cost of those facilities should not be factored into the economic evaluation of the expansion, and construction of the facilities should still be required. Conservation Law also recommends imposition of the minimum flow releases recommended in the FEIS.

The Commission's staff has performed an economic analysis comparing James River's cogeneration alternative with the expansion alternatives originally proposed. The staff determined that the levelized cost of energy from James River's cogeneration alternative would not be greater than 97 mills per kilowatt-hour of energy generation, starting in 1996, and that the cogeneration facilities would not cost more than \$1,200 per kilowatt of installed capacity 4/. In its studies for the Androscoggin

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- 3/ Fish and Game continues to request that James River be required to install downstream fish passage facilities when Fish and Game finds them necessary.
- 4/ The staff's estimate was based on discussions with Mr. E. Vargo of the firm Babcock & Wilcox, who designs such facilities. The staff based its fuel use calculations on an assumed cogeneration heat rate of 8,870 btu's per kilowatt-  
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FEIS, the staff calculated the levelized cost of energy from James River's proposed Gorham expansion to be about 114.5 mills/kWh. This comparison confirms James River's conclusion that installation of steam-electric cogeneration capacity in conjunction with its new process-steam boiler would be more economical than the Gorham hydroelectric expansion proposal.

We agree with Conservation Law that the fish passage facilities should not enter into a calculation of the Gorham expansion's economic benefits. As we explain below, these facilities are a mitigation measure separable from the expansion, and the staff did not include their cost in its incremental analysis of the economics of the expansion in the FEIS. Nevertheless, the exclusion of this cost does not render the expansion economically beneficial.

A licensee is not obligated to develop hydropower capacity beyond that which would be economically beneficial. Since development of the cogeneration steam power plant, when combined with James River's existing hydro resources, would provide more than sufficient power to meet all of James River's loads, the steam power plant and the hydropower expansion are mutually exclusive alternatives. In addition, James River could not develop the hydropower expansion and sell the power in the regional utility market, because the value of the power in the wholesale market would be less than the cost of power from the expansion. The expansion would be economical only when compared to the retail cost of power, and since James River is not an authorized electric utility it could not sell the power it would produce in the retail market.

Contrary to Conservation Law's argument, the cost of the new turbine is not less than the current long-range marginal cost of utility power production in New Hampshire. Staff studies showed that the incremental cost of power from the expansion would be about 105 mills per kilowatthour. When compared to the alternative of James River's purchasing power from Public Service, at a levelized cost of 148.9 mills per kilowatthour (based on retail electric value), the expansion would be economically beneficial. However, when compared to Public Service's levelized cost of alternative power (wholesale value) of about 85 mills per kilowatthour, the expansion would not be

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4/(...continued)

hour of generation, and its fuel cost calculations on the average fuel cost data for the New England Region from Table 115 of the Energy Information Administration's Supplement to the Annual Energy Outlook, February 1993.

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economically beneficial, and the power would not be marketable in the wholesale power market. 5/

Since the amended project would be more economically beneficial than the original one, and since no commenter has identified adverse impacts resulting from the amendment, we find that issuing a license based on the amended application, rather than on the original proposal, is warranted. The amendment of the application requires a reexamination of the environmental impacts, enhancement and mitigation measures, and economics, of the amended proposal. We conclude that the only measure recommended by the FEIS that is no longer warranted is the preparation of a plan for testing forebay sediments and safely disposing of such toxic materials as might be found in the sediments. Such sediments might have been resuspended by modifying the intake and starting up the new turbine, whose installation is now not being authorized. 6/

Based on the recommendations of Interior and Fish and Game, the FEIS recommended a minimum flow release of 400 cfs from March 1 to June 15 and 200 cfs at all other times into the bypass reach to protect and enhance habitat for trout. 7/ The withdrawal of the capacity increase at Gorham will have little impact on this recommended enhancement. Without the proposed expansion, periodic spillage will continue to occur approximately 32 percent of the time (as opposed to 18 percent of the time with the capacity increase). However, without the proposed Pulsifer Rips expansion, which has been withdrawn pursuant to an amendment of the application for the Cascade Project, and its associated 1.5-mile-long significantly enhanced reach for salmonids, the 5,000 ft-long Gorham bypass reach, in conjunction with a 0.75-mile-long riverine reach into which it flows, will be one of the few remaining sections of the Androscoggin River in the highly impounded Berlin-Shelburne reach to encompass any significant free-flowing salmonid habitat. Thus, we will require the minimum flow release condition recommended by the FEIS.

The FEIS recommended the construction, operation, and maintenance of downstream fish passage facilities at this project, as proposed by Interior. Interior based its recommendation, in part, on the fact that, due to the proposed

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5/ James River, in its amendment request, contends that the expansion would not be economical with staff's recommended mitigation. Since we are accepting the amendment withdrawing the expansion, we find it unnecessary to discuss this contention.

6/ FEIS, p. 4-32.

7/ FEIS, p. 4-36 - 4-38.



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increase in Gorham's hydraulic capacity (500 cfs increase) and the associated reduction in spillage flows (32 percent to 18 percent), entrainment of fish into the project's turbines would be likely to increase. The Commission's staff estimated that construction of fish passage facilities at the Gorham intake would cost approximately \$530,000 and would not make the project uneconomical.

Without the proposed expansion, however, all flows except spillage would continue to be passed through the existing Gorham powerhouse. The available fisheries data indicated that fish entrainment and mortality was probably not significant at the existing Gorham Project at this time. Moreover, the staff based its recommendation in part on the prospect of a significantly enhanced 1.5-mile-long reach of the river directly above the Gorham impoundment due to decreased instream flows resulting from the Pulsifer Rips bypass reach. Without the Pulsifer Rips expansion, the enhancement plans for that reach would not occur. Excessively high flows (due to the current management of the river) would continue and the amount suitable for fisheries in this reach would remain low. Thus, one of the reasons for providing downstream fish passage at Gorham, the establishment of an upstream fishery, would be negated.

We nevertheless think that the recommended fish passage facilities are still warranted. The staff based its recommendation of fish passage facilities on several considerations besides those already mentioned. These include a general increase in the area's water quality, a significantly enhanced 5,000-ft-long bypass reach below the Gorham dam due to the increased minimum flows recommended for the project to enhance trout habitat, and documented movement of salmonids through the projects from areas upstream. <sup>g/</sup> The withdrawal of the capacity expansions at Cascade and Gorham will not change these conditions. Given the enhanced habitat and the documented downstream fish movements, we find it reasonable to require the construction and operation of Interior's recommended downstream fish passage facilities at Gorham for any salmonids that may be in the project area. Salmonids moving downstream will be afforded protection from turbine entrainment and will be relocated to better habitat conditions in the Gorham bypassed reach.

Elimination of the capacity expansion does not alter the need for inclusion of an article requiring implementation of the programmatic agreement for cultural resource protection.

Considering the mitigation measures to be required as license conditions, staff has performed a revised economic

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<sup>g/</sup> FBIS, p. 4-43.

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analysis of the amended James River Gorham proposal. The analysis assumes that any license issued would be for a 30-year term, since there would be no new construction.

The existing James River Gorham Project has an installed capacity of 4.80 MW and generates about 29.10 GWh of energy per year. The annual operating cost of the existing project is about \$1,529,000 (52.55 mills/kWh). The 30-year levelized annual value of the project's power, based on the cost of purchased power, is about \$4,399,000 (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 \$2,870,000 (98.63 mills/kWh).

The enhancement measures being required include a minimum flow of 200 cfs from June 16 through February 28, and 400 cfs from March 1 through June 15, and downstream fish passage. The minimum flow regimes would reduce the project's existing energy generation by about 3.27 GWh annually, and the project's 30-year levelized net economic benefits by about \$321,000 per year. The downstream fish passage facilities would further reduce the project energy generation by about 0.53 GWh annually and the project's 30-year levelized net economic benefits by about \$119,000 per year. Even with the enhancement measures, the project would provide about 25.30 GWh of clean and renewable energy annually, at a cost significantly below the cost of equivalent replacement power. 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

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operate and maintain the Gorham Project. This license is subject to the terms and conditions of the FPA, which is 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. 2311-</u>	<u>Showing</u>
1	10	Project Location Plan
2	11	Project Area Map 1
3	12	Project Area Map 2

(2) Project works consisting of: (a) a dam, about 775 feet long, with (1) a west earthen dike, 133 feet long, having a concrete core wall, with a crest elevation of 820.0 feet (USGS), (2) a 300-foot-long by 18-foot-high rock-filled timber-crib spillway section, with a crest elevation of 807.3 feet (USGS), topped with 6-foot-high flashboards, (3) a 122-foot-long power canal headgate section (topped with a gatehouse 113 feet long by 16 feet wide), with a sill elevation of 795.0 feet (USGS), having eight operable and two inoperable stoplog gates, each about 7.5 feet wide, and (4) an east earthen dike, 220 feet long, having a concrete core wall, with a crest elevation of 820.0 feet (USGS); (b) a power canal, about 3,350 feet long by 100 feet wide by 18 feet deep; (c) a brick and steel powerhouse, about 20 feet high by 74 feet wide by 127 feet long, with four existing hydroelectric generating units, each with a rated capacity of 1,200 kW, a hydraulic capacity of 550 cfs, and a design head of 29 feet; (d) a reservoir with a surface area of about 45 acres, at a headwater surface elevation of 813.3 feet (USGS); (e) a 22-kV, 50-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 December 23, 1991:

The dam, turbines, generators and pertinent project structures as described on pages A-4 through A-18.

Exhibit F - The following Exhibit F drawings filed on December 23, 1991:

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<u>Exhibit</u>	<u>FERC No.</u>	<u>Showing</u>
F-1	2311-1	Site Plan
F-2	2311-2	Plan View of the Dam and Canal Gatehouse
F-3	2311-3	Downstream Elevation and Section Views of the Dam
F-4	2311-4	Plan, Section and Elevations of the Canal Gatehouse
F-5	2311-5	Powerhouse Floor Plan
F-6	2311-6	Powerhouse Sections
F-7	2311-7	Powerhouse North & West Elevations
F-8	2311-8	Powerhouse South & East 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 6,400 horsepower.

Article 202. Pursuant to Section 10(d) of the FPA, 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

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amounts established in the project amortization reserve account until further order of the Commission.

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 Mooslookmeguntic Lake, Richardson Lake, the Azischoos 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.

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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 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. The Licensee shall release from the Gorham dam into the Androscoggin River a minimum flow of 400 cubic feet per second (cfs) from March 1 to June 15, and 200 cfs from June 16 to February 28, as measured immediately below the Gorham dam, or inflow to the project reservoir, whichever is less, for the protection and enhancement of fish and wildlife resources and water quality in the bypassed reach of the Androscoggin River. This flow may be temporarily modified if required by operating emergencies beyond the control of the Licensee, or for short periods upon 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 403. Within six months from the effective date of the license, the Licensee shall file with the Commission for approval, a plan to monitor run-of-river operation and minimum flows of the project, as stipulated by Articles 401 and 402, respectively, 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

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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 or maintenance of minimum flows, the Commission may direct the Licensee to modify project structures or operations.

Article 404. Authority is reserved to the Commission to require the licensee to construct, operate, and maintain, or provide for the construction, operation, and maintenance of, such fishways as may be prescribed by the Secretary of the Interior.

Article 405. Within six months of the effective date of the 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 monitoring plan. The Licensee shall allow a minimum of 30

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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 406. The Licensee, within six months from the effective date of this license, shall file, for Commission approval, functional design drawings of a trashrack and downstream fish bypass facility to reduce the entrainment of resident fish, together with a schedule to construct/install the facilities before operation of the project.

This filing shall include, but not be limited to specifications of:

- (1) a fish guidance screen angled from the river current towards a bypass sluice;
- (2) the size of the openings between the trashrack bars (not to exceed 1 inch);
- (3) the maximum intake approach velocity;
- (4) a bypass sluice designed to pass a flow of at least 56 cubic feet per second;
- (5) a plunge pool located at the base of the dam;
- (6) the methods and a schedule for installing the facilities; and
- (7) a plan for the operation and maintenance of the facilities.

The Licensee shall prepare the aforementioned drawings and plan after consultation with the New Hampshire Fish and Game Department and the U.S. Fish and Wildlife Service. The Licensee shall include with the drawings and plan documentation of consultation and copies of comments and recommendations on the drawings, schedule, and completed plan after they have been prepared and provided to the agencies, and specific descriptions



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of how the agencies' comments are accommodated by the Licensee's facilities. The Licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations prior to filing the drawings, schedule, and 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 proposed facilities, schedule, and plan. Upon Commission approval, the Licensee shall implement the proposal, including any changes required by the Commission.

Article 407. 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 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 408. Within six months from the effective date of this license, the Licensee shall develop and file, for Commission approval, a recreation plan to enhance public access to the Androscoggin River. The plan shall include, but not be limited to: (1) provisions to formally designate the project area as open to the public and to post the causeway entrance as a public access point; (2) a system for monitoring recreational use (especially fishing activity) and provisions for modifying existing facilities when use begins to exceed capacity; (3) a discussion of who would maintain the public use area; (4) provisions for the disabled that comply with the Americans With Disabilities Act (ADA); and (5) a schedule for completing items (1) through (4).

The Licensee shall prepare the plan after consultation with the New Hampshire Fish and Game Department, the National Park Service, and the Appalachian Mountain Club. 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

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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 409. Within six months from the effective date of this license, the Licensee shall develop and file, for Commission approval, a plan for aesthetic enhancements. The plan shall include, but not be limited to: (1) 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; (2) a schedule for completing item (1).

The Licensee shall prepare the plan after consultation with the Town of Gorham, 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 410. Within one year from the effective date of this license, the Licensee shall develop and file, for Commission approval, a shore land protection plan. The plan shall be designed to protect the aesthetics of and public access to the project's shore lands. The plan shall include, but not be limited to: (1) maps delineating the shore land protective buffer zone area; (2) the method by which the buffer zone would be maintained, including any cost and method of acquiring (fee or less-than-fee) the various land parcels that comprise the buffer, and the criteria used for selecting the buffer zone widths; and (3) provisions for: (a) maintaining prescribed minimum-width, no tree-cutting, buffer zones around the project's shores, public roads, and private property; (b) carefully planning any timber clearing activities adjacent to the buffer zones, including giving special consideration to the scale and pattern of any areas where cutting is performed; (c) minimizing openings in shoreline vegetation where future recreational facility development requires construction closer to the shoreline than the prescribed minimum-width buffer zone; (d) maintaining the

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project transmission line right-of-ways in a way that minimizes adverse aesthetic effects caused by the clearing of vegetation; (e) landscape screening, on a as-needed basis, for all storage buildings, parking areas, and other adverse visual features that are visible from the shoreline, impoundment, or other adjacent critical viewpoints. Further, the licensee should conduct a periodic inspection of project lands to identify any features in need of screening or general clean-up, and subsequently take remedial action.

The Licensee shall prepare the plan after consultation with the Town of Gorham, New Hampshire Fish and Game 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 411. (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 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.

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(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-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.

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(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:

(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.

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(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.

(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.

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(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.

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