

UNITED STATES OF AMERICA 115 FERC ¶ 62, 311
FEDERAL ENERGY REGULATORY COMMISSION

Erie Boulevard Hydropower, L.P.

Project No. 7321-018

ORDER ON OFFER OF SETTLEMENT
AND ISSUING SUBSEQUENT LICENSE

(June 23, 2006)

INTRODUCTION

1. On November 26, 2004, pursuant to Part I of the Federal Power Act (FPA),¹ Erie Boulevard Hydropower, L.P. (Erie Boulevard) filed an application for a subsequent license to continue to operate the existing 1,000-kilowatt (kW) Macomb Project No. 7321. The application included a Settlement Agreement (Settlement) between Erie Boulevard and several resource agencies and municipalities resolving the entities' concerns over developmental and non-developmental impacts of the project.² The project is located on the Salmon River in the Town of Malone, Franklin County, New York.³ The project does not occupy any federal lands. As discussed below, I am issuing a subsequent license for the project.

¹ 16 U.S.C. §§ 791a – 825r.

² In addition to Erie Boulevard, the Settlement was signed by the following entities: American Rivers; American Whitewater; Franklin County, New York; New York Rivers United; New York State Conservation Council; New York State Department of Environmental Conservation (New York DEC); New York State Council of Trout Unlimited; the Town of Malone, New York; U.S. Fish and Wildlife Service (FWS); National Park Service; and the Village of Malone, New York.

³ The project is located on the Salmon River, which is tributary of the St. Lawrence River, a navigable waterway; it is connected to the interstate distribution grid; and, although the project was constructed in 1899, it was rebuilt in 1940 to increase generating capacity. Since the project is located on a stream over which Congress has Commerce Clause jurisdiction, it affects interstate commerce, and it includes post-1935 construction, it is required to be licensed under section 23(b)(1) of the FPA. 16 U.S.C. § 817(1).

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BACKGROUND

2. The original license for the project, issued on December 29, 1986,⁴ will expire on November 30, 2006.⁵

3. Notice of the application was published in the Federal Register on January 12, 2004. Timely motions to intervene were filed by the New York DEC and the U.S. Department of the Interior (Interior).⁶

4. On March 28, 2005, the Commission issued public notice that the project was ready for environmental analysis and solicited comments, recommendations, terms and conditions, and prescriptions. In response, comments and recommendations were filed by Interior.

5. An environmental assessment (EA) was prepared by Commission staff and issued on December 19, 2005.

6. Interior, New York DEC, New York State Office of Parks, Recreation, and Historic Preservation (SHPO), and Erie Boulevard filed comments on the EA. The motions to intervene, comments, and recommendations have been fully considered in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

7. The Macomb Project includes a 106-foot-long, 32-foot-high concrete gravity overflow-type dam that impounds the 14-acre Lamica Lake reservoir. A 38-foot-long, 25-foot-high intake structure along the left bank of the river,⁷ which is equipped with a

⁴ 37 FERC ¶ 62,270 (1986). The original license was issued to the Niagra Mohawk Power Corporation. In 1999, the license was transferred to Erie Boulevard. 88 FERC ¶ 62,082 (1999).

⁵ Consistent with the Commission's order in *Idaho Power Company*, 7 FERC ¶ 61,253 (1979), the license term was backdated to 1956, fifty years before its expiration date. 37 FERC ¶ 62,270 at 63,370.

⁶ The motions were timely and unopposed and therefore automatically granted by operation of 18 C.F.R. § 385.214(c)(1) (2005).

⁷ A similar intake structure along the right bank of the river, which is also included under the license, is inoperable.

2.5-inch clear bar spaced trashrack, leads to a 6.5-foot-diameter, 60-foot-long gated penstock, which in turn leads to a powerhouse below the dam containing a single generating unit with an installed capacity of 1,000 kilowatts (kW). The penstock and powerhouse bypass about a 100-foot-long reach of the Salmon River.

8. A more detailed project description is contained in ordering paragraph (B)(2). The project boundary encloses the project reservoir up to the normal pool elevation of 570.7 feet mean sea level (msl), the facilities described above, an access easement and right-of-way on the east side of the reservoir, an access road on the south bank of the river, and the tailrace downstream of the project dam.

9. The original license for the project includes a 370-foot-long, 34.5-kilovolt transmission line.⁸ On March 24, 2005, Commission staff sent Erie Boulevard a letter noting, among other things, that while the application referenced the transmission line, the application's exhibit G (project boundary maps) failed to include it within the project boundary.⁹ Staff requested an appropriately revised exhibit G. In its response to staff's letter, filed April 1, 2005, Erie Boulevard stated that the exhibit G, as filed, is correct and that the transmission line, connected to Erie Boulevard's substation, belongs to Niagara Mohawk Corporation "as part of its integrated transmission system." Erie submitted revised page A-8 for its application to eliminate the reference to the transmission line as being part of the project.

10. The Commission's test for a primary line is that the line is used solely to transmit power from the licensed project to a load center, and that without the line there would be no way to transmit all the project power to market. Under this test, the line leading from a project ceases to be a primary line at the point it is no longer used solely to transmit power from the project to the interconnected grid.¹⁰ Erie Boulevard's response fails to show that the 370-foot transmission line is transmitting any power except that which is

⁸ 37 FERC ¶ 62,270 at 63,371.

⁹ The exhibit G shows a transmission line connected to the powerhouse labeled "Spencers Corners – Malone #26 34.5 kV transmission line". The single-line diagram in appendix H-1 of the license application shows the project generator connected to the Spencers Corner – Malone #26 transmission line through the project substation and appurtenant facilities. No other transmission lines are shown on exhibit G or the single-line diagram.

¹⁰ See, e.g., *Vermont Electric Generation & Transmission Cooperative, Inc. and North Hartland, LLC*, 104 FERC ¶ 61,151 at P 8 (2003) and the orders cited there.

generated by the project. The current ownership of the line is irrelevant. Consequently, I am including the transmission line in this license and requiring Erie Boulevard to file an appropriately revised exhibit G. Standard license Article 5 requires Erie Boulevard to obtain sufficient rights in the line to operate and maintain the line in accordance with the license.

11. The current license requires Erie Boulevard to release a minimum flow of 125 cubic feet per second (cfs) or inflow, whichever is less, from the project and maintain the headpond elevation no lower than 569.7 msl, which is 1 foot below the spillway crest. Flows greater than the hydraulic capacity of the generating unit (310 cfs) are passed over the spillway crest. At flows between 310 cfs and 125 cfs, flow is passed through the turbine and the allowable 1 foot drawdown below the spillway crest is utilized as needed to facilitate generation and ensure provision of the 125-cfs base flow required by the current license. When inflow to the project is below 125 cfs, flow is released through the turbine or is spilled and the pond elevation is maintained near the crest of the spillway. The generating unit is controlled by a Programmable Logic Controller (PLC), which adjusts the gate position according to inflow. When inflow decreases to a point where there is a 50 percent gate opening, the PLC control is shut off and the project is operated manually by the local operator.

12. Consistent with the Settlement, Erie Boulevard proposes to limit daily impoundment fluctuations to 0.25 foot as measured in a downward direction from the spillway crest of the dam (570.7 feet msl) when inflow exceeds 125 cfs, and operate run-of-river when inflow is 125 cfs or less. Erie Boulevard also proposes to maintain a baseflow of 125 cfs or inflow to the impoundment, whichever is less, from the project's tailrace. No new capacity or construction is proposed.

SETTLEMENT AGREEMENT

13. The Settlement parties request that the Commission incorporate the provisions (environmental mitigation measures) of section 3.0 of the Settlement (attached to this license as appendix B), without material modification, as license conditions. The water quality certification (certification), issued for the project under section 401(a)(1) of the Clean Water Act, (attached to this license as appendix A) includes conditions for project operation and the provisions of section 3.0 of the Settlement. The certification conditions are included in this license by ordering paragraph E. The EA recommended adoption of the provisions of section 3.0 of the Settlement. The Settlement parties ask that section 4.0 of the Settlement, which addresses recreation measures in the project area, not be included in the license.

Background and General Agreement Sections

14. Sections 1.0 and 2.0 introduce the Settlement, and the general agreements of the parties to the Settlement, its purpose, and definitions of terms.

Terms of the Settlement for Inclusion in the License

15. Section 3.0 describes the provisions agreed to by the settlement parties that are to be included in the license and are described below.

- Daily Impoundment Fluctuation as Part of Normal Operations

16. Under section 3.1 of the Settlement, Erie Boulevard will limit daily impoundment fluctuations as part of normal operation within the Macomb impoundment and will operate the project run-of-river when river flow is 125 cfs or less, as specified in table 3-1 of the Settlement. Section 3.1 also requires Erie Boulevard to make a good faith effort to limit normal impoundment fluctuation to 0.25-foot; however only drawdowns below 0.5-foot will be reportable to the Commission or New York DEC by the Settlement parties. These operational requirements are to be implemented within 18 months of license issuance and are stipulated in condition 8 of the certification.

- Base Flow Release

17. Under section 3.2, Erie Boulevard will continue to maintain a baseflow (which section 1.10 of the Settlement defines, in part, as “[t]he required minimum instantaneous instream flow...”) of 125 cfs or inflow to the Macomb impoundment, whichever is less, from the project’s tailrace. This operational requirement is stipulated in condition 9 of the certification.

- Sediment Management Plan

18. Under section 3.3 of the Settlement, Erie Boulevard will continue to implement the Interim Sediment Management Plan¹¹ (filed with the license application on November 26, 2006) upon license issuance and will cooperate with the New York DEC in development of a Final Sediment Management Plan. Sediment management, as described in the Settlement, is required by condition 12 of the certification. This

¹¹ By letter dated September 9, 2005, the Commission’s Division of Hydropower Administration and Compliance required Erie Boulevard to comply with the Interim Sediment Management Plan until the New York DEC approves the Final Sediment Management Plan.

condition also stipulates that, upon the New York DEC's approval, a Final Sediment Management Plan will be included and incorporated into the certification. Article 401 requires Erie Boulevard to file the plan for Commission approval.

- Fish Movement and Protection

19. Under section 3.4, Erie Boulevard will either (1) install seasonal trashrack overlays with 1.0-inch clear spacing over the full length and on the upstream face of the existing trashracks, or (2) replace the full length of the existing trashracks with trashracks with 1.0-inch clear spacing. This is to occur within 8 years of license issuance or when the existing trashracks need replacing, whichever is sooner. This provision is required by condition 11 of the certification. Article 402 requires Erie Boulevard to file a trashrack installation plan for Commission approval.

- Fish Stocking

20. Under section 3.5, Erie Boulevard will install a fish stocking tube that will allow the New York DEC to stock fish directly into the project's tailrace. Erie Boulevard will maintain the fish stocking tube, and the New York DEC will be responsible for all stocking activities. The fish stocking tube will be installed within 24 months of license issuance, and the New York DEC will notify the licensee at least five working days prior to use of the fish stocking tube. This provision is required by condition 13 of the certification. Article 401 requires Erie Boulevard to document installation of the stocking tube.

- Flow and Water-Level Monitoring

21. Under section 3.6, Erie Boulevard will develop a stream-flow and water-level monitoring plan in consultation with the New York DEC and the FWS within 6 months of license issuance. The plan will include all gages and/or equipment necessary to determine: (1) headpond elevations as needed; (2) monitor flow through the project turbines, sluice gates, and spillways; and (3) provide an appropriate means of independent verification of water levels by the New York DEC and FWS. This plan is required by condition 10 of the certification. Article 401 requires Erie Boulevard to file the plan for Commission approval.

- Fish Passage and Section 18

22. Section 3.7 stipulates that no fishways will be required as a part of the Settlement. The section notes that Interior will reserve its authority under section 18 of the FPA to prescribe upstream or downstream fish passage facilities in the future, ensuring that adequate facilities for fish passage can be required should management goals or needs change during the life of the license.

Settlement Provisions Not for Inclusion in the License

23. Section 4.0 describes recreation provisions agreed to in the Settlement that are not intended by the signatories to be included in the license. Under section 4.0, Erie Boulevard will enhance an existing car-top boat launch on Town of Malone property adjacent to the impoundment, and develop a recreational trail and parking area on its property immediately north of the project. These provisions are discussed further in the "Comments on the EA" section of this order.

WATER QUALITY CERTIFICATION

24. Under section 401(a)(1) of the Clean Water Act (CWA),¹² the Commission may not issue a license authorizing the construction or operation of a hydroelectric project unless the state water quality certifying agency either has issued certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA provides that the certification shall become a condition of any federal license that authorizes construction or operation of the project.¹³

25. On May 9, 2005, Erie Boulevard requested certification from the New York DEC. New York DEC received Erie Boulevard's request on May 10, 2005, and issued certification for the project on March 22, 2006. The certification contains 23 conditions including requirements, which reflect the Settlement provisions, for impoundment fluctuations, base flows, flow and water level monitoring, fish protection, sediment management, a fish stocking tube, and project maintenance and construction. The conditions of the certification are set forth in appendix A of this order and incorporated into the license by ordering paragraph D.

COSTAL ZONE MANAGEMENT ACT

26. Under section 307(c)(3)(A) of the Costal Zone Management Act (CZMA),¹⁴ the Commission cannot issue a license for a project within or affecting a state's costal zone unless the state CZMA agency concurs with the license applicant's certification of consistency with the state's CZMA program, or the agency's concurrence is conclusively presumed by its failure to act within 180 days of its receipt of the applicant's certification.

¹² 33 U.S.C. § 1341(a)(1).

¹³ 33 U.S.C. § 1341(d).

¹⁴ 16 U.S.C. § 1456(3)(A).

27. By letter dated April 2, 2004, (appendix E-1 of the filed license application) the New York Department of State, Division of Coastal Resources (New York DOS) determined that the Macomb Project is not subject to the consistency provisions of the New York State Coastal Management Program. New York DOS notes that the project, as proposed, is located outside the state's designated coastal area and is not likely to affect land and water uses and natural resources within the state's coastal area. Therefore, no consistency certification is required.

SECTION 18 FISHWAY PRESCRIPTIONS

28. Section 18 of the Federal Power Act, 16 U.S.C. § 811, provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate. In a letter filed May 20, 2005, Interior requested that the Commission reserve its authority to require fishways that it may prescribe in the future. Consistent with the Commission's policy, Article 403 of this license reserves the Commission's authority to require fishways that may be prescribed by Interior for the project.

THREATENED AND ENDANGERED SPECIES

29. Section 7(a)(2) of the Endangered Species Act of 1973 (ESA)¹⁵ requires federal agencies to ensure their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat. No federally listed or proposed-for-listing endangered or threatened species are known to exist in the project area, and no habitat in the project area is currently designated or proposed for designation as critical habitat. Based on this, the EA found that continued operation of the project would not affect listed species or critical habitat. Therefore, no further section 7 consultation is required.

NATIONAL HISTORIC PRESERVATION ACT ISSUES

30. By letter to Erie Boulevard dated November 4, 2004, the New York State Historic Preservation Officer (SHPO) determined that the Macomb Project meets the criteria for inclusion in the National Register of Historic Places as an intact and representative example of turn-of-the-century hydroelectric architecture and engineering, as upgraded around 1940. The SHPO determined that Erie Boulevard's proposal to

¹⁵ 16 U.S.C. § 1536(a).

replace the trash racks would have no adverse effect on historic resources. In addition, the SHPO determined that the Macomb Project's area of potential effect (APE) is archaeologically sensitive due to the presence of archaeological sites within or adjacent to the project area.

31. Relicensing the project is considered an undertaking within the scope of section 106 of the National Historic Preservation Act (NHPA), as amended, 16 U.S.C. § 470. Section 106 requires the Commission to take into account the effects of its undertakings on properties eligible for inclusion in the National Register of Historic Places and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. On May 5, 2006, the Commission and the SHPO executed a Programmatic Agreement (PA) for managing historic properties that may be affected by issuing a subsequent license for the project.¹⁶ The PA stipulates that Erie will conduct surveys in the archaeologically-sensitive areas and prepare a historic properties management plan that will include measures to protect cultural resources. Execution and subsequent implementation of the PA evidences the Commission as having satisfied its responsibilities under the NHPA. Article 405 requires Erie Boulevard to implement the PA.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

A. Recommendations Pursuant to Section 10(j) of the FPA

32. Section 10(j)(1) of the FPA¹⁷ requires the Commission, when issuing a license, to include conditions based on recommendations by federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act,¹⁸ to "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)" affected by the project.

¹⁶ Programmatic Agreement Among the Federal Energy Regulatory Commission and the New York State Historic Preservation Officer for Managing Historic Properties That May Be Affected By Issuing a License to Erie Boulevard Hydropower, L.P. for the Continued Operation of the Macomb Hydroelectric Project In Franklin County, New York (FERC No. 7321).

¹⁷ 16 U.S.C. § 803(j)(1).

¹⁸ 16 U.S.C. §§ 661, *et seq.*

33. In response to the March 28, 2005, public notice that the project was ready for environmental analysis, Interior filed six 10(j) recommendations on May 20, 2005. All six recommendations were found to be within the scope of section 10(j). This license includes conditions consistent with all six of these recommendations to: (1) limit daily impoundment level fluctuations (certification condition 8); (2) maintain a 125-cfs baseflow (certification condition 9); (3) manage sediment (certification condition 12 and Article 401); (4) install a trashrack or seasonal overlay with one-inch clear spacing (certification condition 11 and Article 402); (5) install a fish stocking tube (certification condition 13 and Article 401); and (6) develop a flow monitoring plan (certification condition 10 and Article 401). The New York DEC did not file recommendations under section 10(j).

B. Recommendations Pursuant to Section 10(a)(1) of the FPA

34. Interior made several recommendations pursuant to the broad public-interest standard of FPA section 10(a)(1).¹⁹

35. First, Interior recommended that all measures intended by the Settlement to be license conditions be included in the license without modification, as numbered license articles. The certification conditions (appendix A) stipulate the provisions within section 3.0 of the Settlement be included and these conditions are included in this license by ordering paragraph D.

36. Regarding Interior's recommendation that Erie Boulevard strive to limit daily impoundment drawdowns to 0.25 feet below the crest of the spillway, as noted, section 3.1 of the Settlement provides that Erie Boulevard will make a good faith effort to limit normal impoundment fluctuations to 0.25-foot; however only drawdowns more than 0.5-foot will be reportable to the Commission or the New York DEC. This provision is required by condition 8 of the certification.

37. Finally, this license is consistent with Interior's recommendation for a license term of 35 years.

¹⁹ 16 U.S.C. § 803(a)(1). Section 10(a)(1) requires that any project for which the Commission issues a license shall be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and utilization of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.

COMMENTS ON THE EA*Recreation*

38. Recreational access at the project is currently provided by a Town of Malone car-top boat launch adjacent to the impoundment, and informal fishing access areas near the dam. Section 4.0 of the Settlement provides for a number of recreation enhancements that are not intended to be included in the license. These measures include enhancing the Town of Malone car-top boat launch and developing a recreational trail and parking area on Erie Boulevard property immediately north of the project. The EA recommended that these measures be included as conditions of the license and that the areas be brought into the project boundary to ensure the sites are maintained throughout the license term.

39. In their comments on the EA, Erie Boulevard objects to the requirement that these measures be included in the license and brought into the project boundary, stating this would constitute a material and significant modification of the Settlement. Erie Boulevard notes that the cost of preparing the license application was relatively high for such a small project, and that the cost of measures unanticipated by the Settlement, such as bringing additional recreational facilities into the license, could make the project uneconomical.

40. Erie Boulevard instead asks that it only be required by the license to maintain the informal fishing access areas and the portions of the proposed trail that are within its project boundary. In addition, Erie Boulevard states that it would monitor recreation at the project and provide recreation facilities in the future, if needed. The New York DEC, in its comments on the EA, also notes that the EA's recommended inclusion of the recreation measures in the license is inconsistent with the Settlement and unnecessary.

41. Current recreational use of the project is light and public access areas appear sufficient for the foreseeable future. In addition, Standard Article 13 of this license requires that the licensee allow the public reasonable access to project lands and waters for recreational purposes.²⁰ Therefore, Erie Boulevard's monitoring proposal is a reasonable alternative to the EA recommendation for ensuring recreational access to the project is maintained throughout the term of the license. Article 404, therefore, requires that Erie Boulevard monitor recreational use at the project and file a report with the Commission every 6 years concurrent with the FERC Form 80 filing required under section 8.11 of the Commission's regulations. Moreover, Article 203, which requires a

²⁰ See Standard Article 13, which is included in Form L-12, reprinted at 54 FPC 1871 (1975), and is attached to this license.

revised project boundary, requires Erie Boulevard to identify the informal recreation access areas and portion of the trail Erie Boulevard proposes to maintain.

ADMINISTRATIVE CONDITIONS

A. Annual Charges

42. The Commission collects annual charges from licensees for administration of the FPA. Article 201 provides for the collection of funds for administration of the FPA. Under the regulations currently in effect, projects, such as the Macomb Project, with an authorized installed capacity of less than or equal to 1,500 kW are not assessed an annual charge.

B. Exhibit F Drawings

43. The exhibit F drawings filed with the license application are approved and made part of this license. The Commission requires licensees to file sets of approved project drawings on microfilm and in electronic file format. Article 202 requires the filing of these drawings.

C. Exhibit G Drawing

44. The exhibit G drawing filed with the license application show the project boundary with three control points with New York State plane coordinates, and stamped by a Registered Land Surveyor. However, the exhibit G drawing does not include the 370-foot-long transmission line within the project boundary needed to deliver project power to the interconnected grid. Therefore, Erie Boulevard should revise the project boundary to include the transmission line necessary for operation and maintenance of the project. Article 203 requires Erie Boulevard to file a revised exhibit G drawing. The exhibit G drawing filed on November 26, 2004, is not approved and is not made part of the license (see ordering paragraph (C)).

D. Use and Occupancy of Project Lands and Waters

45. Requiring a licensee to obtain prior Commission approval for every use or occupancy of project land would be unduly burdensome. Therefore, Article 406 allows the licensee to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape planting. Such uses must be consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project.

E. Review of Final Plans and Specifications

46. Consistent with the Settlement, this license requires Erie Boulevard to replace the existing trashracks at the project with trashracks with 1.0-inch clear spacing or to install seasonal overlays. Article 301 requires the licensee to provide the Commission's Division of Dam Safety and Inspection New York Regional Office (D2SI-NYRO) with contract plans and specifications, including a quality control and inspection program, a temporary emergency action plan, and Soil Erosion and Sediment Control Plan for constructing or replacing existing trashracks with trashracks with 1.0-inch clear spacing, or installing seasonal overlays.

47. Article 302 requires Erie Boulevard to provide the Commission's D2SI-NYRO with cofferdam construction drawings.

48. Article 303 requires Erie Boulevard to provide the Commission's D2SI-NYRO with revised exhibits A, F, and G, as applicable, that show and describe project features as-built.

STATE AND FEDERAL COMPREHENSIVE PLANS

49. Section 10(a)(2)(A) of the FPA, 16 U.S.C. § 803(a)(2)(A)(2005), requires the Commission to 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. Staff identified and reviewed seven comprehensive plans that address resources relevant to the Macomb Project.²¹ No inconsistencies were found.

APPLICANT'S PLANS AND CAPABILITIES

50. In accordance with section 10 of the FPA²² and the Commission's regulations, I have evaluated Erie Boulevard's record as a licensee with respect to: (A) need for power; and (B) safe management, operation, and maintenance of the project.²³ I accept the staff's finding in each of the following areas.

²¹ The list of applicable plans can be found in section IX of the environmental assessment for the project.

²² 16 U.S.C. § 803.

²³ In order No. 513, the Commission exempted licenses of minor projects, such as the Macomb Hydroelectric Project, whose licenses waive sections 14 and 15 of the FPA, from the information requirements of 18 C.F.R. § 16.10. *See Hydroelectric Relicensing*

A. Need for Power

51. The Macomb Project is located in the Northeast Power Coordinating Council (NPCC) region of the North American Electric Reliability Council (NERC). According to NERC, a 1.0 percent annual growth rate is expected over the 2004-2013 period, with a summer peak demand growth rate of 1.2 percent in the New York area (NERC, 2004). Staff conclude that the project's power, low cost, displacement of nonrenewable fossil-fired generation, and contribution to the region's diversified generation mix, will help meet the need for power in the region.

B. Safe Management

52. Staff have reviewed Erie Boulevard's management, operation, and maintenance of the Macomb Project and the project's Operation Reports and concludes that the dam and other project works are safe, and concludes that there is no reason to believe that Erie Boulevard cannot continue to safely manage, operate, and maintain these facilities under a subsequent license.

PROJECT ECONOMICS

53. In determining whether to issue a subsequent license for an existing hydroelectric project, the Commission considers a number of public interest factors, including the economic benefit of project power. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.*,²⁴ the Commission uses current costs to compare the costs of the project and likely alternative power with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and of reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

54. As proposed by Erie Boulevard, consistent with the Settlement, and with the mandatory certification conditions, the annual cost of operating the Macomb Project would be about \$269,250 (47.57 mills/kWh). The annual power value, for the estimated

Regulations Under the Federal Power Act, 54 *Fed. Reg.* 23756 (June 2, 1989) and 55 *Fed. Reg.* 10768 (March 23, 1990), FERC Statutes and Regulations, Regs. Preambles 1986-1990 ¶ 30,854 at 31,445 (May 17, 1989).

²⁴ 72 FERC ¶ 61,027 (1995).

annual generation of 5,660 MWh, would be \$307,030 (54.24 mills/kWh).²⁵ To determine whether the proposed project is currently economically beneficial, staff subtract the project's cost from the value of the power the project produces. Therefore, in the first year of operation, the project would cost \$37,780 (6.67 mills/kWh) less than the likely alternative cost of power.

55. If licensed as proposed by Erie Boulevard, consistent with the certification conditions and with the staff-recommended measures,²⁶ the Macomb Project would produce an average of 5,660 MWh of energy annually at a cost of about \$270,000 or 47.70 mills/kWh. The annual value of the project's power would be about \$307,030 or 54.24 mills/kWh. Therefore, in the first year of operation, the project would cost \$37,030, or 6.54 mills/kWh less than currently available alternative power.

56. In considering public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary service benefits). These benefits include their capability to provide an almost instantaneous load-following response to dampen voltage and frequency instability on the transmission system, system-power-factor-correction through condensing operations, and a source of power available to help in quickly putting fossil-fuel based generating stations back on line following a major utility system or regional blackout.

COMPREHENSIVE DEVELOPMENT

57. Sections 4(e) and 10(a)(1) of the FPA,²⁷ respectively, require the Commission to give equal consideration to power development purposes and to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a

²⁵ The annual value of alternative power is based on information in Energy Information Administration's Annual Energy Outlook at <http://www.eia.doe.gov/oiaf/aeo/index.html>.

²⁶ The staff-recommended measures include developing plans for trashrack replacement or modification and recreation monitoring, and implementing a programmatic agreement.

²⁷ 16 U.S.C. § 797(e) and 803(a)(1).

waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

58. The EA for the Macomb Project contains background information, analysis of impacts, support for related license articles, and the basis for a finding that issuance of the license is not a major federal action significantly affecting the quality of the human environment. The project would be safe if operated and maintained in accordance with the requirements of this license.

59. Based on my independent review and evaluation of the Project, recommendations from resource agencies, and the no-action alternative, as documented in the EA, I have selected the proposed Macomb Project, with the staff-recommended measures, and find that it is best adapted to a comprehensive plan for improving or developing the Salmon River.

60. I selected this alternative because: (1) issuance of the subsequent license will serve to maintain a beneficial, dependable, and inexpensive source of electric energy; (2) the required environmental measures will protect fish and wildlife resources, water quality, recreational resources, and historic properties; (3) the 1,000 kW of electric energy generated from this renewable resource would continue to offset the use of fossil-fueled generating plants, thereby conserving nonrenewable resources and reducing atmospheric pollution.

LICENSE TERM

61. The Commission's general policy is to establish 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive measures. In section 2.1 of the Settlement, the signatories agree to a 35-year license term. Because the term of the license was likely an important element in the negotiations that led to the Settlement, I will issue the license for a term of 35 years.

The Director orders:

(A) This license is issued to Erie Boulevard Hydropower, L.P. (licensee), for a period of 35 years, effective December 1, 2006, to operate and maintain the Macomb 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.

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(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by exhibit G drawings filed November 26, 2004:

| <u>Exhibit G Drawings</u> | <u>FERC No. 7321-</u> | <u>Description</u> |
|---------------------------|-----------------------|--------------------|
| 1 | 1001 | Detail Map |

(2) Project works consisting of: (1) a 106-foot-long, 32-foot-high concrete gravity overflow-type dam having a spillway crest elevation of 570.7 feet above mean sea level (msl); (2) a 38-foot-long, 25-foot-high intake structure along each bank; (3) two 6-foot-diameter, 60-foot-long, gated waste tubes (one along the north bank, and the other on the south side of the spillway); (4) a 14-acre reservoir with a net storage capacity of 14 acre-feet at the spillway crest elevation; (5) a 6.5-foot-diameter, 60-foot-long, gated penstock along the left (south) bank; (6) a powerhouse containing one 1,000-kW horizontal Francis turbine; (7) a 370-foot-long, 34.5-kV transmission line; and (8) 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: Pages A-1 through A-9 filed on November 26, 2004.

The following exhibit F drawings filed on November 26, 2004:

| <u>Exhibit F Drawings</u> | <u>FERC No. 7321-</u> | <u>Description</u> |
|---------------------------|-----------------------|---|
| 1 | 1002 | General Plan Intake and Spillway Sections |
| 2 | 1003 | Powerhouse Plan, Elevation and Section |

(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 all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) The exhibits A and F described above are approved and made part of the license. The exhibit G drawing filed on November 26, 2004, does not conform to Commission regulations and is not approved. The revised exhibit G drawing should include the 370-foot-long transmission line, and show the existing informal recreational access areas and the trail the licensee will maintain within the project boundary.

(D) This license is subject to the conditions submitted by the New York State Department of Environmental Conservation under section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1431(a)(1), as those conditions are set forth in appendix A to this order.

(E) Section 3.0 of the Macomb Project Settlement is attached as appendix B for clarity and information.

(F) The following sections of the FPA are waived and excluded from the license for this minor project:

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

(G) This license is subject to the articles set forth in Form L-12 (October 1975), entitled "Terms and Conditions of License for Constructed Minor Project Affecting the Interests of Interstate or Foreign Commerce" (*see* 54 FPC 1817), and the following additional articles:

Article 201. *Administrative Annual Charges.* The licensee shall pay the United States the following annual charges effective December 1, 2006, and as determined in accordance with the provisions of the Commission's regulations in effect from time to time, for the purpose of reimbursing the United States for the cost of administration of Part I of the Federal Power Act. The authorized installed capacity for that purpose is 1,000 kilowatts. Under the regulations currently in effect, projects with authorized installed capacity of less than or equal to 1,500 kilowatts will not be assessed annual charges.

Article 202. *Exhibit Drawings.* Within 45 days of the effective date of this license, the licensee shall file the approved exhibit F drawings in aperture card and electronic file formats.

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a) Three sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Project Drawing Number (*i.e.*, P-1234-#### through P-1234-####) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (*i.e.*, F-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

Two of the sets of aperture cards shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections New York Regional Office.

b) The licensee shall file two separate sets of exhibit drawings in electronic raster format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections New York Regional Office. Exhibit F drawings must be identified as critical energy infrastructure information (CEII) material under 18 CFR §388.113(c). Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this license, and file extension in the following format [P-1234-####, F-1, Description, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

IMAGERY - black & white raster file
 FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4
 RESOLUTION – 300 dpi desired, (200 dpi min)
 DRAWING SIZE FORMAT – 24" X 36" (min), 28" X 40" (max)
 FILE SIZE – less than 1 MB desired

Article 203. Exhibit G Drawings. Within 60 days of the effective date of this license, the licensee shall file, for Commission approval, a revised exhibit G drawing enclosing project features that are licensed, including the transmission line necessary for operation and maintenance of the project. The revised exhibit G drawing must also show the existing informal recreational access areas and portion of the hiking trail the licensee will maintain within the project boundary. The exhibit G drawing shall be filed electronically pursuant to 18 CFR sections 4.39 and 4.41.

Article 301. Contract Plans and Specifications. At least 60 days prior to the start of construction or replacement of existing trashracks with trashracks with 1.0-inch clear spacing, or to install seasonal overlays, the licensee shall submit one copy of its plans and specifications design document to the Commission's Division of Dam Safety and Inspections (D2SI) - New York Regional Engineer, and two copies to the Commission

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(one of these shall be a courtesy copy to the Director, D2SI). The submittal must also include as part of preconstruction requirements: a Quality Control and Inspection Program, Temporary Construction Emergency Action Plan, and Soil Erosion and Sediment Control Plan. The licensee may not begin construction until the D2SI-New York Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

Article 302. Cofferdam Construction Drawings. Before starting construction of the new trashracks on the intake structure, the licensee shall review and approve the design of contractor-designed cofferdams and deep excavations and shall make sure construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days before starting construction of the cofferdam, the licensee shall submit one copy to the Commission's D2SI - New York Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, Division of Dam Safety and Inspections), of the approved cofferdam construction drawings and specifications and the letters of approval.

Article 303. As-built Drawings. Within 90 days of completion of all construction activities authorized by this license, the licensee shall file for Commission approval, revised exhibits A, F, and G, as applicable, to describe and show those project facilities as built. A courtesy copy shall be filed with the Commission's D2SI - New York Regional Engineer, the Director, D2SI, and the Director, DHAC.

Article 401. Commission Approval and Reporting.

(a) Requirement to File Plans for Commission Approval

The New York State Department of Environmental Conservation (New York DEC) water quality certification, filed April 19, 2006 (issued March 22, 2006), requires the licensee to develop certain plans without prior Commission approval. The plans shall be submitted to the Commission for approval. The plans are listed below.

| New York DEC Certification Condition No. (appendix A of this license order) | Settlement (filed November 26, 2004) Section No. (appendix B of this license order) | Plan Name | Due Date |
|---|---|--------------------------------------|---|
| 10 | 3.6 | Flow and Water Level Monitoring Plan | Within 30 days of the effective date of the license |

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| New York DEC Certification Condition No. (appendix A of this license order) | Settlement (filed November 26, 2004) Section No. (appendix B of this license order) | Plan Name | Due Date |
|---|---|--------------------------------|--|
| 12 | 3.3 | Final Sediment Management Plan | Within 60 days after New York DEC approval |

The licensee shall submit to the Commission documentation of its consultation, copies of comments and recommendations made in connection with the plan, and a description of how the plan accommodates the comments and recommendations. 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 make changes to any plan submitted. Upon Commission approval the plan becomes a requirement of the license, and the licensee shall implement the plan or changes in project operations or facilities, including any changes required by the Commission.

(B) Requirement to File Documentation of Completion

The licensee shall file with the Commission the following reports or notifications according to the schedule set forth below.

| New York DEC Certification Condition No. (appendix A of this license order) | Settlement (filed November 26, 2004) Section Nos. (appendix B of this license order) | License Requirement | Due Date |
|---|--|--|--|
| 6 | 3.1, 3.2, 3.3, and 3.4 | Emergency Activities Notification | Within 24 hours of commencing emergency activities |
| 13 | 3.5 | Fish Stocking Tube Installation Notification | Within 60 days of completing installation |

| New York DEC Certification Condition No. (appendix A of this license order) | Settlement (filed November 26, 2004) Section Nos. (appendix B of this license order) | License Requirement | Due Date |
|---|--|--|--|
| 16 | | Sediment Sampling Results | 45 days prior to disturbing sediment |
| 18 | | Temporary Structures Design Notification | 60 days prior to installation of structure |
| 21 | | Inadequate River Flow Notification | Within 24 hours of each incident |

Article 402. Trashracks Plan. As required by condition 11 of the water quality certification in appendix A and section 3.4 of appendix B of this order, the licensee shall replace or modify (with seasonal overlays) the existing trashracks with 1-inch clear spaced trashracks for fish protection according to the time period specified in section 3.4 of appendix B. At least 6 months before replacing or modifying the trashracks, the licensee shall file for Commission approval, a plan for installing the replacement trashracks or seasonal overlays. The plan shall, at a minimum, include functional design drawings showing the specifications of the permanent trashracks or seasonal overlays and a schedule for the installation.

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 New York Department of Environmental Conservation and U.S. Fish and Wildlife Service, 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 site-specific information.

The Commission reserves the right to require changes to the plan. The plan shall not be implemented until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 403. Reservation of Authority to Prescribe Fishways. Pursuant to section 18 of the Federal Power Act, 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 404. Recreation Monitoring. The licensee shall monitor recreation use at the project, including those measures described in section 4 of the Settlement (appendix B) (impoundment car-top boat launch, proposed recreational trail and parking area, and informal facilities within the project boundary), to determine whether recreation needs are being met. Every 6 years during the term of the license, concurrent with its Form 80 filing, the licensee shall file a report with the Commission on the monitoring results. This report shall include:

- 1) annual recreation use figures;
- 2) a discussion of whether recreation needs are being met at the project;
- 3) a description of the methodology used to collect all data;
- 4) a proposal to provide additional recreation facilities at the project if the monitoring results indicate such a need;
- 5) documentation of agency consultation and agency comments on the report after it has been prepared and provided to the agencies; and
- 6) specific descriptions of how the agencies' comments are accommodated by the report.

The licensee shall include with the report documentation of consultation, copies of comments and recommendations on the report after it has been prepared and provided to the New York Department of Environmental Conservation and U.S. Fish and Wildlife Service, and specific descriptions of how the agencies' comments were accommodated.

The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the report with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on site-specific information.

Article 405. Historic Properties. The licensee shall implement the "Programmatic Agreement Among the Federal Energy Regulatory Commission and the New York State Historic Preservation Officer for Managing Historic Properties that May be Affected by Issuing a License to Erie Boulevard Hydropower, L.P. for the Continued Operation of the Macomb Hydropower Project in Franklin County, New York (FERC No. 7321)," executed on May 5, 2006, and including but not limited to the Historic

Properties Management Plan (HPMP) for the project. In the event that the Programmatic Agreement (PA) is terminated, the licensee shall continue to implement the provisions of its approved HPMP. The Commission reserves the authority to require changes to the HPMP at any time during the term of this license. If the PA is terminated prior to the Commission approval of the HPMP, the licensee shall obtain approval before engaging in any ground-disturbing or land-clearing activities or taking any other action that may affect any historic properties within the project's area of potential effect.

Article 406. Use and Occupancy. (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, such action includes, as 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 types of use and occupancy of project lands and water for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement.

To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, 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.

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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 or roads where all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir.

No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(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 (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved report on

recreational resources of an exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year.

At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Energy Projects, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked exhibit G 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 report on recreational resources of an exhibit E; or, if the project does not have an approved report on recreational resources, that the lands to be conveyed do not have recreational value; (3) the instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters; and (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 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

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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 drawings would be filed for approval for other purposes.

(H) 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 the filing. Proof of service on these entities must accompany the filing with the Commission.

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

J. Mark Robinson
Director
Office of Energy Projects

APPENDIX A

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CERTIFICATION UNDER SECTION 401 OF THE
FEDERAL CLEAN WATER ACT ISSUED MARCH 2, 2005,
AND FILED ON APRIL 19, 2006

A. NATURAL RESOURCE PERMIT CONDITIONS

1. **Conformance with Plans** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or his agent as part of the permit application and licensing Settlement Agreement.
2. **State Not Liable for Damage** The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.
3. **Precautions Against Contamination of Waters** All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.
4. **No Interference with Navigation** There shall be no unreasonable interference with navigation by the work herein authorized.
5. **State May Require Site Restoration** If any work authorized by this certificate has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the New York State Department of Environmental Conservation ("the Department") may with authority require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.
6. **Notification Requirements for Emergencies.** With the exception of emergency provisions described in the Settlement Agreement (see subsections 3.1, 3.2, 3.3 and 3.4), the following procedures shall apply to activities conducted at the project in response to an emergency:

Prior in commencement of emergency activities, Certificate Holder must notify the Department and receive approval in advance of the work commencing. If circumstances require that emergency activities be taken immediately such that prior notice to the Department is not possible, then the NYSDEC must be notified by the Certificate Holder within 24 hours of commencement of the emergency activities. In either case, notification must be by certified mail or other written form of communication, including fax and electronic mail. This notification must be followed within 24 hours by submission of the following information:

- a. a description of the action;
- b. location map and plan of the proposed action;
- c. reasons why the situation is an emergency.

All notifications, requests for emergency authorizations and information submitted to support such requests shall be sent to the contacts listed in Special Condition .

7. Settlement Agreement. This Certificate includes and incorporates the Macomb Project Settlement Agreement (“Settlement”) dated November 2, 2004, to the extent that the Settlement provides for or requires the certificate holder to comply with New York State water quality standards and the conditions of this certificate.

B. OPERATING CONDITIONS

8. Project Operations and Impoundment Fluctuations. The project reservoir shall be operated in accordance with the Settlement (see Section 3.1). Alternate Impoundment operating plans must be reviewed and approved by the Department prior to being implemented. Emergencies shall be dealt with in accordance with Natural Resource Permit Condition #6 of this Certificate.

9. Base Flows. The certificate holder shall maintain a baseflow of 125 cfs (or inflow to the Macomb impoundment, whichever is less) from the Project’s tailrace, in accordance with the Settlement (see section 3.2).

10. Flow and Water Level Monitoring. The certificate holder shall develop a stream flow and water level monitoring plan consistent with the Settlement, in particular, Section 3.6.

11. Fish Protection and Downstream Fish Movement. Fish protection provisions and downstream fish movement provisions shall be provided in accordance with the Settlement (see Section 3.4).

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12. Sediment Management. The certificate holder shall manage sediments in accordance with the Settlement (see Section 3.3). The Interim Sediment Management Plan will remain in effect until the Department approves the Final Sediment Management Plan. Upon the Department's approval, the Final Sediment Management Plan will be included and incorporated into this Certificate.

13. Fish Stocking. Within 24 months of license issuance, the certificate holder, in consultation with NYS DEC, install a fish stocking tube in the Project's tailrace in accordance to Section 3.5 of the Settlement.

C. PROJECT MAINTENANCE AND CONSTRUCTION

14. NOTE: All matters pertaining to "Project Maintenance and Construction" work affecting water quality, compliance with water quality standards, and this certificate shall be addressed to:

Regional Permit Administrator
New York State Department of Environmental Conservation
1115 Route 86, P.O. Box 296
Ray Brook, NY 12977-0296

15. Maintenance Dredging. The certificate holder shall install and maintain appropriate turbidity control structures while conducting any maintenance dredging activities associated with the Project.

16. Sediment Analysis and Disposal. Sediment analysis must be conducted consistent with the Interim or Final Sediment Plan, whichever is applicable. The certificate holder must sample any sediments to be disturbed or removed from the project waters and test them for contaminants. Sampling and testing shall be accomplished according to a protocol that is consistent with the Department's Technical and Operations Guidance 5.1.9 or applicable guidelines/regulations. The sampling protocol shall include a disposal protocol based on analytical sediment sampling results and current applicable regulations/guidelines. The sampling results are required to be submitted to the Department at least 45 days prior to the commencement of dredging or work that will disturb sediment in the project waters. Dredging or other excavation can not commence until the certificate holder also secures the Department's approval for the disposal or interim holding locations for any sediments to be removed from the project waters.

17. Construction Drawdowns. Whenever construction and/or maintenance activities require that the water level of project reservoirs be lowered, it shall not be drawn down more than 1 foot per hour. During refill, the water level of the impoundment shall not be

allowed to rise more than 1 foot per hour. Baseflow requirements below the Macomb Project (125 cfs unless inflow to the Macomb impoundment is less than 125 cfs, in which case the outflow from the Macomb Project will be equal to inflow to the Macomb impoundment, as specified in Section 3.2 of the Settlement) is to be maintained during all impoundment drawdowns and refills.

18. Placement of cofferdams, construction of temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the Salmon River or project reservoir. The proposed design of all such structures as they pertain to water quality, to compliance with water quality standard, and to this certificate must be approved by the Department prior to installation. The Department will conduct its review of the proposed design within 60 days after receipt of all materials it determines are necessary for completing such review.

19. Erosion and Sediment Control. The certificate holder shall ensure that the following erosion and sediment/contaminant control measures, at a minimum, are adhered to during routine maintenance and construction that may result in sediments/contaminants entering any wetland or waterbody.

a) Isolate in-stream work from the flow of water and prevent discolored (turbid) discharges and sediments caused by excavation, dewatering and construction activities from entering any waterbody or wetland.

b) Exclude the use of heavy construction equipment below the mean high water line until the work area is protected by an approved structure and dewatered.

c) Stabilize any disturbed banks by grading to an appropriate slope, followed by armoring or vegetating as appropriate, to prevent erosion and sedimentation into any waterbody or wetland.

d) Minimize soil disturbance, provide appropriate grading and temporary and permanent revegetation of stockpiles and other disturbed areas to minimize erosion/sedimentation potential.

e) Protect all waters from contamination by deleterious materials such as wet concrete, gasoline, solvents, epoxy resins or other materials used in construction, maintenance and operation of the project.

f) Install effective erosion control structures on the downslope of all disturbed areas to prevent eroded material from entering any waterbody or wetland . Erosion control measures must be maintained in a fully functional condition until the disturbed areas are

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fully stabilized. These erosion control measures are to be installed before commencing any activities involving soil disturbance.

g) Ensure complete removal of all dredged and excavated material, debris or excess materials from construction, from the bed and banks of all water areas to an approved upland disposal site.

h) Ensure that all temporary fill and other materials placed in the waters of the river are completely removed, immediately upon completion of construction, unless otherwise directed by the Department.

20. Turbidity Monitoring. During routine maintenance or construction related activities in or near the Salmon River or project reservoir, the certificate holder will monitor the waters of the river at a point immediately upstream of project activities and at a second point no more than 100 feet downstream from any discharge point or other potential source of turbidity. The certificate holder specifically agrees that if, at any time, turbidity measurements from the downstream locations exceed the measurements from the locations upstream of the work areas, all related construction on the project will cease until the source of the turbidity is discovered and the situation is corrected. The certificate holder is required to report any events where turbidity measurements for the downstream locations exceed the measurements from the upstream locations to the Department's Region 5 office, Ray Brook, within 24 hours of the incident.

21. Maintenance of River Flows. During all periods of maintenance and/or construction activity, the certificate holder shall continuously maintain adequate flows immediately downstream of the work site consistent with the provisions of this certificate. If adequate river flows are not maintained, the certificate holder is required to notify the Department's Region 5 office in Ray Brook, within 24 hours of the incident.

22. Stormwater SPDES. All activities at the project requiring the disturbance of greater than one acre must obtain coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP 02-01).

23. Notifications. The Regional Permit Administrator must be notified in writing at least 60 days prior to commencing any project maintenance or construction work pertaining to water quality, compliance with water quality standards or to this certificate.

D. WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

1. Water Quality Certification.

The New York State Department of Environmental Conservation hereby certifies:

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- the Department has reviewed the certificate holder's Application for Federal Hydroelectric License (hereafter referred to as "the Application") and all other available pertinent information, including the Settlement;
- the project will comply with Sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act as amended and as implemented by the limitations, standards and criteria of the state statutory and regulatory requirements set forth in 6NYCRR Section 608.9(a); and
- the project will comply with applicable New York State effluent limitations, water quality standards and thermal discharge criteria set forth in 6NYCRR Parts 700-706.

This Water Quality Certification is issued pursuant to Section 401 of the Federal Water Pollution Control Act (33 USC 1341).

E. GENERAL CONDITIONS- APPLY TO ALL AUTHORIZED PERMITS

1. Facility Inspection by the Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department to determine whether the Certificate Holder is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3).

The Certificate Holder shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this certification, including the Settlement Agreement, as well as the FERC license and all pertinent maps, drawings and special conditions must be available for inspection by Department staff at all times during such inspections at the project site or facility. Failure to produce a copy of the certification upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications for Permit Renewals or Modifications The Certificate Holder must submit a separate written application to the Department for renewal, modification or

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transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing.

4. Department Contacts. All contacts with the concerning this certificate, including submission of the information required by the above Natural Resource Permit Conditions and all applications for permit modification or renewal are to be submitted to:

Regional Permit Administrator
New York State Department of Environmental Conservation
1115 Route 86, P.O. Box 296
Ray Brook, NY 12977-0296

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the Certificate Holder to comply with any terms or conditions of the certificate;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing certificate;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfers Permits are transferable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

F. NOTIFICATION OF OTHER CERTIFICATE HOLDER OBLIGATIONS

Item A: Certificate Holder Accepts Legal Responsibility and Agrees to Indemnification

The Certificate Holder expressly agrees to indemnify and hold harmless the Department, its representatives, employees, and agents for all claims, suits, actions, and damages to the extent attributable to the Certificate Holder's acts or omissions in connection with the Certificate Holder's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to Department's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the Department and arising under article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Certificate Holder's Contractors to Comply with Permit

The Certificate Holder is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the Certificate Holder's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the Certificate Holder.

Item C: Certificate Holder Responsible for Obtaining Other Required Permits

The Certificate Holder is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the Certificate Holder any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

APPENDIX B

**SECTIONS 3.0 AND 4.0 OF THE SETTLEMENT AGREEMENT
FOR THE MACOMB PROJECT
FILED ON NOVEMBER 26, 2004**

3.0 MEASURES THAT THE LICENSEE WILL UNDERTAKE WITH RESPECT TO LICENSE CONDITIONS

3.1 Daily Impoundment Fluctuation as Part of Normal Operations

Within 18 months of license issuance, the Licensee shall limit daily impoundment fluctuations as part of normal operation within the Macomb impoundment as specified in Table 3-1.

**Table 3-1
Macomb Hydroelectric Project
Normal Impoundment Fluctuation**

| River Flow (cfs) | Normal Impoundment Fluctuation |
|-------------------------|---|
| Greater than 125 | 0.25-foot measured in downward direction from top of crest of spillway ¹ |
| 125 or less | Run-of-river with outflow through the turbine (or over the spillway crest) equaling inflow and the impoundment level maintained at or above spillway crest. |

¹ Although the Licensee will make a good faith effort to limit the normal impoundment fluctuation to 0.25-foot when the river flow exceeds 125 cfs, for the purposes of FERC compliance, only drawdowns below 0.5-foot will be reportable. This additional 0.25-foot helps address the natural fluctuations in river flow and the limitations of the Project's controls.

Normal impoundment fluctuations specified in Table 3-1 shall be defined as the maximum drawdown limit associated with the operating range necessary to achieve normal operation. The normal impoundment fluctuation limit shall be measured in the downward direction from the crest of the dam (elevation of 570.7). Water surface elevations higher than the elevation from which any downward fluctuation is measured are considered outside of the normal impoundment fluctuation zone, and variations of

such elevations are not considered as a utilization of the normal impoundment fluctuation.

The Licensee will at all times make a good faith effort to maintain impoundment fluctuations within 0.25-foot when river flow exceeds 125 cfs; the Parties agree that only when the impoundment drops in excess of 0.5-foot from the crest of dam shall a notification to the FERC and DEC be made. When the impoundment drops to 0.5-foot from the crest the Licensee shall notify the FERC and the DEC as soon as possible, but not later than ten (10) business days after each such incident. On January 31 of the following year, the Licensee shall provide signatories to this Settlement Agreement with a list of dates and the associated period of time for all drawdowns in excess of 0.25-foot below the crest of dam during the previous year. This report will be submitted annually. The DEC reserves its right to review the annual report, as well as any available data pertaining to seasonal variations and temperature, and to determine whether (a) the operational limitations contained in this Settlement Agreement are sufficient to protect downstream resources, or (b) additional operational limitations are required in order to maintain compliance with the DEC's Water Quality Certificate or New York State's water quality standards. In the event that the DEC determines that additional operational limitations are so required, the DEC will consult with the Licensee before taking measure to amend or modify the Water Quality Certificate, consistent with the provisions of Section 2.6 of this Settlement Agreement.

Impoundment fluctuation limitations may be curtailed or suspended if required by operating emergencies beyond control of the Licensee, including security, and for short periods upon prior mutual agreement between the Licensee and the DEC. If the limitations are so modified, the Licensee shall notify the FERC and FWS as soon as possible, but no later than ten (10) business days after each such incident.

3.2 Baseflow

The Licensee shall maintain a baseflow of 125 cfs (or inflow to the Macomb impoundment, whichever is less) from the Project's tailrace. The requirements of this baseflow commitment may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, including security, and for limited periods upon prior mutual agreement between the Licensee, FWS, and DEC. If the requirements of this commitment are so modified, the Licensee shall notify the FERC as soon as possible, but no later than ten (10) business days after each such incident.

3.3 Sediment Management

The DEC water quality certificate will incorporate the attached Interim Sediment Management Plan (ISMP) as a component of this Settlement Agreement and will be binding upon the Licensee. Upon license issuance, the Licensee will continue to implement the attached ISMP. The Licensee will cooperate with the DEC in the development of a Final Sediment Management Plan (FSMP) regarding the appropriate procedural measures needed to incorporate the FSMP into the Water Quality Certificate and the license. The FSMP will become binding on the Licensee in lieu of the ISMP upon approval by the Commission.

Implementation of the attached ISMP may be curtailed or suspended if required or caused by high water events or operating emergencies beyond the control of the Licensee, including security, and for short periods upon prior mutual agreement between the Licensee and the DEC.

3.4 Fish Movement and Protection

Within 8 years of licensee issuance, or when the existing trashracks need replacing, whichever is sooner, the Licensee shall, at its discretion, either 1) install seasonal trashrack overlays with 1.0-inch clear spacing over the full length and on the upstream face of the existing trashracks or 2) replace the full length of the existing trashracks with trashracks with 1.0-inch clear spacing. Prior to pursuing the alternative to install seasonal overlays, the Licensee will consult with the DEC and FWS regarding the season that the seasonal overlays would need to be in place.

The requirements of this trashrack commitment may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, including security, and for limited periods upon prior mutual agreement between the Licensee, FWS, and DEC. If requirements of this commitment are so modified, the Licensee shall notify the FERC as soon as possible, but no later than ten (10) business days after each such incident.

3.5 Fish Stocking

Within 24 months of license issuance, the Licensee, in consultation with the DEC, will install a fish stocking tube that would allow the DEC to stock fish directly into the Project's tailrace. The Licensee will maintain the fish stocking tube, and the DEC will be responsible for all stocking activities. The DEC shall notify the Licensee at least five working days prior to use of the fish stocking tube.

3.6 Flow and Water-Level Monitoring

The Licensee shall develop a stream-flow and water-level monitoring plan in consultation with the DEC and FWS within 6 months of license issuance. The monitoring plan shall include all gages and/or equipment to:

- Determine headpond elevations as needed;
- Monitor flow through the Project turbines, sluice gates, and spillways; and
- Provide an appropriate means of independent verification of water levels by the DEC and FWS.

All gages and ancillary equipment required by the monitoring, including headpond gages, shall be made operational and fully calibrated within 15 months of license issuance.

The monitoring plan shall contain provisions for the installation of binary staff gages at appropriate locations to permit independent verification of headpond water levels. Binary staff gages will be visible to the general public. Access to staff gages shall be provided to the DEC, FWS, and/or their authorized representatives.

The Licensee shall keep accurate and sufficient records of the impoundment elevations and all Project flows to the satisfaction of the DEC and shall provide such data in a format and at intervals as required by the DEC. The DEC will provide the Licensee with a contact person to receive such information. All records will be made available for inspection at the Licensee's principle business office within New York State within five business days or will be provided in written form within 30 days of the Licensee's receipt of a written request for such records by the DEC. Furthermore, the Licensee will provide to the DEC a seven-day-per-week contact person to provide immediate verification of monitored flows and responses to questions about abnormal or emergency conditions.

The Licensee shall keep accurate and sufficient records of any uncontrollable station outage that causes a reduction in the required baseflow from the Macomb Project. The Licensee will consult with the DEC to develop a plan for reporting these types of incidents. The reporting plan shall be finalized within 12 months of license issuance.

3.7 Fish Passage and Section 18

No fishways are being required as part of this settlement agreement. The U.S. Department of the Interior will reserve its authority under Section 18 of the Federal Power Act to prescribe upstream or downstream fish passage facilities in the future. This reservation ensures that adequate facilities for fish passage can be required should management goals or needs change during the life of the license.

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4.0 RECREATION ENHANCEMENT COMMITMENTS (NOT TO BE INCLUDED IN THE LICENSE)

4.1 Impoundment Car-Top Boat Launch

Within 12 months of license issuance, the Licensee agrees to enhance the existing car-top boat launch on the Town of Malone property adjacent to the Macomb impoundment on Lower Park Street by providing signage and matting for the launch area. The area will be maintained by the Town of Malone.

4.2 Recreational Trail

Within 12 months of license issuance, the Licensee, in consultation with the Town of Malone, agrees to develop a trail and parking area on the Licensee's property immediately north of the Project. The Licensee will develop the trail and parking area (e.g., design, perform grading, clearing, and provide signage). Through a written agreement between the Licensee and the Town of Malone, the Town will be responsible for maintenance of the trail area and for all insurance requirements. See Attachment B of the Settlement for the map of the proposed recreational trail.

4.3 Additional Recreational Facilities

The Parties agreed that no additional recreational facilities are required as part of this Settlement Agreement. This conclusion is based on a field review of the recreational facilities that presently exist within the vicinity of the Project area. Such facilities include: 1) informal fishing access to the impoundment on the Town of Malone property described in Section 4.1; 2) the downstream angler access trail; and 3) the informal parking and shoreline fishing area along the facility's driveway.

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Form L-12
(October, 1975)**FEDERAL ENERGY REGULATORY COMMISSION****TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED
MINOR PROJECT AFFECTING THE INTERESTS OF
INTERSTATE OR FOREIGN COMMERCE**

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Article 4. The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Energy Regulatory Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and any such alterations thereto, and shall notify him of the date upon which work with respect to any alteration will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights or occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made

thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 7. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 8. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 9. The operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release

water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

Article 10. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 11. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 12. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to

construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 13. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 14. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon the request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 15. The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 16. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its

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discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 17. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 18. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.