

138 FERC ¶ 62,190
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Crane and Company

Project No. 13583-001

ORDER GRANTING EXEMPTION FROM LICENSING
(5 MW OR LESS)

(February 29, 2012)

1. On March 9, 2011, as supplemented on June 22, 2011, and August 17, 2011, Crane and Company (Crane or exemptee) filed an application to exempt its proposed 250-kilowatt (kW) Byron Weston Hydroelectric Project (Byron Weston Project or project) from the requirements of Part I of the Federal Power Act (FPA).¹ The project would be located on the East Branch of the Housatonic River in the Town of Dalton, Berkshire County, Massachusetts.² The project would not use or occupy any federal facilities or land. As discussed below, I am issuing an exemption from licensing for the project.

BACKGROUND

2. On March 18, 2011, the Commission issued public notice of the application tendered for filing and soliciting additional study requests, establishing May 9, 2011, as

¹ The Commission is authorized to exempt from the licensing requirements of Part I of the FPA small hydroelectric projects with an installed capacity of 5 megawatts or less that use for the generation of electricity either an existing dam (*i.e.*, one in existence on or before July 22, 2005) or a "natural water feature" without the need for any dam or impoundment. *See* sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2705 and 2708 (2006).

² The Byron Weston Project is located on the East Branch of the Housatonic River, a headwater of the Housatonic River, a navigable water of the United States. *Connecticut Light and Power v. FPC*, 557 F.2d 348 (2nd Cir. 1977). Because the project would have post-1935 construction, be located on a commerce clause waterway, and affect interstate commerce through its selling of power through an interstate grid, it is required to be licensed (or exempted from licensing) by the Commission pursuant to FPA section 23(b)(1), 16 U.S.C. § 817(1) (2006). *See* 126 FERC ¶ 62,248 (2009) (order requiring the Byron Weston Project to be licensed or exempted from licensing).

the deadline for filing study requests.³ On May 5, 2011, the National Park Service (NPS) requested that Crane provide additional information regarding the proposed project's impact on views from the Appalachian National Scenic Trail. On May 11, 2011, the Massachusetts Division of Fisheries and Wildlife (Massachusetts DFW) filed comments and revised preliminary terms and conditions.⁴ On May 12, 2011, the U.S. Department of the Interior (Interior) filed comments and preliminary terms and conditions.

3. On May 18, 2011, Crane filed information with the Commission in response to NPS' request for additional information regarding the proposed project's impact on views from the Appalachian National Scenic Trail.

4. On September 1, 2011, the Commission issued a notice accepting the application and indicating that the application was ready for environmental analysis. The notice established October 3, 2011, as the deadline to file motions to intervene, comments, recommendations, and terms and conditions.⁵ On September 2, 2011, Massachusetts DFW filed comments and final terms and conditions on the proposed project. On September 29, 2011, Interior filed comments and final terms and conditions. No other comments or motions to intervene were filed in response to the notice.

5. An Environmental Assessment (EA) was prepared by Commission staff and is being issued concurrently with this order. The EA contains background information, analysis of impacts, and support for the requirements of this exemption from licensing. Based on the record of the proceeding, including the EA, granting an exemption from licensing for the Byron Weston Project would not constitute a major federal action significantly affecting the quality of the human environment.

6. The comments and terms and conditions have been fully considered in determining whether, and under what conditions, to issue this exemption.

³ 76 *Fed. Reg.* 16,764 (March 25, 2011).

⁴ On April 4, 2011, the Massachusetts DFW filed comments and preliminary terms and conditions on the proposed project. On May 11, 2011, it filed revised preliminary terms and conditions, modifying the term of the post-operation water quality monitoring study from three years to one year.

⁵ Because the notice period deadline fell on a weekend, Saturday, October 1, 2011, the public notice deadline period did not end until the close of the next Commission business day, Monday, October 3, 2011. 18 C.F.R. 385.2007(a)(2) (2011). 76 *Fed. Reg.* 55,893 (September 9, 2011).

PROJECT DESCRIPTION

7. The Byron Weston Project will use the water power potential of the existing 30-foot-high, 90-foot-long, stone-masonry Byron Weston Dam No. 2 equipped with a 23-foot-high, 75-foot-long spillway.⁶ The dam creates a 0.94-acre impoundment with a normal water surface elevation of 1,116.7 feet North Atlantic Vertical Datum (NAVD 1988).
8. In addition to the dam and impoundment, the project will include an existing intake structure equipped with existing trashracks⁷ and an existing headgate. The water will pass through the headgate to an existing 6.5-foot-long, 6-foot-diameter penstock connected to an existing 50-foot-long, 9.5-foot-wide headrace canal. The headrace canal will convey flow to a new 15-foot-long, 4.4-foot-diameter penstock leading to a new 250-kilowatt turbine-generating unit within the existing Byron Weston Defiance Mill building. Water will then be discharged into the East Branch of the Housatonic River through a new draft tube within the existing tailrace approximately 35 feet downstream of the dam.⁸ Project power will be transmitted through a new 100-foot-long, 600-volt transmission line within the Byron Weston Defiance Mill building that will be connected to the mill's existing electrical distribution system.⁹
9. The proposed project boundary encloses all of the project facilities described above.
10. Crane proposes to operate the project in a run-of-river mode, where outflow from the project will equal inflow, and water levels in the impoundment will not be drawn

⁶ The Byron Weston Dam No. 2 was retrofitted with a hydroelectric generator to produce energy in the early 1900s, and electric generation continued at the dam site until sometime after 1942.

⁷ The existing trashracks extend full-depth and have 1-inch clear bar spacing.

⁸ Crane proposes to remove components from the Byron Weston Defiance Mill building that were previously used for hydroelectric generation at the site, including sections of the penstock and the two McCormick Hercules wheel turbines. Structural modifications will also be made within the existing footprint of the Byron Weston Defiance Mill building to accommodate the new turbine-generating unit.

⁹ The electricity generated by the project will be used within Crane's mill complex, which includes the Byron Weston Defiance Mill building as well as other facilities. The mill complex serves as the headquarters and principal paper-manufacturing location for Crane.

down for electric generation. Flow to the turbine will be automatically managed by a controller connected to the turbine wicket gates and a water level sensor located in the impoundment. When the sensor detects a decrease in the impoundment level, the wicket gates will close to reduce flow to the turbine and stabilize the impoundment level. When the sensor detects an increase in the impoundment level, the wicket gates will open to increase flow to the turbine. At flows less than 20 cubic feet per second (cfs) (the minimum hydraulic capacity of the turbine), the project will not operate and all flow will pass over the spillway. At flows between 20 and 170 cfs (the maximum hydraulic capacity of the turbine), the project will operate and no flow will pass over the spillway. At flows greater than 170 cfs, the project will generate at its maximum capacity and all excess flow will pass over the spillway. The project will bypass approximately 35 feet of the East Branch; however, discharge from the tailrace will backwater up to the base of the dam and maintain a wetted channel in the bypassed reach. No minimum flow release to the bypassed reach is proposed. Crane estimates that the annual generation of the project will be 938 megawatt-hours.

WATER QUALITY CERTIFICATION

11. On September 23, 2011, the Massachusetts Department of Environmental Protection (Massachusetts DEP) issued a water quality certification for the Byron Weston Project (see Appendix C). The certification contains 24 conditions.

FPA SECTION 30(c) CONDITIONS

12. Pursuant to section 405 of Public Utility Regulatory Policies Act (PURPA),¹⁰ 5-MW exemptions are subject to the requirements of section 30(c) of the FPA,¹¹ which provides, among other things, that the Commission “shall include in any such exemption . . . such terms and conditions as the Fish and Wildlife Service, National Marine Fisheries Service, and the State [fish and wildlife] agency each determine are appropriate to prevent loss of, or damage to, such resources . . .” Article 2 of all exemptions requires compliance with the terms and conditions filed by federal and state fish and wildlife agencies to protect fish and wildlife resources.¹²

13. On September 2, 2011, Massachusetts DFW submitted 10 section 30(c) conditions, and on September 29, 2011, Interior submitted 10 nearly identical section 30(c) conditions. Massachusetts DFW’s and Interior’s conditions require the exemptee

¹⁰ 16 U.S.C. § 2705(b) (2006).

¹¹ 16 U.S.C. § 823a(c) (2006).

¹² *See* 18 C.F.R. § 4.106 (2011).

to: (1) operate the project in an instantaneous run-of-river mode; (2) use full-depth trashracks with an approach velocity of 2.0 feet-per-second (fps) or less and with clear bar spacing of 1 inch or less;¹³ (3) conduct a post-operation water quality monitoring survey to ensure that the project does not deplete dissolved oxygen in the East Branch of the Housatonic River;¹⁴ (4) develop a plan for monitoring and maintaining run-of-river operation; (5) pass 90 percent of inflow downstream during refilling of the impoundment after maintenance or emergency drawdowns; (6) construct, operate, maintain, and evaluate upstream and downstream fish passage facilities when notified by the agencies that such facilities are necessary; (7) notify the agencies when the project commences operation and provide as-built drawings; (8) allow the agencies to inspect the project area at any time while the project operates; (9) file with the Commission any additional conditions imposed by the agencies; and (10) incorporate in any conveyance (by lease or sale) of the project, the terms and conditions of the exemption.

14. The section 30(c) conditions will protect water quality, fisheries, and aquatic habitat in the impoundment and in the East Branch of the Housatonic River downstream of the project.¹⁵

15. As discussed below, all of the section 30(c) conditions are set forth in Appendices A and B of this order.

THREATENED AND ENDANGERED SPECIES

16. Section 7 of the Endangered Species Act¹⁶ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of the critical habitat of such species. In a letter dated January 3, 2011, included in the exemption application, the U.S. Fish and Wildlife Service stated that no federally listed or proposed,

¹³ Crane will use the existing trashracks with a measured approach velocity of 1.1 fps. EA at 17.

¹⁴ Massachusetts DFW's 30(c) condition 3 states that if results indicate that the project is causing depletion of dissolved oxygen, further study will be required. Interior's 30(c) condition 3 states that if environmental and/or operating conditions during the first year of post-operation monitoring are not representative, or if the data collected indicate that the project is causing depletion of DO, the survey should be repeated the following year.

¹⁵ EA at vi.

¹⁶ 16 U.S.C. § 1536(a) (2006).

threatened or endangered species or critical habitat are known to occur in the project area. Thus, issuing an exemption from licensing for the project will not affect federally listed threatened or endangered species. Therefore, no further action under the Endangered Species Act is required.¹⁷

NATIONAL HISTORIC PRESERVATION ACT

17. Under section 106 of the National Historic Preservation Act (NHPA)¹⁸ and its implementing regulations,¹⁹ federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register (defined as historic properties) and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the State Historic Preservation Office (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

18. The Byron Weston Defiance Mill building, in which the project works will be located, was constructed in 1821 but is not listed in the National Register. Because of its age, however, the Byron Weston Defiance Mill is a structure that could be eligible for listing in the National Register.

19. On October 17, 2011, the Commission issued a letter to the Massachusetts Historical Commission (Massachusetts SHPO) concluding that granting an exemption from licensing for the Byron Weston Project would have no effect on historic, archaeological, or traditional cultural properties. The Massachusetts SHPO did not respond to the Commission's determination of no effect finding in the October 17, 2011, letter. Pursuant to the Advisory Council on Historic Preservation's regulations, if the SHPO does not object within 30 days of receipt of a finding, then the agency's responsibilities under section 106 of the NHPA are fulfilled.²⁰

20. The exemptee will occasionally need to implement project modifications not specifically authorized by this exemption; however, these modifications could affect cultural resources at the project. Therefore, to ensure that cultural resources are not adversely affected by implementing project modifications, Article 25 requires the

¹⁷ EA at 9.

¹⁸ 16 U.S.C § 470 *et seq.* (2006).

¹⁹ 36 C.F.R. Part 800 (2011).

²⁰ 36 C.F.R. § 800.4(d)(1)(i) (2011).

exemptee to consult with the Massachusetts SHPO prior to conducting any maintenance activities, land-clearing or land-disturbing activities, or changes to project operation or facilities that do not require Commission approval but could affect cultural resources.

21. While construction of the project will have no adverse effect on known historic properties, previously unidentified cultural resources could be discovered during the course of constructing or operating the project; therefore, Article 26 requires the exemptee to stop work and consult with the Massachusetts SHPO if previously unidentified cultural resources are discovered during project construction or operation.

22. Crane proposes to remove both of the McCormick Hercules wheel turbines from the existing powerhouse within the Byron Weston Defiance Mill building and refurbish one of the turbines for public display. To ensure that appropriate measures are taken to preserve the McCormick Hercules wheel turbine for public display, Article 27 requires the exemptee to develop and implement a Wheel Turbine Relocation Plan in consultation with the Dalton Historical Commission and the Massachusetts SHPO. The plan will identify how the turbine will be refurbished, procedures involved in the relocation process, and where the turbine will be relocated for public display. The plan will also include methods for photo-documentation of the turbine prior to removal from its existing location and describe the information Crane will incorporate into the turbine's interpretive display.

ADMINISTRATIVE PROVISIONS

23. All projects exempted from licensing under Part I of the FPA are subject to standard terms and conditions. These terms and conditions are included as standard Articles 1 through 9. Special Articles 10 through 27, which provide for administration of the exemption from licensing and dam safety, are also included in this exemption.

A. Annual Charges

24. The Commission collects annual charges from exemptees for the administration of its hydropower program.²¹ As explained in Article 10, however, under the regulations currently in effect, projects with an authorized installed capacity of 1,500 kW or less, like this project, are not assessed an annual charge.

B. Start of Construction

25. Standard Article 3 provides that the Commission may revoke the exemption if actual construction of the project's generating facilities has not begun within two years or

²¹ See 18 C.F.R. § 11.1(b)(2) (2011).

has not been completed within four years from the date this exemption was granted. Additionally, Article 11 is included in this exemption and states that the Commission may terminate the exemption if the construction of any other project works described in this exemption has not begun within two years or is not completed within four years of the date this exemption is issued.²²

C. Exhibit F and G Drawings

26. The Commission requires the exemptee to file sets of approved project drawings (Exhibits F and G) on microfilm and electronic file format. The four Exhibit F drawings (F-1 through F-4) filed on March 9, 2011, the two revised Exhibit F drawing (F-5 and F-6) filed on June 22, 2011, are approved and made part of this exemption. Article 12 requires the filing of the approved Exhibit F drawings in aperture card and electronic file format. The Exhibit F drawings being filed must meet the requirements of sections 4.39 and 4.41 of the Commission's regulations.²³

27. The Exhibit G drawings (G-1 and G-2) filed on March 9, 2011, are not approved. Exhibit G-1 is an aerial photograph and Exhibits G-1 and G-2 contain color which is illegible when formatted on microfilm aperture cards. Exhibit G-1 is not stamped by a registered land surveyor, and Exhibit G-2 shows an illegible surveyor's stamp affixed approximately 11 years prior to the date of the drawing (i.e., January 28, 2011). In addition, Exhibit G-2 includes two illegible drawings, and the reference points shown on Exhibit G-1 and G-2 are linear which makes geo-reference verification difficult. Article 13 requires the refiling of legible Exhibit G-1 and G-2 drawings that are black and white (no color), are stamped by a registered land surveyor, include three non-linear reference points, and meet the requirements of sections 4.39 and 4.41 of the Commission's regulations.

D. Project Safety

28. Ensuring the safety of all jurisdictional dams is an important public interest function of the Commission. A dam failure could result in loss of life or property damage, and could also result in significant negative environmental effects. In the interest of ensuring the safety of this project, Article 14 is included in this exemption and

²² The start-of-construction deadline in standard Article 3 (contained in the attached Form E-2) refers to the project's generating facilities. The deadline in special Article 11 applies to on-the-ground construction of other project facilities.

²³ 18 C.F.R. §§ 4.39 and 4.41(g)-(h) (2011).

requires the exemptee to comply with Part 12 of the Commission's regulations, which governs the safety of water power projects and project works.²⁴

E. Operation and Maintenance

29. Ensuring that the exempted project is operated and maintained as required by this exemption is an important public interest function of the Commission. Therefore, Article 15 is included in this exemption and states that if the exemptee causes or allows essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, the Commission will deem it the exemptee's intent to surrender the exemption.

F. Exemptee Liability

30. Section 10(c) of the FPA provides that licensees, and not the United States, are liable for "damages occasioned to the property of others by the construction, maintenance, or operation of the project works . . ." ²⁵ To clarify that exemptees are similarly liable, Article 16 is included in this exemption and states that the exemptee is liable for damages to the property of others.

G. Property Rights

31. Pursuant to 18 C.F.R. § 4.31(c)(2)(ii), an applicant for exemption is required to demonstrate that, at the time it files its exemption application, it has sufficient rights to any non-federal land and facilities required for the construction and operation of the project. The application and supplemental information filed on June 22, 2011, and August 17, 2011, contains documentation that Crane has the necessary property rights to develop and operate the project. However, because an exemption is issued in perpetuity, Article 17 is included in this exemption and reserves the Commission's authority to revoke the exemption if in the future the exemptee fails to maintain sufficient rights to comply with the terms and conditions of the exemption.

H. Commission Approval of Resource Plans

32. The section 30(c) conditions (Appendices A and B of this order) and the water quality certification conditions (Appendix C) require that plans be prepared for run-of-river operation and erosion control. The conditions, however, do not require the plans to

²⁴ 18 C.F.R. Part 12 (2011). Special Article 14 is broader than standard Article 8 (contained in the attached Form E-2), which essentially is subsumed in special Article 14.

²⁵ 16 U.S.C. § 803(c) (2006).

be filed with the Commission for approval. Therefore, Article 18(a) requires the filing of each plan with the Commission for approval before implementation. In addition, Article 18(b) requires the exemptee to report data collected during the post-operation water quality monitoring survey and Article 18(c) requires the exemptee to notify the Commission of temporary modification of project operation, temporary impoundment refill procedure modification, and when the project commences operation. Finally, Article 18(d) requires the exemptee to file an amendment application with the Commission if Massachusetts DFW, Interior, or Massachusetts DEP determines that depletion of dissolved oxygen in the river from project operation requires mitigation measures, upstream or downstream fish passage facilities are needed, or terms and conditions need to be added or altered to carry out their responsibilities with respect to fish and wildlife resources.

I. Review of Final Plans and Specifications

33. To ensure that the exemptee is constructing and operating a safe and adequate project, Articles 19 through 24 require the exemptee to provide the Commission's Division of Dam Safety and Inspections – New York Regional Office (D2SI), for its review and approval: contract plans and specifications, including a soil erosion and sediment control plan; cofferdam construction drawings; as-built drawings; an owner's dam safety program; an inflow design flood and hazard classification study; and a public safety plan.²⁶

34. The exemptee may not begin any 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, in writing, the start of construction.

The Director orders:

(A) Effective the date this order is issued, the Byron Weston Hydroelectric Project is exempted from Part I of the Federal Power Act (FPA), subject to the conditions submitted by the Massachusetts Division of Fisheries and Wildlife and the U.S.

²⁶ Interior recommended providing access to the project area wherever possible to allow for public utilization of fish and wildlife resources, taking into consideration any necessary restrictions to maintain public safety and protect project civil works. Article 24 requires a public safety plan. The public safety plan requires an evaluation of public safety concerns at the project site, including designated recreation areas, and an assessment of the need for the installation of safety devices, including signage or other safety measures.

Department of the Interior under section 30(c) of the FPA, as those conditions are set forth in Appendices A and B of this order, the conditions in Appendix C, and the articles specified below.

(B) The project consists of:

(1) All lands, to the extent of the exemptee's interests in these lands, described in the project description and the project boundary discussion of this order.

(2) The following project works: (1) the existing 90-foot-long, 30-foot-high, stone-masonry Byron Weston Dam No. 2 equipped with a 75-foot-long, 23-foot-high spillway section; (2) an existing 0.94-acre impoundment with a normal water surface elevation of 1,116.7 feet North Atlantic Vertical Datum (NAVD 1988); (3) an existing 20.8-foot-wide, 12-foot-deep intake structure that includes trashracks with 1-inch clear-bar spacing; (4) a new 3/8-inch-thick steel plate extending from the top of the trashracks to the top of the intake opening; (5) an existing 8-foot-wide, 8-foot-high headgate; (6) an existing 6.5-foot-long, 6-foot-diameter penstock that conveys flow to an existing 50-foot-long, 9.5-foot-wide, 10-foot-high headrace canal connected to a new 15-foot-long, 4.4-foot-diameter penstock; (7) the existing Byron Weston Defiance Mill building containing one new 250-kilowatt turbine-generating unit; (8) a new draft tube placed within the existing 11.8-foot-wide, 10-foot-high arched tailrace; (9) a new 12-inch-diameter low-level outlet pipe that discharges water into the turbine draft tube and tailrace and is connected to the new 15-foot-long, 4.4-foot-diameter penstock; (10) a new 100-foot-long, 600-volt transmission line connecting the generating unit to the existing electrical distribution system for the Byron Weston Defiance Mill; and (11) appurtenant facilities.

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

Exhibit A: Pages A-2 through A-8 filed on March 9, 2011, and information filed on June 22, 2011.

Exhibit F: The following Exhibit F drawings filed on March 9, 2011, (F-1 through F-4) and June 22, 2011, (F-5 and F-6):

<u>Exhibit F Drawing</u>	<u>FERC No. 13583</u>	<u>Description</u>
F-1	1	Title Sheet, Maps, & Index of Drawings
F-2	2	Powerhouse Area Plan – Existing Conditions
F-3	3	Powerhouse Area, Section View – Existing Conditions

<u>Exhibit F Drawing</u>	<u>FERC No. 13583</u>	<u>Description</u>
F-4	4	Powerhouse Area Plan – Proposed Conditions
F-5	5	Flow Profile Through System
F-6	6	Powerhouse Area – Proposed Conditions

(3) All of the structures, fixtures, equipment or facilities used to operate or maintain the project, 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 exemption. The Exhibit G drawings filed on March 9, 2011, are not approved.

(D) This exemption is also subject to the articles set forth in Form E-2 entitled Standard Terms and Conditions of Exemption from Licensing (attached), and the following additional articles:

Article 10. Administrative Annual Charges. The exemptee shall pay the United States annual charges, effective as of the start of project construction, 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 the Commission's hydropower program. The authorized installed capacity for that purpose is 250 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 11. Start of Construction. The Commission may terminate this exemption if actual construction of any project works has not begun within two years or has not been completed within four years from the issuance date of this exemption. If an exemption is terminated under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing for the same project within two years of the termination.

Article 12. Exhibit F Drawings. Within 45 days of the date of issuance of this exemption, the exemptee shall file the approved exhibit drawings in aperture card and electronic file formats.

(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-13583-

1 through P-13583-6) 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, F-2, etc.), Drawing Title, and date of this exemption 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 exemptee 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 segregated from other project exhibits, and identified as (CEII) material under 18 C.F.R. § 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 exemption, and file extension in the following format [P-13583-2, F-2, Powerhouse Area Plan, 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 13. Exhibit G Drawings. Within 90 days of the date of issuance of this exemption, the exemptee shall file, for Commission approval, revised legible Exhibit G drawings that are black and white (no color), are stamped by a registered land surveyor, and include three non-linear reference points. The Exhibit G drawings must comply with sections 4.39 and 4.41 of the Commission's regulations.

Article 14. Part 12 Requirements. This project is subject to Part 12 of the Commission's regulations, 18 C.F.R. Part 12 (as they may be amended from time to time). For the purposes of applying these provisions of Part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee.

Article 15. Operation and Maintenance. The Commission may determine that the exemptee has impliedly surrendered this exemption if essential project property is removed or destroyed or becomes unfit for use, without adequate replacement; or if the project is abandoned or good faith project operation or maintenance is discontinued; or if

the exemptee refuses or neglects to comply with the terms of the exemption and the lawful orders of the Commission.

Article 16. Liability. This exemption is subject to the provisions of section 10(c) of the Federal Power Act, 16 U.S.C. § 803(c) (2006). That section provides that the exemptee shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under this exemption; and in no event shall the United States be liable therefore.

Article 17. Property Rights. The Commission reserves the right to require the exemptee to obtain additional property rights, if such rights become necessary to develop, operate, or maintain the project or to achieve compliance with the terms and conditions of the exemption. The Commission may terminate this exemption if, at any time, the exemptee does not hold sufficient property rights in the land or project works necessary to develop, maintain, and operate the project.

Article 18. Commission Approval and Reporting.

(a) Requirement to File Plans for Commission Approval

Various measures in the Massachusetts Division of Fisheries and Wildlife (Massachusetts DFW) and the U.S. Department of the Interior's (Interior) conditions issued pursuant to section 30(c) of the Federal Power Act (Appendices A and B), and conditions in the Massachusetts Department of Environmental Protection (Massachusetts DEP) water quality certification (WQC) issued pursuant to section 401 of the Clean Water Act (Appendix C), require the exemptee to prepare plans in consultation with state and federal agencies but without submittal to or approval by the Commission. Each such plan shall be submitted to the Commission for approval. These plans are listed below.

30(c) condition no.		WQC condition no.	Plan name	Due date
Massachusetts DFW	Interior	Massachusetts DEP		
4	4	17	Run-of-river operation, maintenance, and monitoring plan	Within 5 months of issuance of this exemption
		9	Erosion control plan	At least 60 days prior to commencing project construction

The exemptee shall include with each plan filed with the Commission documentation that the exemptee developed the plan in consultation with the Massachusetts DFW, Interior, and Massachusetts DEP (as appropriate), and has received approval from these agencies. The Commission reserves the right to make changes to any plan submitted. Upon Commission approval, the plan becomes a requirement of the exemption, and the exemptee shall implement the plan, including any changes required by the Commission.

(b) Requirement to File Reports

Various measures in Massachusetts DFW and Interior's section 30(c) conditions and Massachusetts DEP's WQC conditions require the exemptee to report data or information to other entities that documents compliance with requirements of this exemption and may have bearing on future actions. These reports shall also be submitted to the Commission. These reports are listed below.

30(c) condition no.		WQC condition no.	Description	Due date
Massachusetts DFW	Interior	Massachusetts DEP		
3	3	18	Post-operation water quality monitoring survey results	Within 3 months of completion of the survey

The exemptee shall submit to the Commission documentation of any consultation, and copies of any comments and recommendations made by any consulted entity in connection with each report. The Commission reserves the right to require changes to project operations or facilities based on the information contained in the report and any other available information.

(c) Requirement to File Notification

The exemptee shall also file with the Commission notification of the following activities.

30(c) condition no.		WQC condition no.	Notification requirement	Due date
Massachusetts DFW	Interior	Massachusetts DEP		
1	1	13	Notification of temporary modification of project operation	Within 10 days of each occurrence and a report within 30 days of each occurrence
5	5	16	Notification of temporary refill procedure modification	Within 10 days of each occurrence
7	7	21	Notification of when the project commences operation	Within 30 days of commencement of project operation

(d) Requirement to File Amendment Applications

Certain Massachusetts DFW and Interior section 30(c) conditions and Massachusetts DEP WQC conditions contemplate unspecified long-term changes to project operations or facilities for the purpose of mitigating environmental impacts. These changes may not be implemented without prior Commission authorization granted after the filing of an application to amend the exemption. These conditions are listed below.

30(c) condition no.		WQC condition no.	Exemption requirement	Due date
Massachusetts DFW	Interior	Massachusetts DEP		
3, 6, 9	3, 6, 9	11, 12, 18, 20	Changes or modifications to the exemption	Within 30 days of receipt of new or revised conditions

Article 19. Commission's Review of Contract Plans and Specifications. At least 60 days prior to the start of any construction, the exemptee shall submit one copy of its plans and specifications and a supporting design document to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer, and two copies to the Commission (one of these shall be a courtesy copy to the Director, D2SI). The submittal to the D2SI – New York Regional Engineer 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 exemptee may not begin any land-disturbing activities 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 the start of construction.

The Soil Erosion and Sediment Control Plan shall describe all measures that will be taken to minimize erosion and sedimentation during construction, including: procedures for removal and disposal of accumulated sediment removed from the tailrace, procedures to handle and process wastewater drained from the cofferdam area in the tailrace, descriptions and drawings of all erosion control measures, and an implementation schedule. The Soil Erosion and Sediment Control Plan shall include provisions of the erosion control plan including debris disposal required by Massachusetts Department of Environmental Protection's certification conditions 9 and 10.

Article 20. Cofferdam Construction. The exemptee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations are consistent with the approved design. At least 30 days before starting construction of any cofferdams or deep excavations, the exemptee shall submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Director, D2SI) of the approved cofferdam and deep excavation construction drawings and specifications, and the letters of approval.

Article 21. As-built Exhibits. Within 90 days of completion of construction of the facilities authorized by this exemption, the exemptee 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 Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer; the Director, D2SI; and the Director, Division of Hydropower Administration and Compliance.

Article 22. Owner's Dam Safety Program. Within 90 days of the issuance date of the exemption, the exemptee shall submit to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer, an Owner's Dam Safety Program which at a minimum shall demonstrate a clear acknowledgement of the dam owner's responsibility for the safety of the project, an outline of the roles and responsibilities of the exemptee's dam safety staff, and access of the exemptee's dam safety official to the Chief Executive Officer (CEO).

Article 23. Inflow Design Flood and Hazard Classification Study. Within six months of the issuance date of the exemption, the exemptee shall submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Director, D2SI) of an Inflow Design Flood and Hazard Classification study. The

study shall be performed according to Chapter 2 of the Commission's Engineering Guidelines. The study shall include: (1) an incremental hazard evaluation to determine the effects on downstream structures in the event of a dam failure; (2) a recommendation for the project's hazard potential classification; (3) a determination of the project's Inflow Design Flood; and (4) an assessment of the adequacy of the project's spillway capacity.

Article 24. Public Safety Plan. Within 60 days from the issuance of this order, the exemptee shall submit one copy to the Commission's Division of Dam Safety and Inspections (D2S1) – New York Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Director, D2SI) of a Public Safety Plan. The plan shall include an evaluation of public safety concerns at the project site, including any designated recreation areas, and assess the need for the installation of safety devices or other safety measures. The submitted plan shall include a description of all public safety devices and signage, as well as a map showing the location of all public safety measures. For additional guidance, the exemptee can review the Guidelines for Public Safety at Hydropower Projects on the FERC-D2SI website.

Article 25. Protection of Cultural Resources. Prior to implementing any project modifications not specifically authorized by this exemption, including but not limited to maintenance activities, land-clearing or land-disturbing activities, or changes to project operation or facilities, the exemptee shall consult with the Massachusetts Historical Commission (Massachusetts SHPO) to determine the effects of the activities and the need for any cultural resource studies or measures. If no studies or measures are needed, the exemptee shall file with the Commission documentation of its consultation with the Massachusetts SHPO.

If a project modification is determined to affect a historic property, the exemptee shall file for Commission approval a historic properties management plan (HPMP) prepared by a qualified cultural resource specialist after consultation with the Massachusetts SHPO. In developing the HPMP, the exemptee shall use the Advisory Council on Historic Preservation and the Commission's *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects*, dated May 20, 2002. The HPMP shall include the following items: (1) a description of each historic property; (2) a description of the potential effect on each historic property; (3) proposed measures for avoiding or mitigating adverse effects; (4) documentation of the nature and extent of consultation; and (5) a schedule for implementing mitigation and conducting additional studies. The Commission reserves the right to require changes to the HPMP.

The exemptee shall not implement any project modifications, other than those specifically authorized in this exemption, until informed by the Commission that the requirements of this article have been fulfilled.

Article 26. Protection of Undiscovered Cultural Resources. If the exemptee discovers previously unidentified cultural resources during the course of constructing, maintaining, or developing project works or other facilities at the project, the exemptee shall stop all land-clearing and land-disturbing activities in the vicinity of the resource and consult with the Massachusetts Historical Commission (Massachusetts SHPO) to determine the need for any cultural resource studies or measures. If no studies or measures are needed, the exemptee shall file with the Commission documentation of its consultation with the Massachusetts SHPO.

If a discovered cultural resource is determined to be eligible for the National Register of Historic Places, the exemptee shall file for Commission approval a historic properties management plan (HPMP) prepared by a qualified cultural resource specialist after consultation with the Massachusetts SHPO. In developing the HPMP, the exemptee shall use the Advisory Council on Historic Preservation and the Commission's *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects*, dated May 20, 2002. The HPMP shall include the following items: (1) a description of each discovered property, indicating whether it is listed in or eligible to be listed in the National Register of Historic Places; (2) a description of the potential effect on each discovered property; (3) proposed measures for avoiding or mitigating adverse effects; (4) documentation of the nature and extent of consultation; and (5) a schedule for implementing mitigation and conducting additional studies. The Commission reserves the right to require changes to the HPMP.

The exemptee shall not resume land-clearing or land-disturbing activities in the vicinity of a cultural resource discovered during construction, until informed by the Commission that the requirements of this article have been fulfilled.

Article 27. Wheel Turbine Relocation Plan. Within six months of the issuance date of the exemption, the exemptee shall file with the Commission, for approval, a Wheel Turbine Relocation Plan that describes the refurbishment and relocation of one of the McCormick Hercules wheel turbines being removed from the Byron Weston Defiance Mill building. The plan shall:

- (1) describe the procedures for removing and handling the turbine, including photo-documentation of the turbine prior to removal from its existing location;
- (2) describe the methods for refurbishing the turbine;
- (3) identify where the turbine will be relocated and describe the interpretive information that will be provided with the public display; and
- (4) provide an implementation schedule.

The plan shall be developed in consultation with the Massachusetts Historical Commission and the Dalton Historical Commission. The exemptee 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 exemptee does not adopt a recommendation, the filing shall include the exemptee's reasons, based on project-specific information.

The Commission reserves the right to make changes to the plan. Removal of the McCormick Hercules wheel turbines from the Byron Weston Defiance Mill building shall not begin until the exemptee is notified by the Commission that the plan is approved. Upon Commission approval, the exemptee shall implement the plan, including any changes required by the Commission.

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

(F) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2011). The filing of a request for rehearing does not operate as a stay of the effective date of this exemption or of any other date specified in this order. The exemptee's failure to file a request for rehearing shall constitute acceptance of this order.

Jeff C. Wright
Director
Office of Energy Projects

Form E-2

FEDERAL ENERGY REGULATORY COMMISSION

Section 4.106 - Standard Terms and Conditions of Exemption from Licensing

Any exemption from licensing granted under this subpart for a small hydroelectric power project is subject to the following standard terms and conditions:

Article 1. The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt project. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a suitable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

Article 2. The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or to otherwise carry out the purposes of the Fish and Wildlife Coordination Act, as specified in Exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of the exemption application.

Article 3. The Commission may revoke this exemption if actual construction of any proposed generating facilities has not begun within two years or has not been completed within four years from the date on which this exemption was granted. If an exemption is revoked under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing or a notice of exemption from licensing for the same project within two years of the revocation.

Article 4. This exemption is subject to the navigation servitude of the United States if the project is located on navigable waters of the United States.

Article 5. This exemption does not confer any right to use or occupy any Federal lands that may be necessary for the development or operation of the project. Any right to use or occupy any Federal lands for those purposes must be obtained from the administering Federal agencies. The Commission may accept a license application by any qualified license applicant and revoke this exemption, if any necessary right to use or occupy Federal lands for those purposes has not been obtained within one year from the date on which this exemption was granted.

Article 6. In order to best develop, conserve, and utilize in the public interest the water resources of the region, the Commission may require that the exempt facilities be modified in structure or operation or may revoke this exemption.

Article 7. The Commission may revoke this exemption if, in the application process, material discrepancies, inaccuracies, or falsehoods were made by or on behalf of the applicant.

Article 8. Any exempted small hydroelectric power project that utilizes a dam that is more than 33 feet in height above streambed, as defined in 18 C.F.R. § 12.31(c) of this chapter, impounds more than 2,000 acre-feet of water, or has a significant or high hazard potential, as defined in 33 C.F.R. Part 222, is subject to the following provisions of 18 C.F.R. Part 12, as it may be amended:

- (1) Section 12.4(b)(1)(i) and (ii), (b)(2)(i) and (iii), (b)(iv), and (b)(v);
- (2) Section 12.4(c);
- (3) Section 12.5;
- (4) Subpart C; and
- (5) Subpart D.

For the purposes of applying these provisions of 18 C.F.R. Part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee.

Article 9. Before transferring any property interests in the exempt project, the exemption holder must inform the transferee of the terms and conditions of the exemption. Within 30 days of transferring the property interests, the exemption holder must inform the Commission of the identity and address of the transferee.

APPENDIX A

Conditions submitted under section 30(c) of the FPA by the Massachusetts Division of Fisheries and Wildlife on September 2, 2011.

1. The Exemptee shall operate the project in an instantaneous run-of-river mode, whereby inflow to the project will equal outflow from the project at all times and water levels above the dam are not drawn down for the purpose of generating power. Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the Exemptee, or for short periods upon mutual agreement between the Exemptee, the Massachusetts Division of Fisheries and Wildlife, and the U.S. Fish and Wildlife Service.
2. The Exemptee shall install trashracks that meet the following criteria: (1) have an approach velocity ≤ 2.0 fps (as measured six inches in front of the racks); (2) have clear spacing of one inch or less; and (3) extend full depth. The trashracks shall be installed and operational concurrent with project start-up. The racks shall be required to be kept free of debris and maintained to design specifications.
3. The Exemptee shall conduct a post-operation water quality monitoring survey. The survey protocol shall be identical to the pre-operation survey, and shall be developed in consultation with, and require approval by the Massachusetts Department of Environmental Protection, and the U.S. Fish and Wildlife Service. The study shall be initiated the first low-flow season after project start-up. Results of the post-operation survey shall be compared to the pre-operation data. If results indicate that, in the opinion of the Division, the USFWS, and the MADEP, the project is not causing depletion of dissolved oxygen no further study will be required. If results indicate that, in the opinion of the Division, the USFWS, and the MADEP, the project is causing depletion of dissolved oxygen further study will be required and mitigation measures may be required (e.g., releasing flow over the dam for aeration) as determined by of the Division, the USFWS, and the MADEP.
4. The Exemptee shall, within three (3) months of the date of issuance of an exemption from licensing, prepare and file for approval the Massachusetts Division of Fisheries and Wildlife, and the U.S. Fish and Wildlife Service, a plan for maintaining and monitoring run-of-river operation at the project. The plan shall include a description of the mechanisms and structures that will be used, the level of manual and automatic operation, the methods to be used for recording data on run-of-river operation, an implementation schedule, and a plan for maintaining the data for inspection by the U.S. Fish and Wildlife Service, the Federal Energy Regulatory Commission, and the Massachusetts Division of Fisheries and Wildlife.

5. The Exemptee shall implement a refill procedure whereby, during impoundment refilling after drawdowns for maintenance or emergency purposes, 90% of inflow is passed downstream and the headpond is refilled on the remaining 10% of inflow to the project. This refill procedure may be modified on a case-by-case basis with the prior approval of both the U.S. Fish and Wildlife Service and the Massachusetts Division of Fisheries and Wildlife.
6. The Exemptee shall be responsible for constructing, operating, maintaining and evaluating upstream and downstream fish passage facilities at this project when notified by the U.S. Fish and Wildlife Service and/or the Massachusetts Division of Fisheries and Wildlife that such fishways are needed. All plans and schedules associated with the design, construction, operation, maintenance and evaluation of any prescribed fishways shall be developed by the Exemptee in consultation with, and require approval by, the Massachusetts Division of Fisheries and Wildlife and the U.S. Fish and Wildlife Service.
7. The Exemptee shall notify the Massachusetts Division of Fisheries and Wildlife, and the U.S. Fish and Wildlife Service in writing when the project commences operation. Such notice shall be sent within 30 days of start-up. The Exemptee shall furnish the Massachusetts Division of Fisheries and Wildlife and the U.S. Fish and Wildlife Service with a set of as-built drawings concurrent with filing said plans with the Commission.
8. The Exemptee shall allow the Massachusetts Division of Fisheries and Wildlife and/or the U.S. Fish and Wildlife Service to inspect the project area at any time while the project operates under an exemption from licensing to monitor compliance with their terms and conditions.
9. The Division reserves the right to add to and alter terms and conditions for this exemption as appropriate to carry out its responsibilities with respect to fish and wildlife resources. The Exemptee shall, within thirty (30) days of receipt, file with the Federal Energy Regulatory Commission any additional terms and conditions imposed by the Massachusetts Division of Fisheries and Wildlife and/or the U.S. Fish and Wildlife Service.
10. The Exemptee shall incorporate the aforementioned terms and conditions in any conveyance—by lease, sale or otherwise—of its interests so as to legally assure compliance with said conditions for as long as the project operates under an exemption from licensing.

APPENDIX B

Conditions submitted under section 30(c) of the FPA by the U.S. Department of the Interior on September 29, 2011.

1. The Exemptee shall operate the project in an instantaneous run-of-river mode, whereby inflow to the project will equal outflow from the project at all times, and water levels above the dam are not drawn down for the purpose of generating power. Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the Exemptee, or for short periods upon mutual agreement between the Exemptee, the U.S. Fish and Wildlife Service, and the Massachusetts Division of Fisheries and Wildlife.
2. The Exemptee shall utilize trashracks that meet the following criteria: (1) have an approach velocity ≤ 2.0 fps (as measured six inches in front of the racks); (2) have clear spacing of one inch or less; and (3) extend full depth. The trashracks shall be installed and operational concurrent with project start-up. The racks shall be required to be kept free of debris and maintained to design specifications.
3. The Exemptee shall conduct a post-operation water quality monitoring survey. The survey protocol shall be identical to the pre-operation survey, and shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service. The post-operation water quality monitoring survey shall be initiated the first low-flow season after project start-up. Results of the post-operation survey will be compared to the pre-operation data. If results indicate that the project is not causing depletion of dissolved oxygen, and the U.S. Fish and Wildlife Service and Massachusetts Department of Environmental Protection deem the data to have been collected during representative low flow conditions and turbine operating levels, no further monitoring will be required. However, if environmental and/or operating conditions during the first year of post-operation monitoring are not representative, or if the data collected indicate that the project is causing depletion of dissolved oxygen, the survey shall be repeated the following year. If survey results indicate that the project is causing depletion of dissolved oxygen, mitigation measures may be required (e.g., releasing flow over the dam for reaeration). Measures specified by the U.S. Fish and Wildlife Service shall be implemented.
4. The Exemptee shall, within three (3) months of the date of issuance of an exemption from licensing, prepare and file for approval by the U.S. Fish and Wildlife Service, a plan for maintaining and monitoring run-of-river operation at the project. The plan shall include a description of the mechanisms and structures that will be used, the level of manual and automatic operation, the methods to be used for recording data on run-of-river operation, an implementation schedule, and a plan for maintaining the data for

inspection by the U.S. Fish and Wildlife Service, the Federal Energy Regulatory Commission, and the Massachusetts Division of Fisheries and Wildlife.

5. The Exemptee shall implement a refill procedure whereby, during impoundment refilling after drawdowns for maintenance or emergency purposes, 90 percent of inflow is passed downstream and the headpond is refilled on the remaining 10 percent of inflow to the project. This refill procedure may be modified on a case-by-case basis with the prior approval of both the U.S. Fish and Wildlife Service and the Massachusetts Division of Fisheries and Wildlife.

6. The Exemptee shall be responsible for constructing, operating, maintaining and evaluating upstream and downstream fish passage facilities at this project when notified by the U.S. Fish and Wildlife Service and/or the Massachusetts Division of Fisheries and Wildlife that such fishways are needed. All plans and schedules associated with the design, construction, operation, maintenance and evaluation of any prescribed fishways shall be developed by the Exemptee in consultation with, and require approval by, the U.S. Fish and Wildlife Service.

7. The Exemptee shall notify the U.S. Fish and Wildlife Service in writing when the project commences operation. Such notice shall be sent within 30 days of start-up to Supervisor, New England Field Office, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301. The Exemptee shall furnish the U.S. Fish and Wildlife Service with a set of as-built drawings concurrent with filing said plans with the Federal Energy Regulatory Commission.

8. The Exemptee shall allow the U.S. Fish and Wildlife Service to inspect the project area at any time while the project operates under an exemption from licensing to monitor compliance with their terms and conditions.

9. The U.S. Fish and Wildlife Service reserves the right to add to and alter terms and conditions for this exemption as appropriate to carry out its responsibilities with respect to fish and wildlife resources. The Exemptee shall, within thirty (30) days of receipt, file with the Federal Energy Regulatory Commission any additional terms and conditions imposed by the U.S. Fish and Wildlife Service.

10. The Exemptee shall incorporate the aforementioned terms and conditions in any conveyance—by lease, sale or otherwise—of its interests so as to legally assure compliance with said conditions for as long as the project operates under an exemption from licensing.

These conditions are required with the understanding that the Commission likely will want to retain concurrent approval authority over some or all of the plans and actions described above, and the above conditions should not be read as preventing this.

APPENDIX C

Water quality certification conditions issued by the Massachusetts Department of Environmental Protection on September 23, 2011.

1. MassDEP APPROVES the application of Crane Company and CERTIFIES that there is reasonable assurance that the Byron Weston Hydroelectric Project, as described above and subject to the conditions below, can be constructed and operated in compliance with the applicable provisions of §303 of the Federal Act, 33 U.S.C. § 1313.
2. This Water Quality Certification shall become a condition on the FERC License issued to the Project Owner.
3. This Certification shall become effective on the date that the license issued for the Project by FERC becomes effective.
4. The state and federal resource agencies referred to in this Certification include the MassDEP, the Massachusetts Department of Fisheries and Wildlife (MADFW), and the U.S. Department of the Interior, Fish and Wildlife Service (USFWS).
5. The Project shall be operated by the Project Owner in accordance with the conditions contained in this Certification and the information included in the FERC license application. Any modifications made to the FERC application during the licensing process that would have a significant or material effect on the conclusions or conditions contained in this Certification, as determined by MassDEP, must be submitted to MassDEP for prior review and approval.
6. The Project shall be operated to maintain the existing and designated uses of the East Branch of the Housatonic River as outlined in the Standards at 314 CMR 4.00, and to maintain an integrated and diverse biological community within the East Branch of the Housatonic River.
7. The Project Owner shall obtain and comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements and orders required for the construction and operation of the project in accordance with the terms of this Certification.
8. All activities shall be conducted in compliance with the Massachusetts Wetlands Protection Act, including the Rivers Protection Act, G.L. Chapter 131, Section 40, and the implementing regulations at 310 CMR 10.00. A Water Quality Certification shall be obtained from MassDEP prior to initiating any activity that will cause a discharge subject to §404 of the federal Act, 33 U.S.C., §1344. The Project Owner shall comply with all applicable provisions of the Public Waterfront Act, G.L. c. 91, and the implementing

regulations at 310 CMR 9.00.

9. Prior to beginning any construction on the Project, the Project Owner shall submit a plan to monitor and control erosion during construction activities to keep impacted waters free from turbidity in concentrations that are aesthetically objectionable or would impair any designated use(s) of such waters. The Project Owner shall implement the plan as approved by MassDEP.

10. All construction, maintenance and repair activities, including disposal of debris and removal of sediments in impounded areas, shall be conducted in a manner so as not to impair water quality, and pursuant to and in compliance with any required approvals.

11. MassDEP may request, at any time during which this Certification is in effect, that FERC reopen the license to make modifications MassDEP deems necessary to maintain compliance with the Standards at 314 CMR 4.00, or other appropriate requirements of state law.

12. MassDEP reserves the right to add and alter the terms and conditions of this Certification when authorized by law, and as it deems appropriate to carry out its responsibilities during the life of the Project with respect to water quality and the protection of the existing and designated uses of the waters of the Commonwealth.

13. The Project Owner shall operate the project in a run-of-river mode such that inflow to the project equals outflow from the project on an instantaneous basis and fluctuations of the head pond water level are minimized. This operating regime may be temporarily modified by approved maintenance activities, agreement between the Project Owner and appropriate state and/or federal resource agencies, or by extreme hydrologic conditions or emergency electrical system conditions, as these terms are defined below.

14. "Extreme Hydrologic Conditions" signifies the occurrence of events beyond the Project Owner's control including without limitation, abnormal precipitation, extreme runoff, flood conditions, ice conditions or other hydrologic conditions which render the operational restrictions and requirements contained within this Certification impossible to achieve, or are inconsistent with the safe operation of the Project.

15. "Emergency Electrical System Conditions" signifies operating emergencies beyond the Project Owner's control which require changes in flow regimes to eliminate such emergencies including without limitation, equipment failure or other abnormal temporary operating condition, generating unit operation or third-party mandated interruptions under power supply emergencies, and orders from local, state or federal law enforcement or public safety authorities.

16. The Project Owner shall implement a refill procedure whereby, during impoundment

refilling after drawdowns for maintenance or emergency purposes, 90% of inflow is passed downstream and the headpond is refilled on the remaining 10% of inflow to the Project. The refill procedure may be modified on a case-by-case basis with the prior approval of both the USFWS and the MADFW.

17. The Project Owner, within three months of the date of issuance of an exemption from licensing, prepare and file for approval with the MADFW and USFWS, a plan for maintaining and monitoring run-of-river operation at the Project. The plan shall include a description of the mechanisms and structures that will be used, the level of manual and automatic operation, the methods to be used for recording data on run-of-river operation, an implementation schedule, and a plan for maintaining the data for inspection by the USFWS, MassDEP, the FERC, and MADFW.

18. The Project Owner shall conduct a post-operation water quality monitoring survey. The survey protocol shall be identical to the pre-operation survey, and shall be developed in consultation with, and require approval by the MassDEP and the USFWS. The study shall be initiated the first low-flow season after Project start-up. Results of the post-operation survey shall be compared to the pre-operation data. If results indicate that, in the opinion of the MADFW, USFWS and MassDEP, the Project is not causing depletion of dissolved oxygen no further study will be required. If results indicate that, in the opinion of the MADFW, USFWS and MassDEP, the Project is causing depletion of dissolved oxygen further study will be required and mitigation measures may be required (e.g. releasing flow over dam for aeration) as determined by the MADFW, USFWS and MassDEP.

19. The Project Owner shall install trashracks that meet the following criteria: (1) have an approach velocity ≤ 2.0 fps (as measured six inches in front of the racks); (2) have clear spacing of one inch or less; and (3) extend full depth. The trashracks shall be installed and operational concurrent with Project start-up. The racks shall be required to be kept free of debris and maintained to design specifications.

20. The Project Owner shall be responsible for constructing, operating, maintaining and evaluating upstream and downstream fish passage facilities at this Project when notified by the USFWS and/or the MADFW that such fishways are needed. All plans and schedules associated with the design, construction, operation, maintenance and evaluation of any prescribed fishways shall be developed by the Project Owner in consultation with, and require approval by, the MADFW and the USFWS.

21. The Project Owner shall notify the MADFW and the USFWS in writing when the Project commences operation. Such notice shall be sent within 30 days of start-up. The Project Owner shall furnish the MADFW and USFWS with a set of as-built drawings concurrent with filing said plans with the FERC.

22. The Project Owner shall allow any employee, agent, consultant, contractor or authorized representative of MassDEP, MADFW or USFWS to enter the facilities in order to assess compliance with the terms and conditions of this Certification including, but not limited to, entry for the purposes of: (i) investigating, sampling, inspecting, or photocopying documents or other writings, conditions, equipment, practices or property; (ii) interviewing facility personnel and contractors; (iii) making records of field activities; and (iv) observing any activities undertaken at the facilities under any of the provisions of this Certification.

23. If any event occurs which delays or will delay the Project Owner's performance of work beyond a deadline established by or pursuant to this Certification, which event was beyond the reasonable control and without the fault of the Project Owner or any person or entity subject to the Project Owner's control, and which event could not have been prevented or avoided by the exercise of due care, foresight, or due diligence on the part of the Project Owner (a "force majeure event"), then the time for performance shall be extended for an appropriate period of time, as determined by MassDEP in its sole discretion. The Project Owner shall bear the burden of demonstrating that a force majeure event has occurred or will occur, and that the delay was beyond the reasonable control and without the fault of the Project Owner. Such an extension of time must be in writing to have effect.

24. Submissions under this Certification shall be sent to:

MassDEP:

Massachusetts Department of Environmental Protection
Division of Watershed Management
Central Regional Office
627 Main Street
Worcester, MA 01608
(508) 767-2854; FAX (508) 791-4131

Massachusetts Department of Environmental Protection
Bureau of Resource Protection
Western Regional Office
436 Dwight Street
Springfield, MA 01103
(413) 755-2138; FAX (413) 784-1149

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MADFW:

Massachusetts Division of Fisheries and Wildlife
Field Headquarters
Assistant Director of Fisheries
1 Rabbit Hill Road
Westborough, MA 01581
(508) 389-6331; FAX (508) 389-7890

USFWS:

United States Fish and Wildlife Service
New England Field Office
Attention: Supervisor
70 Commercial Street, Suite 300
Concord, NH 03301-5087
(603) 223-2541; FAX (603) 223-0104

Document Content(s)

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