

139 FERC ¶ 62,037  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Erie Boulevard Hydropower, L.P.

Project No. 2047-049

ORDER AMENDING LICENSE AND REVISING ANNUAL CHARGES

(Issued April 12, 2012)

1. On January 6, and supplemented April 25, and June 30, 2011, Erie Boulevard Hydropower, LP, licensee for the Stewarts Bridge Project No. 2047, filed an application to amend its license to allow for the installation of a 2,550 kilowatt (kW) turbine-generator unit designed to release required base flows. The project is located on the Sacandaga River in Saratoga County, New York.

**Background**

2. The current license for the project was issued on September 25, 2002.<sup>1</sup> The project is located near river mile three on the Sacandaga River and authorized facilities include: (1) a 1,646-foot-long, 112-foot-high earthen dam with a concrete gated spillway; (2) a gated intake structure; (3) an impoundment with a 480-acre surface area; (4) a 216-foot-long steel penstock; (5) a powerhouse with one turbine-generator unit with a rated capacity of 30,000 kW and; (6) an outdoor transformer, switching station, and 400-foot-long transmission line.

**Proposed Action**

3. Article 405 of the project's license requires, beginning January 1, 2013, a base flow to be released from the project which ranges between inflow and 350 cubic feet per second (cfs), depending upon river flow and reservoir elevation. The licensee proposes to construct a second powerhouse in order to release these required flows. The new 44-foot-long, 34-foot-wide, 18-foot-high concrete and steel powerhouse would be located immediately downstream of the existing powerhouse and constructed mostly below grade. The second powerhouse would contain a single 2,550-kW turbine-generator unit with a maximum hydraulic capacity of 350 cfs but the licensee intends to operate the new unit up to its best gate efficiency of 325 cfs. This, combined with the 25 cfs released through the downstream fish passage at the project's spillway, achieves the maximum base flow required by the project's license.

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<sup>1</sup> See 100 FERC ¶ 61,318 (2002).

4. A 6.5-foot-diameter, 250- to 270-foot-long penstock would tap into the existing main penstock, and be routed around the project's substation to supply water to the new base flow unit. Additionally, a 95-foot-long, 8- to 20-foot-wide tailrace would be excavated into the river bank to direct discharges from the new turbine back into the Sacandaga River.

### **Consultation**

5. Prior to filing its final amendment application with the Commission, the licensee consulted with relevant resource agencies and potentially interested parties, including all signatories to the March 27, 2000 Upper Hudson/Sacandaga River Offer of Settlement, and parties on the project service list.<sup>2</sup> The licensee held a public meeting on August 26, 2010, to share information with stakeholders and interested members of the public. No issues were raised during pre-filing consultation. The licensee received several comments in support of the proposed action and no entity opposed the licensee's proposal. Generally, these comments agreed that the proposed action would not change project operation.

### **Public Notice**

6. On February 23, 2011, the Commission issued public notice that the amendment application was accepted for filing, that the project was ready for environmental analysis, and soliciting comments, recommendations, terms and conditions, and fishway prescriptions. In response, the New York State Department of Environmental Conservation (New York DEC) and the Department of the Interior (Interior) filed timely interventions. Interior also filed comments on the application regarding threatened and endangered species and bald eagles; these comments are addressed below. An environmental assessment (EA) for this amendment application was prepared and issued on July 26, 2011.

### **Water Quality Certification**

7. Under section 401(a) of the Clean Water Act (CWA),<sup>3</sup> the Commission may not authorize construction or operation of a hydroelectric project that may result in a discharge from the project unless the state water quality certifying agency either has issued water quality 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

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<sup>2</sup> A complete list of consulted entities is included on pages 21-22 of the amendment application.

<sup>3</sup> 33 U.S.C. § 1341(a) (2006).

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.<sup>4</sup>

8. The licensee submitted a letter to the New York DEC on January 7, 2011, requesting a new or amended water quality certification for the proposed installation of the base flow unit. On December 14, 2011, the New York DEC issued a modified water quality certification.<sup>5</sup> The revised certification is included as Appendix A of this order, and is made part of the license by ordering paragraph (E). The certification includes all conditions required in the original certificate issued May 25, 2001, for the project's license as well as a number of new administrative conditions related to transfer or renewal of the permit as well as specification of the licensee's legal obligations.

### **Threatened and Endangered Species**

9. Section 7(a)(2) of the Endangered Species Act (ESA) of 1973,<sup>6</sup> requires federal agencies to ensure that 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.

10. There are two endangered species which are listed as known or potentially occurring in Saratoga County, New York: the Indiana bat (*Myotis sodalists*) and the Karner blue butterfly (*Lycaeides Melissa samuelis*). On December 1, 2010, the U.S. Fish and Wildlife Service (FWS) issued a letter stating that Indiana bats and Karner blue butterflies are unlikely to occur at the project and that no further ESA consultation is required. Nevertheless, the FWS recommended its website be checked every 90 days until construction is complete to ensure that the licensee remains aware of current information regarding threatened and endangered species. By letter filed April 20, 2011, in response to the Commission's public notice, Interior made the same recommendation. Article 414 requires the licensee to monitor the FWS' website for current information on federally listed species during construction as recommended by the FWS and Interior.

11. While the bald eagle has been removed from federal listing under the ESA, it is protected by: the Bald and Golden Eagle Protection Act; the Migratory Bird Treaty Act; and New York State's Endangered and Threatened Species Regulations. Bald eagles are known to occur in the project area and the FWS recommends that the licensee implement measures and educational signage to protect and minimize disturbance to wintering bald

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<sup>4</sup> 33 U.S.C. § 1341(d) (2006).

<sup>5</sup> The certification was filed with the Commission on January 11, 2012.

<sup>6</sup> 16 U.S.C. § 1536(a) (2006).

eagles during construction activities. The licensee has developed a Bald Eagle Protection Plan in consultation with the FWS and the New York State DEC that includes installation of signage to educate the public about bald eagles and measures to minimize disturbance to bald eagles during construction at the project. Ordering paragraph (F) requires the licensee to implement this plan.

### **National Historic Preservation Act**

12. Under section 106 of the National Historic Preservation Act,<sup>7</sup> and its implementing regulations,<sup>8</sup> 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 Officer (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

13. License Article 410 requires the licensee to implement the Cultural Resources Management Plan (Plan) and associated Programmatic Agreement for the project. As per the Plan, the licensee consulted with the New York SHPO, the Bureau of Indian Affairs, and the St. Regis Mohawk Tribe (Tribe) regarding the proposed amendment. The licensee made the determination that the proposed amendment would have no adverse effect on cultural or historical properties. By letters dated February 15, and March 23, 2011, the Tribe and the New York SHPO, respectively, concurred with the licensee's conclusion.

### **Section 18 Fishway Prescriptions**

14. Section 18 of the Federal Power Act (FPA)<sup>9</sup> 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. No fishway prescriptions or reservations of authority were filed under section 18 of the FPA.

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<sup>7</sup> 16 U.S.C. § 470 (2006) *et seq.*

<sup>8</sup> 36 C.F.R. Part 800 (2011).

<sup>9</sup> 16 U.S.C. § 811 (2006).

### **Coastal Zone Management Act**

15. Under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA),<sup>10</sup> the Commission cannot issue a license for a project within or affecting a state's coastal 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.

16. The Stewarts Bridge Project is not located within the jurisdiction of the New York State coastal zone management program. Therefore, our assessment is that no coastal zone consistency certification is needed for this license amendment.

### **Recommendations Pursuant to Section 10(j) of the FPA**

17. Section 10(j) of the FPA<sup>11</sup> requires the Commission to include license conditions based upon recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act,<sup>12</sup> to "adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat)" affected by the project. No section 10(j) recommendations were filed for this proposal by fish and wildlife agencies.

### **Recommendations Pursuant to Section 10(A)(1) of the FPA**

18. Section 10(a)(1) of the FPA<sup>13</sup> 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. Interior filed recommendations under Section 10(a)(1). As previously stated, Interior's letter, filed April 20, 2011, recommended the licensee monitor the website of the FWS at least every 90 days during construction to maintain current information about threatened and endangered species in the project area. We are

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<sup>10</sup> 16 U.S.C. § 1456(3)(A) (2006).

<sup>11</sup> 16 U.S.C. § 803(j) (2006).

<sup>12</sup> 16 U.S.C. §§ 661 (2006) *et seq.*

<sup>13</sup> 16 U.S.C. § 803(a)(1) (2006).

adopting this recommendation and Article 414 requires the licensee to monitor the FWS' website.

19. Interior also recommended the licensee follow the Bald Eagle Management Guidelines available on the FWS' website. As discussed more fully above, the licensee has developed a Bald Eagle Protection Plan in consultation with the FWS and New York DEC which is consistent with the guidelines. Ordering paragraph (F) requires the implementation of this plan.

### **Comprehensive Plans**

20. Section 10(a)(2)(A)<sup>14</sup> of the FPA requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving waterways affected by the project.<sup>15</sup> Eight state and two federal plans address resources relevant to the Stewarts Bridge Project.<sup>16</sup> No conflicts were found.

### **Applicant's Plans and Capabilities**

#### **A. Conservation Efforts**

21. Section 10(a)(2)(C) of the FPA requires the Commission to consider the electricity consumption improvement program of the applicant, including its plans, performance, and capabilities for encouraging or assisting its customers to conserve electricity cost effectively, taking into account the published policies, restriction, and requirements of state regulatory authorities.

22. The licensee is an independent power producer, not an electric utility, and, as such, is not required to address the energy efficiency improvement programs as required by Section 10(a)(2) of the FPA.

#### **B. Safe Management, Operation, and Maintenance of the Project**

23. Commission staff has reviewed the licensee's management, operation and maintenance of the Stewarts Bridge Project pursuant to the requirements of 18 C.F.R.

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<sup>14</sup> 16 U.S.C. § 803(a)(2)(A) (2006).

<sup>15</sup> Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (2011).

<sup>16</sup> See page 23 of the Environmental Assessment for a complete list of the relevant comprehensive plans.

Part 12 of the Commission's regulations and the Commission's Engineering Guidelines and periodic Independent Consultant Safety Inspection Reports. Based on the history of the licensee's ownership of the project, staff determines that the addition of the new base flow unit would not prevent the licensee from safely managing, operating, and maintaining the project.

24. Construction activities could disrupt recreational access to the tailrace area and pose a safety risk. The licensee is aware of the need to ensure the safety of the public using the tailrace during construction and proposes to install signs and barriers as needed. Further, the licensee proposes to communicate with commercial outfitters and to notify the public of planned disruptions to recreational access. Ordering paragraph (G) requires the licensee to implement these measures to ensure the safety of the public using the tailrace area during construction.

### **Project Economics**

25. In determining whether to grant this license amendment to construct the proposed new powerhouse and increase the project's total installed capacity, the Commission considers a number of public interest factors including the economic benefits of project's power. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corporation*,<sup>17</sup> 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 amendment 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 amendment.

26. Commission staff applied this analysis to the licensee's amendment application. The proposed base flow unit would generate an estimated average of 11,440 megawatt-hours (MWh) of energy annually. When the estimate of average annual generation is multiplied by the energy value of \$50.78/MWh,<sup>18</sup> the total value of the project's additional energy is \$580,920. As proposed by the licensee, the levelized annual cost of constructing the new powerhouse would be \$574,340. To determine whether the proposal is economically beneficial, the proposal's cost is subtracted from the value of the energy gains provided by the new powerhouse. Therefore, the net benefit of the licensee's proposal, including total capital costs and generation benefits, would be

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<sup>17</sup> 72 FERC ¶ 61,027 (1995).

<sup>18</sup> The alternative power cost of \$50.78/MWh is based on information from the licensee's amendment application.

approximately \$6,580 annually. This net benefit is in addition to the requirement in Article 405 to begin releasing up to a 350-cfs base flow starting January 1, 2013, for environmental enhancement purposes.

### **Comprehensive Development**

27. Sections 4(e) and 10(a)(1) of the FPA,<sup>19</sup> 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 waterway or waterways for all beneficial public uses. The decision to issue this license amendment, and the terms and conditions included herein, reflect such consideration.

### **Administrative Conditions**

#### **A. Annual Charges**

28. The Commission collects annual charges from licensees for administration of Part I of the FPA and for the use, occupancy and enjoyment of federal lands. With the proposed addition of the new base flow unit, the total authorized capacity of the project would change from 30,000 to 32,550 kW. Therefore, Article 201 of the license would need to be revised accordingly. In accordance with the Commission's regulations the effective date for the purpose of annual charges would be the date construction of the new equipment commences.<sup>20</sup> As such, Article 206 would require the licensee to file a report notifying the Commission of the date of commencement of construction for the authorized additional capacity.

#### **B. Exhibit Drawings**

29. The Commission requires licensees to file sets of approved project drawings on microfilm and in electronic file format. The licensee filed three Exhibit F drawings on January 6, 2011, and one revised Exhibit G drawing on April 25, 2011, as part of this amendment. Staff has reviewed these Exhibit F drawings and determined that they adequately show the amended project facilities as required. The Exhibit G drawing also conforms to current Commission rules and regulations. Therefore, the filed drawings are being approved by this order. Article 205 requires the licensee to file the approved

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<sup>19</sup> 16 U.S.C. §§ 797(e) and 803(a)(1) (2006).

<sup>20</sup> 18 C.F.R. § 11.1(c)(5) (2011).

drawings in aperture card and electronic file format.

30. In addition, Article 305 requires the licensee to submit as-built Exhibits A, F, and G, as appropriate, to reflect constructed facilities approved in this order, within 90 days following the completion of construction activities.

### **C. Review of Final Plans and Specifications**

31. Article 307 requires the licensee to provide the Commission's Division of Dam Safety & Inspections-New York Regional Office (D2SI-NYRO) with final contract drawings and specifications – together with a supporting design report consistent with the Commission's engineering guidelines. Article 308 requires the licensee to provide the Commission's D2SI-NYRO with cofferdam construction drawings.

### **Environmental Assessment**

32. The EA prepared for the licensee's proposal and issued July 26, 2011, contains background information, analysis of impacts, and support for related ordering paragraphs and license articles. In the EA, Commission staff recommends that the licensee adhere to the recommendations of the FWS to protect wintering bald eagles during construction and to periodically check the FWS website for current information regarding listed species that may be affected by the proposed action. Implementation of these measures, along with those proposed by the licensee should ensure that the proposed action would not have any significant negative impacts to environmental resources at the project.

### **Conclusion**

33. Commission staff concludes that the proposed installation of a base flow unit, with the mitigation measures required by this order, would not constitute a major federal action significantly affecting the quality of the human environment. Therefore, the amendment application is approved, as considered herein.

### **The Director orders:**

(A) The license for the Stewarts Bridge Project, FERC No. 2047, is amended as provided by this order, effective the day this order is issued.

(B) Ordering paragraph (B)(2) of the license is revised, in part, to read as follows:

...(e) a 6.5-foot-diameter, 250- to 275-foot-long base flow unit penstock; (f) a concrete and steel 44-foot-long, 34-foot-wide, 18-foot-high base flow unit powerhouse containing one 2,550 kilowatt vertical shaft, axial flow turbine/generator unit; (g) a tailrace which extends 450 feet downstream from the

powerhouse; (h) an outdoor transformer, switching station and 400-foot-long transmission line; and (i) appurtenant facilities...

(C) The Exhibit A, filed with the amendment application on January 6, 2011, superseding the previous Exhibit A, is approved and made part of the license.

(D) Article 201 of the license is revised to read as follows:

The licensee shall pay the United States an annual charge effective the first day of the month in which this license is issued, for the purpose of reimbursing the United States for the Commission's administrative costs, pursuant to Part I of the Federal Power Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is:

- (a) 30,000 kilowatts based on the authorized and currently existing capacity.
- (b) 32,550 kilowatts upon the commencement of construction of the additional authorized capacity of 2,550 kilowatts.

(E) The license shall be 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) (2006), as those conditions are set forth in Appendix A to this order.

(F) The licensee shall implement the Bald Eagle Protection Plan developed in consultation with the U.S. Fish and Wildlife Service and the New York State Department of Environmental Conservation and filed with the Commission on June 30, 2011.

(G) As specified in its amendment application filed January 6, 2011, the licensee shall implement measures including signage and barriers to notify and protect recreational users of the tailrace area during construction and the licensee shall notify commercial outfitters and the public of planned disruptions to access the tailrace area.

(H) The following exhibit drawings filed on January 6, and April 25, 2011, for the Stewarts Bridge Project conform to the Commission's rules and regulations and are approved and made part of the license as labeled and numbered below. The superseded drawings are deleted from the license.

EXHIBIT	FERC DRAWING No.	SUPERSEDED FERC DRAWING No.	FERC DRAWING TITLE
G-1	P-2047-1006	P-2047-1001	Project Boundary and Location Map
F-1	P-2047-1007	P-2047-1002	General Plan of Project
F-3	P-2047-1008	P-2047-1004	Plan of Spillway and Power Station
F-5	P-2047-1009	P-2047-1005	Longitudinal Section of Minimum Flow Generator Installation

(I) The license is subject to the following additional articles:

Article 205. Revised Exhibit Drawings. Within 45 days of the date of issuance of this order, the licensee 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-2047-1006, etc) shall be shown in the margin below the title block of the approved drawings. 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., G-1 etc.), Drawing Title, and date of this order shall be typed on the upper left corner of each aperture card (See Figure 1).

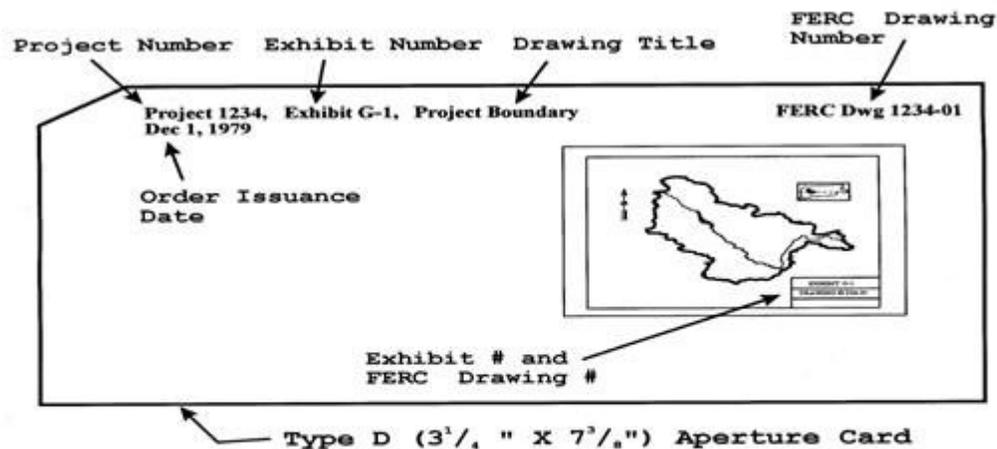


Figure 1 Sample Aperture Card Format

Two of the sets of aperture cards along 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. 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 order, and file extension in the following format [2047-1006, G-1, Project Boundary and Location Map, 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

Each Exhibit G drawing that includes the project boundary must contain a minimum of three known reference points (i.e., latitude and longitude coordinates, or state plane coordinates). The points must be arranged in a triangular format for GIS georeferencing the project boundary drawing to the polygon data, and must be based on a standard map coordinate system. The spatial reference for the drawing (i.e., map projection, map datum, and units of measurement) must be identified on the drawing and each reference point must be labeled. In addition, each project boundary drawing must be stamped by a registered land surveyor.

- c) The licensee shall file two separate sets of the project boundary data in a georeferenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or a similar GIS format) with the Secretary of the Commission, ATTN: OEP/DHAC. The filing shall include both polygon data and all reference points shown on the individual project boundary drawings. A single electronic boundary polygon data file is required for the project boundary. The georeferenced electronic boundary data file must be positionally accurate to  $\pm 40$  feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. The file name(s) shall include: FERC Project Number, data description, date of this order, and file extension in the following format [P-2047, boundary polygon/or point data, MM-DD-YYYY.SHP]. The filing must be accompanied by a separate text file describing the spatial reference for the georeferenced data: map projection used (i.e., UTM, State Plane, Decimal Degrees, etc), the map datum (i.e., North American 27, North American 83, etc.), and the units of measurement (i.e., feet, meters, miles, etc.). The text file name shall include: FERC Project Number, data description, date of this order,

and file extension in the following format [P-2047, project boundary metadata, MM-DD-YYYY.TXT].

Article 206. *Commencement of Construction of Additional Capacity.* The licensee shall file a report stating the date of commencement of construction of the additional authorized capacity, within 15 days of such date. Such commencement date will be the effective date for the annual charges under license Article 201(b).

Article 305. *As-Built Exhibits.* Within 90 days of completion of all construction activities, the licensee shall file, for Commission approval, revised Exhibits A, F, and G, as appropriate, to show the project features as built.

Article 306. *Start of Construction.* The licensee shall commence construction of the project features specified in this amendment within two years from the issuance date of this order and shall complete construction within four years of the issuance date of this order.

Article 307. *Contract Plans and Specifications.* At least 60 days prior to start of construction, the licensee shall submit one copy of its plans, specifications, and supporting design report to the Commission's Division of Dam Safety and Inspection (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 also must include as part of preconstruction requirements: a Quality Control and Inspection Program, a Temporary Construction Emergency Action Plan, and a Soil and Erosion 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 308. *Cofferdam Construction Drawings.* Before starting construction, the licensee shall review and approve the design of contractor-designed cofferdams and deep excavations and shall make sure construction of the 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 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), of the approved cofferdam construction drawings and specifications and the letters of approval.

Article 414. *Threatened and Endangered Species Protection.* For the duration of the approved construction activities, the licensee shall monitor, at an interval no greater than 90 days, the website of the U.S. Fish and Wildlife Service (FWS) to maintain current information on federally listed threatened and endangered species. If new information suggests that federally listed species may be affected, the licensee shall stop construction activities immediately and not resume construction until an evaluation and determination has been made on what protection measures may be necessary. The licensee shall notify

the FWS and the Commission within 10 days of obtaining new information indicating a listed species might be impacted by construction activities.

(J) 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 Federal Power Act, 16 U.S.C. § 8251 (2006), and the Commission's regulations at 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 order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Steve Hocking  
Environmental Review Branch  
Division of Hydropower Administration  
and Compliance

APPENDIX A  
Stewarts Bridge No. 2047  
New York Water Quality Certification #5-4136-0001/00007  
Modification #1 12/15/2011

NATURAL RESOURCE PERMIT CONDITIONS – Apply to the Following Permits: WATER QUALITY CERTIFICATION
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### GENERAL REQUIREMENTS

32. Conformance With Plans. All activities authorized by this permit must be in strict conformance with approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by (see special condition 3).

2. Conformance with plans (continued). This certificate includes and incorporates:

- a. Settlement (filed April 12, 2000, including Technical Corrections filed on July 30, 2000);
- b. Applications for Amendment of License, dated December 2010;
- c. Response to USACE Additional Information Request, dated November 9, 2011.

3. 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.

4. State May Require Site Restoration. If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may lawfully 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.

5. Notifications. The Regional Permit Administrator must be notified in writing at least two weeks prior to commencing any work performed under the authority of this certificate.

## OPERATIONS

6. **Public Access.** Public Access and recreations facilities shall be provided in conformance with the Settlement.
7. **Base Flows.** The certificate holder shall maintain an instantaneous base flow immediately below the project in accordance with the Settlement, in particular, section 5.0.
8. **Impoundment Fluctuations.** The Stewarts Bridge Reservoir shall be operated in accordance with the Settlement (see subsection 5.1). Alternative impoundment operating plans must be reviewed and approved by NYSDEC prior to being implemented. Emergencies shall be dealt with in accordance with special condition 11 of this certificate.
9. **Flow Monitoring.** The certificate holder shall develop a stream flow and water level monitoring plan consistent with the Settlement, in particular, section 2.12.
10. **Fish Protection and Downstream Movement.** Fish protection provisions and downstream fish movement provisions shall be provided in accordance with the Settlement (see subsection 2.8, 2.11 and 5.2).
11. **Emergencies.** With the exception of emergency provisions described in the Settlement (see subsection 2.8), the following procedures shall apply to activities conducted at the project in response to an emergency.

Prior to commencement of emergency activities, the NYSDEC must be notified and must determine whether to grant approval. If circumstances require that emergency activities be taken immediately such that prior notice to the NYSDEC is not possible, then the NYSDEC must be notified by the certificate holder within 24 hours of commencement of emergency activities. In either case, notification must be made by certified mail, telegram, or other written form of communication, including fax and electronic mail. This notification must be followed within 3 weeks 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 Regional Permit Administrator at:

New York State Department of Environmental Conservation  
Regional Permit Administrator – Region 5  
232 Golf Course Road  
Warrensburg, NY 12885

## CONSTRUCTION REQUIREMENTS

12. **Maintenance Dredging.** The certificate holder shall curtail generation and install stoplogs or otherwise shut off flow through the turbine prior to commencing any maintenance dredging activities in the intake/forebay area of the project.
13. **Sediment Analysis and Disposal.** 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 submitted to and approved by the Department prior to sampling.
14. **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 all routine maintenance and construction that may result in sediments/contaminants entering Stewarts Bridge Reservoir or the Sacandaga River.
  - a. Isolate instream work areas from the flow of water and prevent discolored (turbid) discharges and sediments caused by excavation, dewatering and construction activities from entering the waters of the Sacandaga River.
  - b. Prohibit heavy construction equipment from operating below the mean high water level of Stewarts Bridge Reservoir (elevation 704.0') and the Sacandaga River until the work area is protected by a watertight structure and dewatered.
  - c. Minimize soil disturbance, grade so as to prevent or minimize erosion and provide temporary and/or permanent stabilization of all disturbed areas and stockpiles to minimize the potential for erosion and subsequent sedimentation within Stewarts Bridge Reservoir or the Sacandaga River.
  - d. Protect all water 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.

- e. Install and maintain erosion control structures on the down slope of all disturbed areas to prevent eroded material from entering Stewarts Bridge Reservoir and the Sacandaga River. Erosion control structures must be installed before commencing any activities involving soil disturbance and all erosion control structures must be maintained in a fully functional condition.
  - f. Ensure complete removal of all dredged/excavated material and construction debris from the bed and banks of Stewarts Bridge Reservoir and the Sacandaga River.
  - g. Ensure that all temporary fill and other materials placed in the waters of river are completely removed, immediately upon completion of construction, unless otherwise directed by the Department.
15. **Disturbance of Bed or Banks.** Prior to the placement or construction of cofferdams, temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the Sacandaga River or Stewarts Bridge Reservoir the certificate holder shall obtain approval from the Department.
16. **River Flow.** During any period of maintenance and/or construction activity, the certificate holder shall continuously maintain adequate flows immediately downstream of work sites consistent with the provisions of this certificate.
17. **Construction Drawdowns.** Whenever construction and/or maintenance activities require the water level of the Stewarts Bridge Reservoir be lowered, it shall not be drawn down more than one foot per hour. During the refill, the water level of the impoundment shall not be allowed to rise more than one foot per hour.
18. **Turbidity Monitoring.** During maintenance or construction related activities in or near the Sacandaga River or Stewarts Bridge Reservoir, the certificate holder will monitor the turbidity of project waters at a point no more than 100 feet downstream from the work area. The certificate holder specifically agrees that if, at any time, turbidity measurements in the downstream locations exceed the measurements from the upstream locations, all related construction on the project will cease until the source of turbidity is discovered and the situation is corrected.
19. **Disposal of Dredged Material.** Prior to dredging or other excavation the certificate holder must obtain Department approval for all upland locations that will be used as disposal sites for any sediments to be removed from the project waters.

20. 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.

<b>WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS</b>
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1. Water Quality Certification. The NYS Department of Environmental Conservation hereby certifies that the subject project will not contravene effluent limitations or other limitations or standards under Sections 301, 302, 303, 306 and 307 of the Clean Water Act of 1977 (PL 95-217) provided that all of the conditions listed herein are met.

<b>GENERAL CONDITIONS – Apply to ALL Authorized Permits:</b>
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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 of Environmental Conservation (the Department) to determine whether the permittee 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 permittee 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 permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit 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, Modifications or Transfers. The permittee must submit a separate written application to the Department for permit renewal, modification or 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. Submission of applications for permit renewal, modification or transfer is to be submitted to:

Deputy Chief Permit Administrator  
NYSDEC Headquarters  
625 Broadway  
Albany, NY 12233

4. Submission of Renewal Application. The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Water Quality Certification.
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 permittee to comply with any terms or conditions of the permit;
  - 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 permit;
  - 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 Transfer. Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

<b>NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS</b>
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**Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification**

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and

damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee'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 DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 or the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

**Item B: Permittee's Contractors to Comply with Permit**

The permittee 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 permittee'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 permittee.

**Item C: Permittee Responsible for Obtaining Other Required Permits**

The permittee 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 permittee 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.

Document Content(s)

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