

153 FERC ¶ 62,096
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Erie Boulevard Hydropower, L.P.

Project No. 7320-042

ORDER ISSUING NEW LICENSE

(Issued November 10, 2015)

INTRODUCTION

1. On July 1, 2013, Erie Boulevard Hydropower, L.P. (Erie or licensee) filed, pursuant to sections 4(e) and 15 of the Federal Power Act (FPA),¹ an application for a new license to continue operation and maintenance of the Chasm Hydroelectric Project No. 7320 (Chasm Project or project). The project's authorized capacity being licensed is 3.35 megawatts (MW). The project is located on the Salmon River, near the Town of Malone, in Franklin County, New York.² The project does not occupy federal land.
2. As discussed below, this order issues a new license for the project.

BACKGROUND

3. The Commission issued the original license for the project on July 26, 1985,³ which expired on June 30, 2015. Since then, Erie has operated the project under an annual license pending the disposition of its new license application.⁴

¹ 16 U.S.C. §§ 797(e) and 808 (2012).

² The Salmon River, including the reach of the river where the project is located, is a navigable waterway. See September 1, 2015 staff memorandum and attached August 11, 1972 navigation report for the Salmon River, New York (finding that the entire course of the Salmon River was historically used for floating logs and lumber). Therefore, section 23(b)(1) of the FPA, 16 U.S.C. § 817(1)(2012), requires the project to be licensed.

³ *Niagara Mohawk Power Corporation*, 32 FERC ¶ 62,239 (1985). The original license was issued to Niagara Mohawk Power Corporation and transferred to Erie pursuant to a Commission order issued July 29, 1999 (88 FERC ¶ 62,082).

⁴ 80 *Fed. Reg.* 41,031 (2015).

4. On October 9, 2013, the Commission issued a public notice that was published in the *Federal Register* indicating the application was accepted for filing and soliciting motions to intervene and protests.⁵ The deadline for filing motions to intervene and protests was December 8, 2013. The U.S. Department of the Interior (Interior) filed a timely motion to intervene.⁶

5. On May 16, 2014, the Commission issued a public notice that was published in the *Federal Register* indicating the application was ready for environmental analysis, and soliciting comments, recommendations, terms and conditions, and prescriptions.⁷ The deadline for filing comments, recommendations, terms and conditions, and prescriptions was July 15, 2014. Interior, the New York State Department of Environmental Conservation (New York DEC), and the New York State Council of Trout Unlimited (New York Trout) filed comments and recommendations. Erie filed reply comments on August 22, 2014. None of the intervenors or commenters oppose relicensing the project.

6. On April 30, 2015, Erie filed an Offer of Settlement (Settlement Agreement) on behalf of itself, the New York DEC, Interior's Fish and Wildlife Service (FWS), the Town of Malone, New York, and New York Trout. The Settlement Agreement addresses: impoundment fluctuation, bypassed reach and downstream flows, fish protection, recreation, and invasive species management. The provisions of the Settlement Agreement are considered to be Erie's licensing proposal with respect to those issues and supersede any related proposed measures filed by Erie as part of its license application. The Settlement Agreement does not contain measures for other environmental resources such as threatened and endangered species, land use and aesthetics, and cultural resources. As such, this order assumes the measures proposed in the final license application for those resources continue to represent Erie's proposal. In the Explanatory Statement accompanying the Settlement Agreement, Erie states that the proposed license articles set forth in section 3.0 of the Settlement Agreement, if included in the project's new license without modification, would resolve among the parties all issues associated with Erie's pending final license application for continued operation of the project. The Explanatory Statement also provides that the signatories agree that the

⁵ 78 *Fed. Reg.* 62348-62349 (2013).

⁶ Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2015).

⁷ 79 *Fed. Reg.* 29433-29434 (2014).

terms and conditions of the Settlement Agreement are dependent on the Commission issuing a 40-year license for the project.

7. On May 1, 2015, the Commission issued public notice of the Settlement Agreement, which was published in the *Federal Register* on May 7, 2015, with comments and reply comments due on May 21 and May 31, 2015, respectively.⁸ On May 20, 2015, the FWS filed comments in support of the Settlement Agreement. No reply comments were filed.

8. On July 30, 2015, Commission staff issued an Environmental Assessment (EA) analyzing the impacts of the proposed project and alternatives to it, including the measures in the Settlement Agreement. Public notice of the issuance of the EA was published in the *Federal Register* on August 5, 2015.⁹ Erie filed comments on the EA on September 14, 2015.

9. Commission staff fully considered the interventions, comments, and recommendations in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

A. Project Area

10. The Chasm Project is located on the Salmon River near the Town of Malone, in Franklin County, New York. From its headwaters in the Adirondack Mountains, the Salmon River flows approximately 50 miles northwest to its confluence with the St. Lawrence River near Dundee, Quebec. The Salmon River discharges into the St. Lawrence River approximately 28.8 river miles (RM) downstream from the project and drains an area of approximately 379 square miles, as measured at Fort Covington, New York. The project has a drainage area of approximately 126 square miles.

B. Project Facilities

11. The existing Chasm Project consists of: (1) Chasm Falls Dam - a 202-foot-long, 32-foot-high concrete gravity-type dam that includes a 100-foot-long spillway section

⁸ 80 *Fed. Reg.* 26244-26245 (2015).

⁹ 80 *Fed. Reg.* 46570 (2015).

surmounted by 2-foot-high wooden flashboards, and a 22-foot-long intake section with steel trash racks and headgates; (2) a reservoir with a surface area of about 22 acres and a gross storage capacity of 74 acre-feet at a normal pool elevation of 1,285.8 feet mean sea level;¹⁰ (3) a 7-foot-diameter welded steel pipeline approximately 3,355 feet in length from the intake at the dam to a 6-foot-diameter steel manifold pipeline just upstream of the powerhouse; (4) a powerhouse containing three Francis-type generating units having a total rated capacity of 3,350 kilowatts; (5) a 20-foot-wide, 850-foot-long tailrace; (6) three 2.2-kilovolt generator leads (transmission lines) extending from the powerhouse about 74 feet to a 4.2-megavolt-ampere step-up transformer located within an adjacent switchyard connected to transmission facilities owned and operated by the National Grid Corporation (National Grid); and (7) appurtenant facilities.

12. The project bypassed a 4,800-foot-long reach of the Salmon River. Approximately 500 feet downstream from the confluence of the bypassed reach and the tailrace is the Chasm Falls Recreation Area, a seasonal day use area owned and maintained by Erie. There is also an informal bypassed reach access area near the powerhouse.

C. Project Boundary

13. The project boundary follows the impoundment shoreline at the 1,285.8 foot elevation contour (the top of the 2-foot-high flashboards). The project boundary also encloses the penstock, powerhouse, transmission line, tailrace, bypassed reach, the informal bypassed reach access area, and the Chasm Falls Recreation Area. The total area within the project boundary is about 68.5 acres.

D. Current Project Operation

14. Article 25 of the current license requires Erie to maintain the surface of the project's impoundment at an elevation equal to or above 1,285.2 feet when the 2-foot-high flashboards are in place at the dam, and to maintain the surface of the project's impoundment at an elevation equal to or above 1,283.2 feet when the flashboards are removed. These elevations are 0.6 foot below the top of the flashboards and the spillway crest, respectively. Article 24 of the existing license requires Erie to: (1) discharge into the bypassed reach a continuous minimum flow of 15 cfs;¹¹ and (2) maintain a continuous

¹⁰ All elevations in this order are referenced to mean sea level.

¹¹ When inflows to the project fall below 85 cfs, the license allows Erie to reduce discharge from the Chasm Falls dam to a continuous minimum flow of 10 cfs, or inflow (*continued ...*)

base flow of 70 cfs in the Salmon River below its confluence with the powerhouse tailrace, or a flow equal to impoundment inflow, whichever is less. Minimum flows are released to the bypassed reach just below the dam via a tap on the project's penstock. Erie also manages sediments in the project's impoundment pursuant to the Sediment Management Plan filed with the Commission on July 5, 2012.

15. The project's average annual generation is approximately 20,847 megawatt-hours (MWh).

E. Proposed Operation and Environmental Measures

16. Erie's proposal for relicensing the Chasm Project is described in its July 1, 2013 license application, which was modified by the April 30, 2015 Settlement Agreement. The substantive conditions of the Settlement Agreement are described below and attached to this license as Appendix B.

17. To provide for the controlled release of sediments deposited within the project impoundment, Erie proposes to continue to implement the Sediment Management Plan, filed July 5, 2012 and required by the existing license.

18. To limit the duration of base flow interruptions resulting from powerhouse outages by ensuring that spill occurs quickly, Erie proposes to maintain the impoundment water level within 0.25 foot of the top of the flashboards (or spillway crest if the flashboards are not installed) when inflow to the impoundment is 85 cfs or more, and within 0.1 foot of the top of the flashboards or spillway crest when inflow is less than 85 cfs (section 3.1 of the Settlement Agreement).

19. To protect aquatic resources downstream of the project, Erie proposes to continue to provide a base flow of 70 cfs, or flow equal to impoundment inflow, whichever is less, in the Salmon River below its confluence with the powerhouse tailrace (section 3.2 of the Settlement Agreement).

20. To protect aquatic species and improve habitat conditions during the winter months, Erie proposes to release a minimum flow to the bypassed reach of 15 cfs from May 1 through October 1, and a flow of 23 cfs from October 2 through April 30, or flow

to the impoundment, whichever is less.

equal to impoundment inflow, whichever is less (section 3.3 of the Settlement Agreement).¹²

21. To verify compliance with water level, bypassed reach flow, and downstream base flow requirements, Erie proposes to develop a streamflow and water level monitoring plan to verify impoundment water levels, base flow, and minimum bypassed reach flows (section 3.6 of the Settlement Agreement).

22. To ensure that entrainment and impingement of fishes is minimized, Erie proposes to maintain the existing trash racks on the project's intake with 1-inch clear bar spacing (section 3.4 of the Settlement Agreement).

23. To limit the introduction and spread of invasive species during construction and maintenance activities, Erie proposes to implement the Invasive Species Management Plan appended to the Settlement Agreement (section 3.7 of the Settlement Agreement).

24. To enhance recreation opportunities at the project, Erie proposes to implement the Recreation Management Plan appended to the Settlement Agreement that includes provisions for: (1) installing a footpath at the informal recreation area at the powerhouse; (2) installing signage at the informal recreation area; (3) installing signage near the powerhouse identifying restricted areas including the upper bypassed reach, the substation, and the tailrace area; (4) continuing to maintain the Chasm Falls Recreational Area as a river access point, but removing existing picnic amenities; (5) providing the Town of Malone a one-time donation of two wooden picnic tables at the William A. King Memorial Park; and (6) installing signage at the Chasm Dam indicating "No Parking" and directing the public to the upstream New York DEC's Titusville Mountain Access Site (section 3.5 of the Settlement Agreement).

25. To protect cultural resources, Erie proposes to implement the Historic Properties Management Plan (HPMP), filed on October 14, 2014.

SUMMARY OF LICENSE REQUIREMENTS

26. As summarized below, this license, which authorizes 3.35 MW of renewable energy, requires a number of measures to protect and enhance fisheries resources, water

¹² The increased seasonal flows would be provided beginning 48 months following license issuance, or by October 2, 2019, whichever occurs later. Until then, a continuous minimum flow of 15 cfs, the capacity of the existing penstock tap, would be released.

quality, recreation, and cultural resources at the project. In addition to the measures proposed by Erie, this license requires the following environmental measures.

27. Because the 23-cfs minimum flow to be released into the bypassed reach from October 2 to April 30 may require a new release structure, the license requires Erie to develop for Commission approval a minimum flow release plan.

28. To protect cultural resources, the license requires Erie to implement the HPMP per a Programmatic Agreement (PA) that was executed on October 14, 2015.

WATER QUALITY CERTIFICATION

29. Under section 401(a)(1) of the Clean Water Act (CWA),¹³ the Commission may not issue a license authorizing the construction or operation of a hydroelectric project unless the state water quality certifying agency either has issued 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 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.¹⁴

30. By letter dated May 22, 2014,¹⁵ Erie applied to the New York DEC for a section 401 water quality certification (certification) for the Chasm Project. New York DEC received this application on May 23, 2014. On May 19, 2015, New York DEC issued its certification for the Chasm Project, which incorporates the terms of the Settlement Agreement and includes conditions (conditions 8 through 14, described below) concerning project operation, which are set forth in Appendix A of this order and incorporated into the license by ordering paragraph (D). To provide clarity, those Settlement Agreement provisions are set forth in Appendix B to this order. The

¹³ 33 U.S.C. § 1341(a)(1) (2012).

¹⁴ 33 U.S.C. § 1341(d) (2012).

¹⁵ Erie filed a copy of this correspondence with the Commission on May 23, 2014.

certification also contains 27 additional conditions that are general or administrative and are not discussed further in this order.¹⁶

Certification Conditions

31. Condition 8 requires Erie to maintain a base flow of 70 cfs (or inflow to the impoundment, whichever is less), in accordance with section 3.2 of the Settlement Agreement.
32. Condition 9 requires Erie to maintain a seasonal bypassed reach flow of 15 cfs from May 1 - October 1 and 23 cfs from October 2 - April 30 each year, beginning within 48 months of license issuance, or by October 2, 2019, whichever occurs later, in accordance with section 3.3 of the Settlement Agreement.¹⁷
33. Condition 10 requires Erie to develop a stream flow and water level monitoring plan consistent with section 3.6 of the Settlement Agreement.
34. Condition 11 requires Erie to operate the project's impoundment in accordance with section 3.1 of the Settlement Agreement.
35. Condition 12 requires Erie to maintain fish protection provisions in accordance with section 3.4 of the Settlement Agreement.
36. Condition 13 requires Erie to manage impoundment sediments in accordance with the project's current Sediment Management Plan and any subsequent updated versions over the term of the license period. Condition 13 further states that the certification conditions associated with the construction and maintenance section¹⁸ do not apply to this

¹⁶ The general or administrative conditions include: Natural Resource Permit Conditions (nos. 1 – 7 and 15 – 25), General Conditions that Apply to all Authorized Permits (nos. 1 – 6), and Notification of other Permittee Obligations (items A – D).

¹⁷ Although the increased flow is in excess of the capacity of the existing minimum flow release structure, neither Erie nor the certification specify how the increased flow release would be made. Because a new flow release structure may be needed, Article 404 requires Erie to develop a minimum flow release plan for Commission approval.

¹⁸ See Appendix A, conditions 15 – 25.

sediment management plan condition. Article 403 requires continued implementation of the Sediment Management Plan.

37. Condition 14 requires Erie to prevent the introduction and/or spread of invasive species in accordance with the Invasive Species Management Plan (section 3.7 of the Settlement Agreement). Article 405 requires implementation of the Invasive Species Management Plan.

COASTAL ZONE MANAGEMENT ACT

38. Under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA),¹⁹ 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 6 months of its receipt of the applicant's certification.

39. The Chasm Project is not located within the state-designated Coastal Management Zone, which includes coastal areas and extends inland along the St. Lawrence River to the west of the project, and the project would not affect New York's coastal resources.²⁰ Therefore, the project is not subject to New York's coastal zone program review and no consistency certification is required.

SECTION 18 FISHWAY PRESCRIPTION

40. Section 18 of the FPA²¹ 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.

41. By letter filed July 14, 2014, Interior requested that the Commission reserve authority to prescribe fishways. Consistent with Commission policy, Article 402 of the license reserves the Commission's authority to require fishways that may be prescribed by Interior for the Chasm Project.

¹⁹ 16 U.S.C. § 1456(c)(3)(A) (2012).

²⁰ See New York State Department of State letter dated June 17, 2010, included in Appendix A of the license application.

²¹ 16 U.S.C. § 811 (2012).

THREATENED AND ENDANGERED SPECIES

42. Section 7(a)(2) of the Endangered Species Act of 1973²² requires federal agencies to ensure their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat.

43. According to the FWS' Environmental Conservation Online System, the threatened northern long-eared bat is known to or believed to occur in Franklin County, New York.

44. In the EA, Commission staff determined that issuance of a new license for the Chasm Project may affect, but was not likely to adversely affect the northern long-eared bat, should it occur in the project area because Erie proposes no construction, tree removal, or land-disturbing activities.²³ In a letter issued July 31, 2015, staff requested Interior's concurrence with this finding. In a letter filed August 15, 2015, Interior concurred with staff's finding. Therefore, no further action under the Endangered Species Act is required.

NATIONAL HISTORIC PRESERVATION ACT

45. Under section 106 of the National Historic Preservation Act (NHPA)²⁴ and its implementing regulations,²⁵ federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register of Historic Places (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 SHPO to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

²² 16 U.S.C. § 1536(a) (2012).

²³ *See* EA at 7.

²⁴ 54 U.S.C. § 306108. Pub. L. 113-287, 128 Stat. 3188 (2014). (The National Historic Preservation Act was recodified in Title 54 in December 2014.)

²⁵ 36 C.F.R. Part 800 (2015).

46. To satisfy these responsibilities, the Commission executed a Programmatic Agreement (PA) with the New York State Historic Preservation Officer and invited the St. Regis Mohawk Tribe and Erie to concur with the stipulations of the PA.²⁶ Neither party has concurred. The PA requires Erie to implement the Historic Properties Management Plan (HPMP), filed October 14, 2014, for the term of any new license issued for this project. Execution of the PA demonstrates the Commission's compliance with section 106 of the NHPA. Article 407 requires the licensee to implement the PA and HPMP.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES PURSUANT TO SECTION 10(j) OF THE FPA

47. Section 10(j) of the FPA²⁷ requires the Commission, when issuing a license, to include conditions based on recommendations submitted by federal and state fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act²⁸ to "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)" affected by the project.

48. In response to the Commission's May 16, 2014 notice that the project was ready for environmental analysis, Interior, by letter filed July 14, 2014, submitted 10 fish and wildlife recommendations under section 10(j). Subsequently, as noted previously, Erie, FWS, and other parties executed a Settlement Agreement to address various issues associated with issuance of a new license for the project, including impoundment fluctuation, base flows, bypassed reach flows, fish protection and passage, recreational enhancements, stream flow and water level monitoring, and invasive species management.

49. In its comments on the Settlement Agreement, filed May 20, 2015, FWS stated that the seven measures in the Settlement Agreement supersede its original 10(j) recommendations, with the exception of 10(j) recommendation 9 (implement the existing Sediment Management Plan), which was not reflected in the Settlement Agreement.

²⁶ See October 23, 2015 Commission staff transmittal of executed Programmatic Agreement.

²⁷ 16 U.S.C. § 803(j)(1) (2012).

²⁸ 16 U.S.C. §§ 661 *et seq.* (2012).

50. One of Interior's eight recommendations is outside the scope of section 10(j) and is discussed in the next section.

51. In the EA, staff recommended adopting all of Interior's measures determined to be within the scope of Section 10(j).²⁹ These measures are also conditions of the water quality certification set forth in Appendix A of this order and are incorporated into the license by ordering paragraph (D).

SECTION 10(a)(1) OF THE FPA

52. Section 10(a)(1) of the FPA³⁰ requires that any project for which the Commission issues a license 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.

53. Interior made one recommendation under section 10(j) that is not a specific measure to protect, mitigate damages to, or enhance fish and wildlife. Consequently, this recommendation is considered under the broad public-interest standard of section 10(a)(1).

54. Interior recommended that Erie implement the Recreation Management Plan (RMP) described in section 3.5 of the Settlement Agreement and included as Appendix A thereto. The RMP was developed by Erie in consultation with resource agencies and other stakeholders and provides for Erie to: (1) install a footpath at the informal recreation area at the powerhouse; (2) install signage at the informal recreation area designating the fishing area, footpath, and parking area; (3) install signage near the powerhouse identifying restricted areas including the upper bypassed reach, the substation, and the tailrace area; (4) continue to maintain the Chasm Falls Recreational Area as a river access point, but remove existing picnic amenities; (5) provide the Town of Malone a one-time donation of two wooden picnic tables at the William A. King Memorial Park; and (6) install signage at the Chasm Dam indicating "No Parking" and directing the public to the upstream Titusville Mountain Access Site.

²⁹ See EA at 84-85.

³⁰ 16 U.S.C. § 803(a)(1) (2012).

55. In the EA, staff concluded that there was a recognized need for additional recreation and safety-related signage at the project, and concluded that the RMP's measures would enhance recreational opportunities at the project.³¹ Article 406 requires Erie to implement the RMP.

ADMINISTRATIVE PROVISIONS

A. Annual Charges

56. The Commission collects annual charges from licensees for administration of the FPA. Article 201 provides for the collection of funds for administration of the FPA.

B. Exhibit F and G Drawings

57. The Commission requires licensees to file sets of approved project drawings in electronic file format. Article 202 requires the filing of these drawings.

C. Amortization Reserve

58. The Commission requires that for new major licenses, non-municipal licensees must set up and maintain an amortization reserve account upon license issuance. Article 203 requires the establishment of the account.

D. Headwater Benefits

59. Some projects directly benefit from headwater improvements that were constructed by other licensees, the United States, or permittees. Article 204 requires the licensee to reimburse such entities for these benefits if they were not previously assessed and reimbursed.

E. Project Modification Resulting From Environmental Requirements

60. Article 301 requires the licensee to coordinate with the Commission's Division of Dam Safety and Inspections-New York Regional Engineer regarding any modifications resulting from environmental requirements, if such modifications would affect project works or operation.

F. Use and Occupancy of Project Lands and Waters

³¹ See EA at 83-84.

61. Requiring a licensee to obtain prior Commission approval for every use or occupancy of project land would be unduly burdensome. Therefore, Article 408 allows the licensee to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape planting. Such uses must be consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project.

G. Commission Approval of Resource Plans, and Notification

62. In Appendix A, there are certain certification conditions that either do not require the licensee to file plans with the Commission for approval; require agency, but not Commission notification of emergencies and other activities; or contemplate unspecified project modifications that would require amendment of the license. Therefore, Article 401 requires the licensee to file the plans with the Commission for approval, notify the Commission of emergencies and other activities, and file amendment applications, as appropriate.

STATE AND FEDERAL COMPREHENSIVE PLANS

63. Section 10(a)(2)(A) of the FPA,³² requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.³³ Under section 10(a)(2)(A), federal and state agencies filed 41 comprehensive plans that address various resources in New York. Of these, staff identified and reviewed five comprehensive plans that are relevant to this project.³⁴ No conflicts were found.

APPLICANT'S PLANS AND CAPABILITIES

64. In accordance with sections 10(a)(2)(C) and 15(a) of the FPA,³⁵ Commission staff evaluated Erie's record as a licensee for these areas: (A) conservation efforts; (B) compliance history and ability to comply with the new license; (C) safe management, operation, and maintenance of the project; (D) ability to provide efficient and reliable

³² 16 U.S.C. § 803(a)(2)(A) (2012).

³³ Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (2015).

³⁴ The list of applicable plans can be found in section 5.4 of the EA.

³⁵ 16 U.S.C. §§ 803(a)(2)(C) and 808(a) (2012).

electric service; (E) need for power; (F) transmission services; (G) cost effectiveness of plans; and (H) actions affecting the public. This order adopts staff's findings in each of the following areas.

A. Conservation Efforts

65. 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, restrictions, and requirements of state regulatory authorities.³⁶ Erie does not transmit power or sell electricity to retail customers. Erie sells the project's energy to the New York Independent System Operator (New York ISO), which is responsible for the operational control of New York's power grid. The New York ISO in turn delivers the power to local utilities, which are responsible for promoting conservation of electricity use by its customers. Staff concludes that, given the limits of its ability to influence users of the electricity generated by the project, Erie complies with section 10(a)(2)(C) of the FPA.

B. Compliance History and Ability to Comply with the New License

66. Based on a review of Erie's compliance with the terms and conditions of the existing license, staff finds that Erie's overall record of making timely filings and complying with its license is satisfactory. Therefore, staff believes Erie can satisfy the conditions of a new license.

C. Safe Management, Operation, and Maintenance of the Project

67. Staff has reviewed Erie's record of management, operation, and maintenance of the Chasm Project pursuant to the requirements of 18 C.F.R Part 12 and the Commission's Engineering Guidelines, as well as the most recent dam safety inspection report. Staff concludes that the dam and other project works are safe, and that there is no reason to believe that Erie cannot continue to safely manage, operate, and maintain these facilities under a new license.

D. Ability to Provide Efficient and Reliable Electric Service

³⁶ 16 U.S.C. § 803(a)(2)(C) (2012).

68. Staff has reviewed Erie's plans and its ability to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. Staff's review indicates that Erie's plan to safely manage, operate, and maintain the Chasm Project will ensure the project is able to operate reliably into the future. Staff concludes that Erie is capable of operating the project to provide efficient and reliable electric service in the future.

E. Need for Power

69. To assess the need for power, staff looked at the needs in the operating region in which the project is located. Power from the Chasm Project would be used to support demand in the Northeast Power Coordinating Council (NPCC) - New York region of the North American Electric Reliability Corporation (NERC). The NERC annually forecasts electrical supply and demand nationally and regionally for a 10-year period. According to NERC's 2014 long-term reliability assessment, the total internal demand for the NPCC - New York region is projected to grow at a compound annual growth rate of 0.79 percent for summer and 0.33 percent for winter during the period from 2015 through 2024. Staff concludes that the project's power and contribution to the region's diversified generation mix will help meet a need for power in the region.

F. Transmission Services

70. Erie is not a utility and does not maintain a transmission system. Erie is a wholesale electric generating company, and as such, has no direct retail customers. The project is interconnected with the National Grid distribution and transmission system. Erie's generation from the Chasm Project is transmitted to electric customers through the integrated transmission and distribution system operated by National Grid. Erie is not proposing changes that would affect its own or other transmission services in the region.

G. Cost Effectiveness of Plans

71. Erie plans to make a number of operational modifications to enhance environmental resources affected by the project. Based on Erie's record as an existing licensee, staff concludes that these plans are likely to be carried out in a cost-effective manner.

H. Actions Affecting the Public

72. Erie provided extensive opportunity for public involvement in the development of its application for a new license for the Chasm Project. During the previous license period, Erie maintained impoundment levels to protect environmental resources,

maintained year-round flows to the project's bypassed reach and downstream of the project, and maintained recreational access to enhance the public use of project lands.

PROJECT ECONOMICS

73. In determining whether to issue a new license for an existing hydroelectric project, the Commission considers a number of public interest factors, including the economic benefits of project power. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.*,³⁷ the Commission uses current costs to compare the costs of the project and likely alternative power with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and of reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

74. In applying this analysis to the Chasm Project, we considered three alternatives: the no-action alternative, Erie's proposal, and the project as licensed herein. Under the no-action alternative, the project would continue to operate as it does now. The project has an installed capacity of 3.35 MW, has a dependable capacity of 0.45 MW, and generates an average of 20,847 MWh of electricity annually. The average annual project cost is about \$949,581, or \$45.55/MWh. When an estimate of average generation is multiplied by the alternative power cost of \$52.25/MWh, the total value of the project's power is \$1,089,256 in 2015 dollars. To determine whether the proposed project is currently economically beneficial, the project's cost is subtracted from the value of the project's power. Therefore, the project costs \$139,675, or \$6.70/MWh, less to produce power than the likely alternative cost of power.

75. Erie's proposal and staff's recommended alternative including the mandatory conditions are the same and represent the alternative licensed herein.

76. As licensed herein with the mandatory conditions, the levelized annual cost of operating the Chasm Project is \$983,941, or \$48.47/MWh. The project would have a dependable capacity of 0.30 MW, and generate an average of 20,300 MWh of electricity annually. Based on an alternative power cost of \$51.13/MWh, the total value of the project's power is \$1,037,939 in 2015 dollars. Therefore, in the first year of operation,

³⁷ 72 FERC ¶ 61,027 (1995).

the project would cost \$53,998, or \$2.66/MWh, less than the likely alternative cost of power.

77. In considering public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary service benefits). These benefits include the ability to help maintain the stability of a power system, such as by quickly adjusting power output to respond to rapid changes in system load; and to respond rapidly to a major utility system or regional blackout by providing a source of power to help restart fossil fuel-based generating stations and put them back on line.

COMPREHENSIVE DEVELOPMENT

78. Sections 4(e) and 10(a)(1) of the FPA³⁸ require the Commission to give equal consideration to the 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 license this project, and the terms and conditions included herein, reflect such consideration.

79. The EA for the project contains background information, analysis of effects, and support for related license articles. Based on the record of this proceeding, including the EA and the comments thereon, licensing the Chasm Project as described in this order would not constitute a major federal action significantly affecting the quality of the human environment. The project will be safe if operated and maintained in accordance with the requirements of this license.

80. Based on an independent review and evaluation of the Chasm Project, recommendations from the resource agencies and other stakeholders, and the no-action alternative, as documented in the EA, the proposed Chasm Project, with the addition of the water quality certification conditions, is best adapted to a comprehensive plan for improving or developing the Salmon River.

81. This alternative was selected because: (1) issuance of a new license will serve to maintain a beneficial and dependable source of electric energy; (2) the required

³⁸ 16 U.S.C. §§ 797(e) and 803(a)(1) (2012).

environmental measures will protect and enhance fish and wildlife resources, water quality, recreation resources, and historic properties; and (3) the 3.35 MW of electric capacity comes from a renewable resource that does not contribute to atmospheric pollution.

LICENSE TERM

82. Section 15(e) of the FPA³⁹ provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years. The Commission's general policy is to establish 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive measures.⁴⁰

83. As noted previously, Erie's Settlement Agreement is predicated on the Commission's issuance of a new license with 40-year term. The Settlement Agreement states that the settling parties collectively agree that the costs associated with the proposed protection, mitigation and enhancement measures, in combination with the costs of the relicensing process, support a 40-year license term.⁴¹

84. However, while this license requires increased minimum flow releases from October 2 to April 30 over the term of the license, the development of a plan for providing those flows, and new gaging equipment, these measures collectively represent a minor amount of new environmental measures. Therefore, a 30-year license term for the Chasm Project is appropriate.

The Director Orders:

(A) This license is issued to Erie Boulevard Hydropower L.P. (licensee), for a period of 30 years, effective the first day of the month in which this order is issued, to operate and maintain the Chasm Hydroelectric Project. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference

³⁹ 16 U.S.C. § 808(e) (2012).

⁴⁰ See *Consumers Power Co.*, 68 FERC ¶ 61,077 at 61,383-84 (1994).

⁴¹ See Settlement Agreement at section 2.1.1.

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

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in these lands, enclosed by the project boundary shown by Exhibit G filed May 15, 2014:

<u>Exhibit G Drawing</u>	<u>FERC No. 7320-</u>	<u>Description</u>
G-1	1003	Project Boundary and Location Map
G-2	1004	Project Boundary and Location Map

(2) Project works consisting of: (1) Chasm Falls Dam which is composed of a spillway, two non-overflow retaining walls and an intake on the Salmon River; (2) a 100-foot-long concrete gravity ogee spillway section with a fixed crest elevation of 1,283.8 feet⁴² (1,285.8 feet when mounted with 2-foot-high trip-able wooden flashboards); (3) a 5-foot-diameter sluice gate located in the spillway section; (4) two concrete gravity non-overflow retaining walls with a maximum height of 10.0 feet on the 38-foot-long west wall and a maximum height of 21.3 feet on the 42-foot-long east wall; (5) a concrete intake section 22 feet wide by 30 feet high diverting water into the penstock; (6) a reservoir having a surface area of about 22 acres and a gross storage capacity of 74 acre-feet at normal pool elevation of 1,285.8 feet; (7) a 7-foot-diameter welded steel penstock approximately 3,355 feet in length connecting to a 6-foot-diameter steel manifold pipeline just upstream of the powerhouse; (8) a 10-inch-diameter steel pipe for discharging the minimum flow release from the penstock into the bypassed reach just below the dam; (9) a 52-foot-wide by 70-foot-long powerhouse, with a concrete substructure and steel and brick superstructure, containing three horizontal Francis generating units having a total rated capacity of 3,350 kilowatts operated under a 268-foot head and at a flow of 195 cubic feet per second; (10) a 20-foot-wide, 850-foot-long tailrace; (11) three 74-foot-long, 2.2-kilovolt above-ground transmission lines extending from the powerhouse to a 4.2-megavolt ampere step-up transformer;⁴³ and (12) appurtenant facilities.

⁴² All elevations use the mean sea level datum.

⁴³ After step-up, project power interconnects with the electrical grid at Switch 228. Switch 228 is jointly owned by Erie and National Grid. *See* Erie's Additional Information Request response, filed May 15, 2014.

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

Exhibit A: The following sections of Exhibit A filed on May 15, 2014: Section A.2.2 entitled “Intake and Conveyance System”, section A.2.3 entitled “Powerhouse”, section A.2.7 entitled “Turbines”, section A.2.8 entitled “Generators”, and section A.2.9 entitled “Appurtenances.”

Exhibit F: The following Exhibit F drawings filed on July 1, 2013:

<u>Exhibit F Drawing</u>	<u>FERC No. 7320-</u>	<u>Description</u>
F-1	1001	General Plan – Dam and Intake Plan, Elevations and Sections
F-2	1002	Pipeline Profile – Generator Floor Plan, Elevations and Sections

(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, F, and G described above are approved and made part of the license.

(D) This license is subject to the conditions submitted by the New York State Department of Environmental Conservation under section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341(a)(1) (2012), as those conditions are set forth in Appendix A to this order.

(E) This license is also subject to the articles set forth in Form L-3, (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States" (*see* 54 F.P.C. 1792 *et seq.*), as reproduced at the end of this order, and the following additional articles:

Article 201. Administrative Annual Charges. The licensee must pay the United States annual charges, effective the first day of the month in which this license is issued, and as determined in accordance with provisions of the Commission's regulations in effect from time to time, to reimburse the United States for the cost of administration of

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Part I of the Federal Power Act. The authorized installed capacity for that purpose is 3.35 megawatts.

Article 202. Exhibit Drawings. Within 45 days of the date of issuance of this license, as directed below, the licensee must file two sets of the approved exhibit drawings and geographic information system (GIS) data in electronic file format on compact disks.

(a) Digital images of the approved exhibit drawings must be prepared in electronic format. Prior to preparing each digital image, the FERC Project-Drawing Number (i.e., P-7320-1001 through P-7320-1004) must be shown in the margin below the title block of the approved drawing. The licensee must file two separate sets of exhibit drawings in electronic format on compact disks with the Secretary of the Commission, ATTN: OEP/DHAC. Exhibit F drawings must be segregated from other project exhibits, and identified as **Critical Energy Infrastructure Information (CEII) material under 18 CFR §388.113(c)**. Each drawing must be a separate electronic file, and the file name must include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this License, and file extension in the following format [P-7320-1003, G-1, Project Boundary, MM-DD-YYYY.TIF]. All digital images of the exhibit drawings must meet the following format specification:

IMAGERY – - black & white raster file
 FILE TYPE – Tagged Image File Format (TIFF) CCITT Group 4 (also known as T.6 coding scheme)
 RESOLUTION – 300 dots per inch (dpi) desired, (200 dpi minimum)
 DRAWING SIZE FORMAT – 22” x 34” (minimum), 24” x 36” (maximum)
 FILE SIZE – less than 1 megabyte 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.

(b) The licensee must file two separate sets of the project boundary GIS data on compact disks with the Secretary of the Commission, ATTN: OEP/DHAC. The data must be in a georeferenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or a similar GIS format). The filing must include both polygon data and all reference points shown on the individual project boundary drawings.

An electronic boundary polygon data file(s) is required for each project development. Depending on the electronic file format, the polygon and point data can be included in single files with multiple layers. The georeferenced electronic boundary data file must be positionally accurate to ± 40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. The file name(s) must include: FERC Project Number, data description, date of this License, and file extension in the following format [P-1234, boundary polygon/or point data, MM-DD-YYYY.SHP]. The data 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 must include: FERC Project Number, data description, date of this License, and file extension in the following format [P-1234, project boundary metadata, MM-DD-YYYY.TXT].

Article 203. Amortization Reserve. Pursuant to section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project must be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensee must set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensee must deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensee must set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensee must maintain the amounts established in the project amortization reserve account until further order of the Commission.

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

Article 204. Headwater Benefits. If the license's project was directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license

(including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee must reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license. The benefits will be assessed in accordance with Part 11, Subpart B, of the Commission's regulations.

Article 301. Project Modifications Resulting From Environmental Requirements. If environmental requirements under this license require modification that may affect the project works or operations, the licensee must consult with the Commission's Division of Dam Safety and Inspections–New York Regional Engineer. Consultation must allow sufficient review time for the Commission to ensure that the proposed work does not adversely affect the project works, dam safety, or project operation.

Article 401. Commission Approval and Notification.

(a) Requirement to File Plans for Commission Approval.

Various conditions of this license found in the New York State Department of Environmental Conservation (New York DEC) water quality certification (certification) conditions (Appendix A) require the licensee to prepare plans in consultation with other entities and for approval by the New York DEC, and implement specific measures without prior Commission approval. The following table indicates the deadline for filing the plans with the Commission for approval. The plans are listed below.

New York DEC Certification Condition No.	Plan Name	Date Due
10	Stream Flow and Water Level Monitoring Plan	Within 24 months of license issuance

The licensee must include with each plan filed with the Commission documentation that the licensee developed the plan in consultation with the New York DEC and has received approval from the New York DEC, as appropriate. The licensee must allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific information. The Commission reserves the right to make changes to any plan submitted. Upon Commission approval, the plan becomes a requirement of the license, and the licensee must implement the plan or changes in project operations or facilities, including any changes required by the Commission.

(b) Requirement to Notify the Commission of Planned and Unplanned Deviations from License Requirements.

New York DEC certification conditions 8, 9, 11, and 12 would allow the licensee to temporarily modify project operations for maintenance or construction activities, extreme hydrologic conditions, or electrical emergencies. The Commission must be notified in writing prior to implementing such modifications, if possible, or in the event of an emergency, as soon as possible, but no later than 10 business days after each such incident.

(c) Requirement to File Amendment Applications

Certain conditions of the New York DEC certification in Appendix A contemplate unspecified long-term changes to project operations or facilities for the purposes of complying with state water quality standards or mitigating environmental impacts. Such changes may not be implemented without prior Commission authorization granted after the filing of an application to amend the license.

Article 402. *Reservation of Authority to Prescribe Fishways.* Authority is reserved to the Commission to require the licensee to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of such fishways as may be prescribed by the Secretary of the Interior pursuant to section 18 of the Federal Power Act.

Article 403. *Sediment Management Plan.* Upon license issuance, the licensee must continue to implement the Sediment Management Plan filed with the Commission on July 5, 2012.

The Sediment Management Plan must not be amended without prior Commission approval. The Commission reserves the right to make changes to the Sediment Management Plan.

Article 404. *Minimum Flow Release Plan.* Within 12 months of license issuance, the licensee must file a Minimum Flow Release Plan for Commission approval. The plan must include, but not necessarily be limited to:

(1) functional design drawings showing the proposed modifications to the project to allow for a seasonal minimum flow release into the bypassed reach of 23 cubic feet per second from October 2 through April 30; and

(2) a construction schedule.

The plan must be developed after consultation with the New York State Department of Environmental Conservation and the U.S. Fish and Wildlife Service. The licensee must include with the plan an implementation schedule, documentation of consultation, copies of recommendations on the completed plan after it has been prepared and provided to the agencies above, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee must allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific reasons.

The Commission reserves the right to require changes to the plan. Implementation of the plan must not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee must implement the plan according to the approved schedule, including any changes required by the Commission.

Article 405. Invasive Species Management Plan. The Invasive Species Management Plan, filed as Appendix B to the Settlement Agreement on April 30, 2015, is approved and must be implemented upon license issuance.

The approved Invasive Species Management Plan must not be amended without prior Commission approval. The Commission reserves the right to make changes to the Invasive Species Management Plan.

Article 406. Recreation Management Plan. The Recreation Management Plan (RMP), filed on April 30, 2015 as Appendix A to the Settlement Agreement is approved and must be implemented according to the schedule included in the plan. The licensee must continue to operate and maintain, or provide for the operation and maintenance of, the Chasm Falls Recreation Area and the Informal Bypassed Reach Access Area recreation sites for the term of the license.

The licensee must file, for Commission approval, as-built site plan drawings within 90 days of completing the modifications at each of the recreation sites identified in the table below. An overall site plan drawing that includes the location of all Commission-approved recreation sites in relation to the project boundary and an as-built site plan drawing five-column table is required. In addition to the overall site plan drawing, the licensee also must file individual as-built site plan drawings for both recreation sites showing the location of all recreation facilities in relation to the project boundary.

Recreation Site Name	Recreation Facilities
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Chasm Falls Recreation Area	Seven vehicle parking area and footpath
Informal Bypassed Reach Access Area (near the powerhouse)	Install a footpath; install signage to identify: (a) the designated fishing area and footpath; (b) the two-vehicle parking area; and (c) the restricted areas including the upper bypassed reach, the substation, and the tailrace area

The first column of the five-column table on the overall site plan drawing must be titled “Identification” and must key each recreation site to the location on the drawing. The second column must be titled “Exhibit No.” and must include the Commission assigned Exhibit Numbers for any previously approved as-built site plan drawings and left blank for the current filing until provided in an approval order. The third and fourth columns must contain information from the two columns in the table above (i.e., “Recreation Site Name” and “Recreation Facilities”). The recreation facilities must include the footpath and seven parking spaces at the Chasm Falls Recreation Area and the informal path and two parking spaces at the Informal Bypassed Reach Access Area. The fifth column must be titled “Construction Status” and must indicate if the recreation site is “constructed” or “unconstructed.”

Each drawing must include a north arrow, scale (graphic and numeric), and Title Block. The Title Block must include the Project Name, Project Number, a space for Exhibit Number (Commission assigned upon approval), a space for Drawing Number (Commission assigned upon approval), and drawing name. All drawings must be legible when reduced to or printed on 11”x17” paper size. For additional guidance, please see: <https://www.ferc.gov/industries/hydropower/gen-info/guidelines/as-built-site-plan.pdf>.

Upon completion of the installation of the signage specified in the RMP, the licensee must file a report with the Commission. The report must include, at a minimum, a map showing the location of each sign in relation to the project boundary and any explanations, if needed, of variances in the signage from the RMP.

The approved RMP must not be amended without prior Commission approval. The Commission reserves the right to make changes to the RMP.

Article 407. Programmatic Agreement and Historic Properties Management Plan. The licensee must implement the “Programmatic Agreement Between the Federal Energy Regulatory Commission and the New York State Historic Preservation Office for managing historic properties that may be affected by issuing a new license to Erie Boulevard Hydropower, L.P for the continued operation of the Chasm Hydroelectric Project in Franklin County, New York (FERC No. 7320-042),” executed on

October 14, 2015, and including but not limited to the Historic Properties Management Plan (HPMP) for the project, filed on October 14, 2014 and approved herein. In the event that the Programmatic Agreement is terminated, the licensee must continue to implement the provisions of the approved HPMP. The Commission reserves the authority to require changes to the HPMP at any time during the term of the license.

Article 408. Use and Occupancy. (a) In accordance with the provisions of this article, the licensee must have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee must also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee must take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee must require multiple use and occupancy of facilities for access to project lands or waters. The licensee must also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee must: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the impoundment shoreline. To implement this

paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project impoundment. No later than January 31 of each year, the licensee must file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 water craft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must file a letter with the Commission, stating its intent to convey the interest and briefly describing

the type of interest and location of the lands to be conveyed (a marked Exhibit G map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Commission's authorized representative, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

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

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

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

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

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

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

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

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

(G) This order 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 (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2015). The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Ann F. Miles
Director
Office of Energy Projects

Form L-3
(October, 1975)

**FEDERAL ENERGY REGULATORY COMMISSION
TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED
MAJOR PROJECT AFFECTING NAVIGABLE
WATERS OF THE UNITED STATES**

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

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

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

Article 4. The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Energy Regulatory Commission, in the

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

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

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a nonpower licensee under the provisions of Section 15

of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full

reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United

States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

Article 23. The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 24. The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

Article 25. The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 26. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 27. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 28. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

**APPENDIX A: CONDITIONS IMPOSED PURSUANT TO SECTION 401(A)(1)
OF THE CLEAN WATER ACT**

New York State Department of Environmental Conservation

Water Quality Certification Conditions

DEC Permit Number: 5-1648-00084/00008

Effective Date: May 19, 2015

DESCRIPTION OF AUTHORIZED ACTIVITY:

This Water Quality Certificate authorizes the continued operation and maintenance of the existing Chasm Falls Hydroelectric Project, with a generating capacity of 3.35 MW. This Water Quality Certification is part of a Federal Energy Regulatory Commission (FERC) relicensing, Project # P-7320. The project shall be run in accordance with attached conditions and the applicable provisions of the Chasm Project Settlement Agreement dated April 13, 2015.

NATURAL RESOURCE PERMIT CONDITIONS

- 1. Expiration Date** The expiration date of this Water Quality Certificate is coincident with the expiration date of the license issued by the Federal Energy Regulatory Commission (FERC) for FERC project #7320.
- 2. Conformance with Plans** All activities authorized by the permit must be in strict conformance with approved plans submitted by the applicant or applicant's agent as part of the permit application and licensing Settlement Agreement.
- 3. Settlement Agreement** This certificate includes and incorporates the Chasm Project Settlement Agreement ("Settlement") dated April 13, 2015, to the extent that the Settlement provides for or requires the certificate holder to comply with New York State water quality standards and the conditions of this certificate.
- 4. Notification Requirements for Emergencies** With the exception of emergency provisions described in the Settlement Agreement, the following procedures shall apply to all activities conducted at the project in response to an emergency:

Prior to commencement of emergency activities, the certificate holder must notify the Department and receive approval in advance of the work commencing. If circumstances require that emergency activities be taken immediately such that prior notice to the Department is not possible, then the Department must be notified by the certificate

holder within 24 hours of commencement of the emergency activities. In either case, notification must be by certified mail or other written form of communication, including fax or electronic mail. This notification must be followed within 24 hours by submission of the following information:

- a description of the action;
- location map and plan of the proposed action; and
- 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 Department contact listed in Permit Condition #15.

5. **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.
6. **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.
7. **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.

OPERATIONS

8. **Base Flows** The certificate holder shall maintain a base flow of 70 cfs (or inflow to the impoundment, whichever is less), in accordance with the Settlement, Section 3.2.
9. **Bypassed Reach Flow** The certificate holder shall maintain a seasonal bypassed reach flow of 15 cfs from May 1 - October 1 and 23 cfs from October 2 - April 30 each year, in accordance with the Settlement, Section 3.3.

10. **Flow and Water Level Monitoring** The certificate holder shall develop a stream flow and water level monitoring plan consistent with the Settlement, Section 3.6.
11. **Impoundment Fluctuations** The project reservoir shall be operated in accordance with the Settlement, Section 3.1. Alternate impoundment operating plans must be reviewed and approved by the Department prior to being implemented. Emergencies shall be dealt with in accordance with Permit Condition #4 of this Certificate.
12. **Fish Protection and Passage** The certificate holder will maintain fish protection and passage provisions in accordance with the Settlement, Section 3.4.
13. **Sediment Management** The certificate holder shall manage sediments in accordance with the Department-approved Sediment Management Plan, dated May 25, 2011, and any subsequent updated versions over the course of the FERC license period. The conditions associated with the construction and maintenance section below do not apply to this sediment management plan condition.
14. **Invasive Species Management** The licensee will prevent the introduction and/or spread of invasive species in accordance with the Invasive Species Management Plan referenced in the Settlement, Section 3.7.
15. **Department Contact for Project Maintenance and Construction** All matters pertaining to project maintenance and construction work affecting water quality, compliance with water quality standards, and this certificate shall be addressed to:

Regional Permit Administrator
New York State Department of Environmental
Conservation 1115 Route 86, PO Box 296
Ray Brook, NY 12977-0296
16. **Notifications** The Regional Permit Administrator must be notified in writing at least 60 days prior to commencing any project maintenance or construction work pertaining to water quality, compliance with water quality standards or this certificate.
17. **Prohibition Period for Trout** All instream work, as well as any work that may result in the suspension of sediment, is prohibited during the trout spawning and incubation period commencing October 1 and ending April 30, unless project-specific approval is granted by the Department.

- 18. Maintenance Dredging** The certificate holder shall install and maintain appropriate turbidity control structures while conducting any maintenance dredging activities associated with the Project. At least 60 days prior to maintenance dredging, the certificate holder shall notify the Department of the details of the dredging operations and provide details of the environmental controls to be used to minimize sediment and turbidity releases downstream of the work, along with the disposal location.
- 19. Sediment Analysis and Disposal** The certificate holder shall notify the Department at least 60 days prior to sediment dredging or disturbance of the proposed activity in order for the Department to determine whether sediment sampling and analysis is necessary. If deemed necessary, the certificate holder shall sample any sediments to be disturbed or removed from the project's waters and test them for contaminants. Sampling and testing shall be accomplished according to a protocol that is consistent with the Department's Technical and Operations Guidance (TOGS) 5.1.9 or applicable guidelines/regulations. The sampling protocol shall include a disposal protocol based on analytical sediment sampling results and current applicable regulations/guidelines. The sampling results are required to be submitted to the Department at least 45 days prior to the commencement of dredging or work that will disturb sediment in the project waters. Dredging or other excavation can not commence until the certificate holder also secures the Department's approval for the disposal or interim holding locations for any sediments to be removed from the project waters.
- 20. Construction Drawdowns** Whenever construction and/or maintenance activities require that the water level of project reservoirs be lowered, it shall not be drawn down more than 1 foot per hour. During refill, the water level of the impoundment shall not be allowed to rise more than 1 foot per hour. Baseflow requirements below the Chasm Project (70 cfs unless inflow to the impoundment is less than 70 cfs, in which case the outflow from the Chasm Project will be equal to inflow to the impoundment, as specified in Section 3.2 of the Settlement) is to be maintained during all impoundment drawdowns and refills.
- 21. Cofferdams, Access Roads, or other Structures on River Bank** Placement of cofferdams, construction of temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the Salmon River or project reservoir: The proposed design of all such structures as they pertain to water quality, compliance with water quality standards, and this certificate must be approved by the Department prior to installation. The Department will conduct its review of the proposed design within 60 days after receipt of all materials it determines are necessary for completing such review.

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

- Isolate in-stream work from the flow of water and prevent discolored (turbid) discharges and sediments caused by excavation, dewatering and construction activities from entering any waterbody or wetland.
- Exclude the use of heavy construction equipment below the mean high water line until the work area is protected by an approved structure and dewatered.
- Stabilize any disturbed banks by grading to an appropriate slope, followed by armoring or vegetating as appropriate, to prevent erosion and sedimentation into any waterbody or wetland.
- Minimize soil disturbance, provide appropriate grading and temporary and permanent re-vegetation of stockpiles and other disturbed areas to minimize erosion/sedimentation potential.
- Protect all waters from contamination by deleterious materials such as wet concrete, gasoline, solvents, epoxy resins or other materials used in the construction, maintenance and operation of the project.
- Install effective erosion control measures on the downslope of all disturbed areas to prevent eroded material from entering any waterbody or wetland. Erosion control measures must be maintained in a fully functional condition until the disturbed areas are fully stabilized. These erosion control measures are to be installed before commencing any other activities involving soil disturbance.
- Ensure complete removal of all dredged and excavated material, debris or excess materials from construction, from the bed and banks of all water areas to an approved upland disposal site.
- Ensure that all temporary fill and other materials placed in the waters of the river are completely removed, immediately upon completion of construction, unless otherwise directed by the Department.

23. Turbidity Monitoring During routine maintenance or construction related activities in or near the Salmon River or project reservoir, the certificate holder will

visually monitor the waters of the river at a point no more than 200 feet downstream of the worksite to ensure there is no substantial visible contrast to natural conditions as observed upstream of the worksite. If there is a substantial visible contrast to natural conditions caused by the work, the certificate holder shall take appropriate actions to prevent further turbidity exceedence of the applicable 6NYCRR Part 703 turbidity water quality standard. The certificate holder shall also notify the Department within 24 hours of a turbidity exceedence and the actions taken to correct the exceedence.

- 24. Maintenance of River Flows** During all periods of maintenance and/or construction activity, the certificate holder shall continuously maintain adequate flows immediately downstream of the work site consistent with the provisions of this certificate. If adequate river flows are not maintained, the certificate holder is required to notify the Department's Region 5 office in Ray Brook, within 24 hours of the incident.
- 25. Stormwater SPDES** All activities at the project proposing ground disturbance greater than one acre must obtain coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-0-15-002

WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

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

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

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

- 1. Facility Inspection by The Department** The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department 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 are to be submitted to:

Regional Permit Administrator
NYSDEC REGION 5 HEADQUARTERS
1115 NYS ROUTE 86
PO BOX 296
RAY BROOK, NY 12977 -0296

- 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.

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- 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.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

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 of 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

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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.

APPENDIX B: SECTION 3.0 OF THE SETTLEMENT AGREEMENT

3.0 MEASURES THAT THE PARTIES AGREE SHOULD BE INCORPORATED IN THE TERMS OF THE LICENSE

3.1 Daily Impoundment Fluctuation as Part of Normal Operations

3.1.1 General Agreements

Within 24 months of license issuance or by August 1, 2017, whichever occurs later, the Licensee shall limit daily impoundment fluctuations as part of normal operations, as specified in Table 3-1.

**TABLE 3-1
CHASM HYDROELECTRIC PROJECT NORMAL
IMPOUNDMENT FLUCTUATION**

River Flow (cfs)	Normal Impoundment Fluctuation
85 cfs or greater	0.25-foot measured in a downward direction from top of 2-foot-high crest
Less than 85 cfs	0.1-foot measured in downward direction from top of 2-foot-high crest

1. Although Erie will make a good faith effort to limit normal impoundment fluctuation to 0.25-foot when river flows are equal to or exceed 85 cfs, for the purposes of FERC compliance, only drawdowns greater than 0.5-foot will be reportable. This additional 0.25-foot helps address the natural fluctuations in river flow.
2. An example of a crest control device includes year-round or seasonal flashboards.
3. The Parties agree that the Licensee may continue to install 2-foot-high seasonal flashboards (or equivalent) consistent with current operations. The Licensee has the flexibility to modify the seasonal flashboards to be year-round flashboards or to replace the flashboard with a similar device or devices (e.g., an inflatable crest control device) over the term of the license. The Licensee is not required to provide the Parties with details regarding the schedule for deployment, removal, or a designed failure of the crest control device.

Normal impoundment fluctuations specified in Table 3-1 will be defined as the maximum drawdown limit associated with the operating range necessary to achieve normal operation. The normal impoundment fluctuation limit will be measured in the downward

direction from the crest of spillway elevation of 1,283.8 feet or top of crest control device (e.g., flashboards) elevation of 1,285.8 feet when installed. Water surface elevations higher than the elevation from which any downward fluctuation is measured are considered outside of the normal impoundment fluctuation zone, and variations of such elevations are not considered as a utilization of the normal impoundment fluctuation.

The Licensee will at all times make a good faith effort to maintain impoundment fluctuation within 0.25-foot when river flow exceeds 85 cfs. The Parties agree that only when the impoundment drops in excess of 0.5-foot from the top of the 2-foot-high crest control device (when installed), or crest of spillway (when not installed), shall a notification to FERC and the NYSDEC be made.

3.1.2 Emergency Exceptions

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

3.1.3 Justification

The Salmon River downstream of the Project supports a high quality wild and stocked trout fishery. The trout, and the invertebrates that provide their primary forage, are dependent upon the free flowing habitat of the Salmon River downstream of the Project. Water levels in the free flowing portions of the river can be quickly altered due to modifications in upstream flow releases. While the mobility of trout and other fish may allow these species to avoid potential dewatering, the much less mobile invertebrate populations can be adversely impacted.

Based on study activities, field observations, and subsequent consultation, the Parties concluded that limiting daily impoundment fluctuations consistent with the levels presented in Table 3-1 would help support the downstream habitat areas in the event of a potential unit trip during non-spill events. Given the Parties' continuous seasonal bypass flows of 15 and 23 cfs (as specified in Section 3.3 below), in combination with flows in the Project's tailrace that would continue to contribute to the downstream base flow following a unit trip, the Parties believe that limiting the Project's impoundment fluctuation consistent with Table 3-1 will help protect the downstream areas through continuing to provide the necessary base flow. Therefore, the Parties determined that, in order to reduce the potential for interruptions in the Project's downstream 70 cfs base flow (as specified in Section 3.2 below), a reduction of the Project's normal fluctuation limits would be beneficial.

3.2 Base Flows

3.2.1 General Agreements

Upon license issuance, the Licensee shall maintain a base flow of 70 cfs (or inflow to the Chasm impoundment, whichever is less) immediately downstream of the confluence of the Project's bypassed reach and tailrace.

3.2.2 Emergency Exceptions

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

3.2.3 Justification

The existing base flow was established during the previous licensing of the Project. The Base Flow Study conducted in support of this current relicensing demonstrated that the existing base flow of 70 cfs fully meets all management goals for the downstream river reach.

3.3 Flow Releases to Bypassed Reach

3.3.1 General Agreements

Upon license issuance, the Licensee shall provide a year-round flow releases to the Project's bypassed reach of 15 cfs (or inflow to the Chasm impoundment, whichever is less). The flow released to the bypassed channel will continue to be provided through an existing penstock tap located immediately downstream of the Project's intake. Within 48 months of license issuance, or by October 2, 2019, whichever occurs later, the Licensee shall begin providing a flow release to the bypassed channel of 15 cfs from May 1st through October 1st, and a flow release of 23 cfs from October 2nd through April 30th, (or inflow to the Chasm impoundment, whichever is less) with such flow regime continuing for the remainder of 40- year term of the new license.

3.3.2 Emergency Exceptions

The requirements of this flow release to the bypassed reach commitment may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, and for limited periods upon prior mutual agreement between the Licensee and

the NYSDEC. If the requirements of this commitment are so curtailed or suspended, the Licensee shall notify FERC and the NYSDEC as soon as possible, but no later than ten (10) business days after each such incident.

3.3.3 Justification

The Delphi Flow Studies and subsequent consultation conducted as part of the relicensing effort demonstrated that a bypassed reach flow release of 15 cfs from May 1st through October 1st provides the necessary flow to support the habitat and fish species associated with the Chasm bypassed reach. Additional consultation among the Parties determined that a flow release of 23 cfs from October 2nd through April 30th provides the necessary stream flow to support spawning and recreational fishing activities associated with the bypassed reach. The Parties to this Offer of Settlement have agreed that establishment of the proposed flow releases to the Project's bypassed reach was justified by, and is contingent upon, a 40-year (or more) license term associated with the new license.

3.4 Fish Protection and Passage

3.4.1 General Agreements

Over the course of the new license, the Licensee will maintain trashracks with 1-inch clear spacing on a year-round basis.

3.4.2 Reservation of Authority

In addition to the protection measures outlined in this section, the DOI will reserve its authority under Section 18 of the FPA to prescribe additional upstream or downstream fishway facilities in the future. This reservation ensures that adequate facilities for fish passage will be in place should management goals or needs change during the term of the license.

3.4.3 Emergency Exceptions

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

3.4.4 Justification

The use of 1-inch clear spaced trashracks to exclude most adult game fish and other fish from potential entrainment has become the USFWS's standard for hydroelectric facilities located on rivers similar to the Salmon River in New York. This Offer of Settlement does not require the Licensee to monitor or test the effectiveness of any fish protection measures included in this Offer of Settlement.

3.5 Recreational Enhancements

3.5.1 General Agreements

The Licensee has developed a Recreation Management Plan in consultation with the NYSDEC, USFWS, TU, and Town of Malone. A copy of the approved Plan is presented in Appendix A to this Offer of Settlement. In accordance with the Recreation Management Plan, the Licensee will complete the following recreational enhancements within 24 months of license issuance:

- Through the installation of signage and a herd path, formalize the designated fishing areas associated with the lower portion of the Project's bypassed reach.
- Through the installation of signage within the parking lot, formalize a 2 vehicle parking area within the Project's powerhouse parking lot (due to the sensitive nature of this area, no signage will be posted at the road identifying public access).
- Through the installation of signage, clearly identify restricted areas associated with public safety concerns, including the upper bypassed reach, the substation, and the tailrace area.
- Continue to maintain the Chasm Falls Recreational Area, with an emphasis on river access by removing the existing picnic tables.
- Provide the Town of Malone with two wooden picnic tables for the town's William A. King Memorial Park (this will serve as a one-time donation to the park and the Licensee will not be responsible for maintenance or the potential replacement of the picnic tables).
- Install signage near the Project's dam indicating no parking and directing the public to the upstream Titusville Mountain State Forest Salmon River Fishing and Waterway Access Site.

3.5.2 Monitoring

This Offer of Settlement does not require the Licensee to monitor the use of any recreational facilities included in this Offer of Settlement beyond the requirements of FERC Form 80 reporting.

3.5.3 Justification

The Parties agreed to formalize the fishing areas associated with the Project's bypassed reach through the installation of signage, a herd path, and through identification of areas associated with potential public safety concerns. The Parties also agreed that, given the proximity of the existing Chasm Falls Recreation Area and the Town of Malone's William A. King Memorial Park, it would be appropriate for the Licensee's recreation area to focus on providing river access, and for the Town's park to be the central location for picnicking activities along this portion of the river. Thus, the Parties agreed that Licensee should remove the picnic tables from the Chasm Falls Recreation Area and install two picnic tables at the Town of Malone's William A. King Memorial Park.

3.6 Stream Flow and Water Level Monitoring Plan

3.6.1 General Agreements

The Licensee shall develop a Stream Flow and Water Level Monitoring Plan in consultation with the NYSDEC and the USFWS within 24 months of license issuance. The Monitoring Plan shall include all gages and/or equipment to:

- Determine head pond elevation,
- Determine bypass flow,
- Determine tailrace base flow, and
- Provide an appropriate means of independent verification by the NYSDEC and the USFWS.

All staff gages, pins, and ancillary equipment required by the Monitoring Plan, including head pond gages, shall be made operational and calibrated within 36 months of license issuance.

The Monitoring Plan shall contain provisions for the installation of binary staff gages at appropriate locations to permit independent verification of head pond water level, bypass flow, and tailrace base flow. Binary staff gages will be visible to the general public.

Within 36 months of license issuance, as part of the Monitoring Plan, the Licensee shall establish a public website that provides daily flow information associated with the Salmon River downstream of the Chasm Project. The Licensee will provide the address of the web site to the NYSDEC, USFWS, and TU. These Parties may distribute the web site address as deemed appropriate; however, the Licensee will not be responsible for advertising or further dissemination of web site address over the term of the license. The public website will be established and maintained in lieu of any future funding or development of a gaging station on the Salmon River over the 40-year term of the new license.

3.6.2 Record-Keeping

As to be defined in the Stream Flow and Water Level Monitoring Plan, the Licensee shall keep accurate and sufficient records of the impoundment elevation and Project flows. Consistent with similar plans developed in consultation with the NYSDEC, the Licensee anticipates that such data would be provided in spreadsheet format in intervals ranging from 15 minutes to 1 hour and in increments ranging from 0.1 foot to 1 foot. The NYSDEC will provide the Licensee with a contact person to receive such information. All records will be made available for inspection at the Licensee's principal business office within New York State within five (5) business days or will be provided in written form within 30 days of the Licensee's receipt of a written request for such records by the NYSDEC. Furthermore, the Licensee will provide to the NYSDEC the name of a 7-day-per-week contact person to provide immediate verification of monitored flows and responses to questions about abnormal or emergency conditions.

3.6.3 Justification

The NYSDEC and the USFWS have required that flows be verified through stream gaging methods for the initial placement of visual gages and markers for other hydroelectric facilities across New York State. Experience throughout the State has confirmed that the development of a Stream Flow and Water Level Monitoring Plan and the associated gaging and data management activities has proven to be an essential component of a water flow and elevation management program. Such a Plan, and the associated monitoring, provides the tools necessary to verify the water flows and elevations presented in this Offer of Settlement. Aside from providing the agencies with a means to independently monitor flows, the visual gages and markers have proved to be useful to the Licensee as well. The Parties to this Offer of Settlement agree that the public website, in combination with the proposed visual gages, provide the desired recreational and flow information, and thus no further funding of gaging efforts (e.g., USGS gage) by Licensee on the Salmon River is warranted.

3.7 Invasive Species Management Plan

The Licensee has developed an Invasive Species Management Plan in consultation with the NYSDEC and the USFWS. A copy of the approved Plan is presented in Appendix B to this Offer of Settlement. The Plan includes measures to prevent the introduction and/or spread of invasive species during construction, maintenance, and operational activities, as defined by the NYSDEC Office of Invasive Species Coordination.

3.7.1 Justification

Although no invasive species are currently associated with the Project, given the agreed upon 40-year term for the new license, the Parties agreed that the development and implementation of an Invasive Species Management Plan will be beneficial to help prevent the introduction of invasive species to the Project through recreation or construction activities.

Document Content(s)

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