

77 FERC ¶ 61,305

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Elizabeth Anne Moler, Chair;
Vicky A. Bailey, James J. Hoecker,
William L. Massey, and Donald F. Santa, Jr.

Beebee Island Corporation) Project No. 2538-001

ORDER APPROVING SETTLEMENT OFFER
AND ISSUING NEW LICENSE

(Issued December 24, 1996)

The Beebee Island Corporation (Beebee Island) applied, on December 23, 1991, for a new license, 1/ under Sections 4(e) and 15 of the Federal Power Act (FPA), 16 U.S.C. §§ 797(e) and 808, to continue to operate and maintain the 8.0-megawatt (MW) Beebee Island Water Power Project No. 2538, located on the Black River, 2/ within the City of Watertown (Watertown) in Jefferson County, New York. Beebee Island will continue to sell the electricity generated by the project to its major shareholder, Niagara Mohawk Power Corporation (Niagara Mohawk), an investor-owned utility, and its minor shareholder, Filtration Science, Inc. (Filtration). 3/ Operations of the Beebee Island Project are coordinated with those of Niagara Mohawk's five upstream developments that comprise the Black River Project No. 2569. As that project's license also expired on December 31, 1993, and

- 1/ The Commission issued the original license to Beebee Island, on May 27, 1968. 39 FPC 865, 866 (1968). The original license expired on December 31, 1993, and since then, the project has operated under annual license. See Section 15(a)(1) of the FPA, 16 U.S.C. § 808(1). On January 21, 1994, the Commission Secretary issued notice authorizing continued operation of the project pending the disposition of Beebee Island's application. 59 F.R. 10125 (March 3, 1994); 66 FERC ¶ 61,145 (1994).
- 2/ The Black River is navigable from its mouth at Lake Ontario to at least Lyons Falls, at river mile 72, beyond which the river traverses a mountainous area. See Frank E. Peacock, 32 FPC 1101, 1102 (1964). Section 23(b)(1) of the FPA, 16 U.S.C. § 817(1), therefore requires the project to be licensed.
- 3/ Niagara Mohawk buys the greater part of project electricity on a wholesale basis at that utility's avoided cost, while Filtration buys the remainder on a retail basis. License Application at p. H-1.

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Niagara Mohawk has applied for a new license, Commission staff consolidated review and environmental analysis for both projects' relicense proceedings.

Beebee Island amended its new license application by filing a Settlement Offer 4/ that it and Niagara Mohawk had negotiated with the entities interested in both this and the contemporaneous Black River Project relicense proceedings. The Settlement Offer contains certain environmental measures. We are, today, approving the Settlement Offer and incorporating all appropriate provisions thereof into this 30-year new license for the Beebee Island Project. 5/

I. PROCEDURAL BACKGROUND

Following publication of our December 15, 1992 notice that Beebee Island had filed a new license application, 6/ the following entities filed timely motions to intervene in the proceeding: the U.S. Department of the Interior (Interior), presenting the views of the U.S. Fish and Wildlife Service (FWS) and the National Park Service (NPS); the New York State Department of Environmental Conservation (NYSDEC); the Glen Park Associates Limited Partnership; 7/ Watertown; Niagara Mohawk; and, jointly, four environmental interest entities, the American Whitewater Affiliation (Whitewater), American Rivers, Inc. (American Rivers), New York Rivers United (New York Rivers), and the Natural Heritage Institute (Heritage) (jointly, the Environmental Associations). 8/

4/ The Black River Project, FERC No. 2569, of Niagara Mohawk Power Corporation and Beebee Island Project, FERC No. 2538, of Beebee Island Corporation, Settlement Offer, September 14, 1995, filed October 13, 1995.

5/ We are also issuing a new license for the Black River Project No. 2569 concurrently with this new license for Project No. 2538. See ___ FERC ¶ 61, ___ (1996).

6/ 57 FR 62320 (December 30, 1992).

7/ Glen Park Associates is co-licensee with Niagara Mohawk of the Glen Park Project No. 4796, the next downstream project on the Black River, located at river mile 6.

8/ These motions to intervene were timely and unopposed and therefore granted automatically under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c)(1) (1996).

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Interior's intervention motion opposed relicensing of the project, as proposed in the new license application, because of concerns over fishways, fish injury and mortality caused by entrainment, degradation of aquatic and terrestrial habitats, and the need for better recreational access. Although a signatory to the Settlement Offer, Interior reserves its opposition to license issuance. 9/

NYSDEC, on December 21, 1992, denied Beebee Island's request for water quality certification, a statutory prerequisite of licensing. Negotiations ensued that included not only the Beebee Island Project but also nine Niagara Mohawk relicensing proceedings in which NYSDEC denied water quality certification, including the Black River Project. 10/ All intervenors in the relicensing and certification proceedings were invited to participate in the negotiations. For the Beebee Island and Black River projects, these negotiations took place between September 1994 and September 1995, and culminated in settlement agreements.

As noted, the Settlement Offer containing the agreements pertaining to this project and the Black River Project, together with an explanatory statement, were filed on October 13, 1995, pursuant to Commission Rule 602. 11/ The Settlement Offer signatories are: Niagara Mohawk, Beebee Island, NPS, FWS, NYSDEC, the Adirondack Mountain Club (Adirondack), 12/ American Rivers, New York Rivers, Heritage, the New York Council of Trout Unlimited, and the New York State Conservation Council.

9/ FWS's April 8, 1996 filing with the Commission. FWS stated that Interior would not oppose new licenses for the Beebee Island and Black River Projects if the licenses were consistent with the Settlement Offer, but that the Draft Environmental Analysis did not include the draft license articles for FWS to review for consistency.

10/ The nine proceedings are: Beaver Project No. 2645, which received a new license on August 2, 1996, 76 FERC ¶ 61,152, reh'g pending, unpublished order granting rehearing for further consideration, issued September 19, 1996; E.J. West Project No. 2318; Middle Raquette River Project No. 2320; Lower Raquette River No. 2330; Oswego River Project No. 2474; Hudson River Project No. 2482; School Street Project No. 2539; Hoosic River Project No. 2616; and the Black River Project No. 2569.

11/ 18 C.F.R. § 385.602 (1996).

12/ The Adirondack Mountain Club intervened in the Black River Project No. 2569 proceeding.

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On October 24, 1995, the Commission's staff issued notice that the Beebee Island license application, as modified by Settlement Offer, was ready for environmental analysis. 13/ Felts Mills Energy Partners L.P. (Felts Mills), on December 22, 1995, filed a motion for late intervention in this and the Black River Project proceedings, and requested dismissal of the Settlement Offer, claiming that the Settlement Offer infringes on its license application for the Felts Mills Project No. 4715. By unpublished order issued January 30, 1996, the Secretary granted Felts Mills late intervention.

The Commission's staff issued the Draft Environmental Assessment for the Beebee Island and the Black River Hydroelectric Projects (Draft EA) on March 18, 1996. 14/ Niagara Mohawk, FWS, NYSDEC, New York Rivers, and Adirondack filed comments on the Draft EA. Interior, Adirondack, and New York Rivers had filed comments previously on the Settlement Offer. The final Environmental Assessment (EA), issued on September 27, 1996, 15/ and made part of this order, responds to all those comments. The EA contains background information and analysis of impacts, and provides the basis for our finding that continued project operation will have no significant impact on the environment. 16/

Felts Mills opposes the Settlement Offer because it would establish the Black River Fund, which a Black River Advisory Council would use to fund, inter alia, the purchase and dedication to conservation purposes of parcels of land that are located within the project boundaries of Felts Mills' proposed Felts Mills Hydroelectric Project No. 4715. 17/ Felts Mills

13/ 60 FR 56992, 56994 (Nov. 13, 1995).

14/ See Notice of Availability of Draft Environmental Assessment, 61 FR 11823 (March 22, 1996).

15/ See Notice of Issuance, 61 FR 51697 (Oct. 3, 1996).

16/ On November 6, 7, and 12, 1996, respectively, New York Rivers, FWS, and Niagara Mohawk filed subsequent comments on the EA.

17/ The proposed Felts Mills Project comprises two developments located at river miles 19.2 and 21.7 of the Black River at two partially-breached dams, which Felts Mills proposes to refurbish, and the site of a third breached dam in between the two other dams, which Felts Mills proposes to demolish. The site of the proposed Felts Mill Project lies between the Black River Project's Deferiet and Kamargo Developments,

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argues that because these lands cannot be both preserved for conservation and licensed for development, our approval of the Settlement Offer necessarily precludes issuance of a license to develop the Felts Mills site. We find that approval of the Settlement Offer does not preclude licensing the Felts Mills Project.

We have fully considered the Settlement Offer, all the motions and comments of the above-named organizations, and the staff's conclusions and recommendations in the EA in determining to issue a new license for the Beebee Island Project.

II. PROJECT DESCRIPTION

The Beebee Island Project was constructed in 1931. It is one of ten existing or proposed hydroelectric projects on the river's lower reaches between Carthage, New York, and its mouth at Lake Ontario. ^{18/} The project operates in an essentially run-of-river mode (minimal storage), and is subject to flood control and flow augmentation regulation by upstream storage projects, principally the Hudson River-Black River Regulating

17/(...continued)

approximately ten miles upstream from the Beebee Island Project. The EA for the Black River and Beebee Island projects and the environmental impact statement for the Felts Mills Project, issued September 1996, analyze cumulative impacts of the three projects. The Black River/Beebee Island EA (section V.B.) finds no major cumulative impacts of the three projects and includes, by reference, the Felts Mills EIS, which makes specific findings of no significant cumulative impacts on water, terrestrial, transportation, and cultural resources, and findings of positive impacts on socioeconomic and recreation resources. Since the three projects will not contribute to cumulative adverse impacts, and since, as discussed below (see section VII, infra, and sections VI and VII of the Black River Project order, issued contemporaneously with this order), the projects do not conflict, we are processing the application for the proposed Felts Mills Project separately from the applications for the Beebee Island and Black River projects. See, e.g., Jack M. Fuls, 32 FERC ¶ 61,424 at pp. 61,934-35 (1985).

18/ These dams and their associated hydroelectric plants are shown in Figure 2 and in Table 5 of the EA. The immediate upstream developments are, at river mile 10, the Sewalls Development of Niagara Mohawk's Black River Project, and, at river mile 11, Watertown's Watertown Project No. 2442.

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District's (Hudson-Black) Stillwater Reservoir Project No. 6743, located on the Beaver River. 19/

The Beebee Island Project's principal features consist of: (1) a 266-foot-long, 18-foot-high, U-shaped, concrete gravity main dam with a main spillway section, 100 feet long, across the North Channel of the Black River at Beebee Island, having permanent crest elevation of 428.0 feet U.S. Geological Survey Datum (USGS), topped by 3-foot-high wooden flashboards; (2) a 50-foot-long by 15-foot-high, concrete-capped, stone, auxiliary non-overflow dam across the South Channel, having crest elevation of 444.0 feet USGS; (3) an impoundment extending approximately 1,900 feet upstream at normal maximum surface elevation of 431.0 feet USGS, with area of approximately 20 acres and an estimated gross storage capacity of 60 acre-feet; (4) an intake structure that is an integral part of the powerhouse, 82 feet long and 27 feet wide, equipped with steel trashracks, four steel gates, a skimmer section, and slots for stop-logs; (5) an 8-foot-wide by 15-foot-high ice sluice, controlled by stop-logs, between the steel gates and a retaining wall, that permits ice and debris to circumvent the powerhouse; (6) a 47-foot-wide by 82-foot-long powerhouse, located on the main dam at the south shore, with a skimmer gate and a sluiceway between it and a retaining wall that permits bypass of the turbines; and (7) two vertical generating units, each with rated capacity of 4,000 kilowatts (kW), with one unit being adjustable and utilizing flows between 300 cubic feet per second (cfs) and 1,800 cfs. Ordering paragraph (B) contains a more detailed project description.

The project's nameplate rating is 8.0 MW, and its annual generation averages about 38,729 megawatt hours (MWh). The project's generating units usually operate at best gate (the discharge at which a turbine-generator unit operates most efficiently). When Black River flows are below 300 cfs, all inflows are spilled at the main (north) dam. At less than full gate (the maximum possible discharge through a turbine-generator unit), the generating units operate in various combinations and at various gates (discharges), to achieve overall efficiency.

19/ On March 16, 1984, Hudson-Black was granted an exemption from licensing under Part I of the FPA for the 1.2-MW Stillwater Reservoir Project No. 6743. See 26 FERC ¶ 62,247. The Stillwater Reservoir, located at the headwaters of the Beaver River, is the largest regulating body of water in the Black River Basin. It is primarily operated for flood control and flow augmentation, with a targeted minimum flow of 1,000 cubic feet per second at the Watertown U.S. Geological Survey gaging station, located approximately two miles upstream of the Beebee Island Project.

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Flows between 300 cfs and 1,800 cfs pass through the adjustable generating unit. Flows between 1,800 cfs and 3,600 cfs pass through both units. Above 3,600 cfs, excess flows are spilled over the dam.

III. THE SETTLEMENT OFFER

The Settlement Offer treats project operation, fish and wildlife resources, water quality, recreation, lands management and ownership, and aesthetics. Its provisions, in these areas, are to supersede any conflicting proposals made by Beebee Island in its new license application and subsequent submittals. 20/ Beebee Island's proposals not in conflict with the Settlement Offer are maintained. The Settlement Offer maintains all the recreational features proposed by Beebee Island and adds to them.

The Settlement Offer resolves a range of resource use issues. For this new license, we consider only those terms that apply to the Beebee Island Project and not those relating solely to Niagara Mohawk's Black River Project. While, absent the Settlement Offer, we may not have conditioned the Beebee Island new license with all the terms we herein approve, we conclude that the agreement negotiated by the parties is in the public interest. We will include in the license those terms of the Settlement Offer that pertain to Beebee Island, 21/ modified to accord with our policies, together with provisions enabling us to ensure compliance with all license conditions. 22/

We emphasize that the Settlement Offer's provisions, such as the dispute resolution process, cannot interfere with Beebee Island's compliance with its license. 23/ The licensee must comply with Commission orders, even when an order relates to a matter currently subject to dispute resolution. The licensee may not perform actions that require Commission approval without

20/ Beebee Island filed amendments, responses to additional information requests or other information concerning its new license application on: September 11 and November 23, 1992; February 2, September 30, and December 13, 1993; January 12 and August 16, 1994, and July 11, 1995.

21/ Accordingly, our approval of the Settlement Offer does not create a precedent on any specific matters thereunder.

22/ See order approving settlement agreement and issuing new license in Niagara Mohawk Power Corporation, 76 FERC ¶ 61,152 (1996), citing Consumers Power Co., 68 FERC ¶ 61,077 (1994).

23/ Consumers Power Co., supra, 68 FERC at pp. 61,372, 61,374.

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first receiving Commission authorization, even if the result of the dispute resolution process requires these actions.

IV. APPROVAL OF THE SETTLEMENT OFFER PROVISIONS

We describe here the Settlement Offer's provisions for the Beebee Island Project new license, followed by how our license articles implement them, with any needed modifications.

A. Withdrawn Proposals

The Settlement Offer withdraws Beebee Island's proposals intended to increase the project's installed capacity by 6.5 MW: construction of a new powerhouse and generating facility on the north shore; improvement of existing generating units; and raising the impoundment elevation five feet by installation of an eight-foot-high rubber dam in place of the three-foot seasonal flashboards. Ordering Paragraph (B) does not authorize additional installed capacity, but rather authorizes continued operation at the current installed capacity of 8,000 kW.

B. Project Operation

1. Run of river

The Settlement Offer requires the Beebee Island Project to operate run-of-river, which it defines as an active storage volume of zero cubic feet at all times so that the instantaneous sum of all discharges and releases will equal the instantaneous inflow to the impoundment to the extent practicable. Beebee Island may modify this condition temporarily during operating emergencies or, with NYSDEC's agreement, for short time periods and with licensee notification to FWS.

Article 401 adopts this provision. It requires the project to operate run-of-river, as defined in the Settlement Offer. It takes cognizance of operating emergencies that prevent compliance and permits the licensee to modify run-of-river operation, but requires the licensee to notify the Commission, FWS, and NYSDEC promptly. It similarly permits modification of the flow for short time periods, with the prior consent of NYSDEC and prompt notification to the Commission and FWS.

2. Impoundment level

The Settlement Offer lists, as one of the signatories' goals, reduction of non-natural river fluctuations in order to foster boating and other river uses. The Settlement Offer requires that the project impoundment not fall below 0.5 foot of the spillway crest of the dam (428.0 feet USGS) or the top of the flashboards (431.0 feet USGS) when installed. Beebee Island may

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modify this condition temporarily during operating emergencies, or, with NYSDEC's agreement, for short time periods and with licensee notification to FWS. Additionally, to respond to instantaneous changes in inflow, Beebee Island is to set the turbine intake controls to actuate incremental changes of unit discharge within 0.2 feet of the top of the spillway crest or the flashboard elevation. If, between May 1 and June 30, Beebee Island can not maintain the impoundment within 0.5 feet of the flashboard tops, because of flashboard problems, Beebee Island is to alert NYSDEC and to propose remedial actions. NYSDEC is to consult with FWS and, with the latter agency's agreement, will, within five business days, approve remedial actions to be implemented before or on June 30.

Article 401 requires the licensee to set the project controls to maintain the impoundment elevation within 0.2 foot of the top of the spillway crest or flashboard elevation, but permits, for compliance purposes, impoundments levels of 427.5 feet USGS when flashboards are not in use, and 430.5 feet USGS when flashboards are mounted. It allows for operating emergencies and for short-term variations, with NYSDEC's prior consent and prompt notification to the Commission and FWS.

Without limit to the time period May 1 to June 30, Article 401 requires the licensee to notify the Commission, FWS and NYSDEC of flashboard problems that prevent maintenance of the impoundment within 0.5 foot of the top of the flashboard elevation. The article also requires the licensee to propose remedial actions, and to file for Commission approval its proposed remedies, together with the resource agencies' comments on them.

3. Flashboards

To protect fish spawning in and birds nesting around the project impoundment, the Settlement Offer requires Beebee Island to install flashboards by May 1, or as soon thereafter as safely possible. Article 402 adopts this requirement.

C. Flows

1. Continuous flow

The Settlement Offer requires Beebee Island to provide a continuous flow of not less than 1,000 cfs through the project, except when inflow to the project is below 1,000 cfs, when inflow will determine and equal outflow. Article 403 requires that this standard be met within 270 days of license issuance.

2. South Channel minimum flow

The Beebee Island Project has an integrated powerhouse and dam on the north side of Beebee Island. Because the powerhouse discharges at the base of the dam, the bypassed reach in the North Channel (created by the north side of the island and the north bank of the river) is not dewatered. However, a non-overflow impounding structure across the South Channel prevents flow releases and consequently creates a 750-foot-long reach that is continuously dewatered except for leakage. In order to restore aquatic habitat to the South Channel bypassed reach, the Settlement Offer requires a year-round minimum flow of 14 cfs in the South Channel bypassed reach. Article 404 requires the licensee, after installation of a minimum flow release structure, to release a 14 cfs minimum flow into the South Channel. 24/

3. Flow release structure

The Settlement Offer requires flow release structures to be designed to minimize adverse effects to downstream passing fish while being reasonably cost effective. Final design details, device locations, and other fish conveyance measures, such as plunge pools and piping, are to be based on 1996 field inspections and the judgment of FWS and NYSDEC, and the structures are to be installed within two years of license issuance. In particular, Beebee Island is to provide the 14 cfs year-round minimum flow into the South Channel bypassed reach by installing a pipe through the project dam permitting discharge into a plunge pool.

Article 406 requires the licensee, within one year of license issuance and after consultation with FWS and NYSDEC, to file design drawings for a flow release structure via a pipe through the project dam to a plunge pool, together with a schedule for implementation. The licensee is to complete construction of the approved devices within one year of Commission approval of the design drawings.

4. Staff gages

The Settlement Offer requires Beebee Island to install permanent staff gages to allow independent verification of headpond and tailwater elevations to the nearest 0.1 foot. Also, Beebee Island is to provide FWS and NYSDEC staff and representatives with access to these gages. Article 407 adopts this requirement.

24/ As required in Article 405, Beebee Island will remove debris and trash manually from the channel within two years of license issuance, and repeat removal efforts as needed.

5. Flow monitoring plan

The Settlement Offer requires Beebee Island to develop a flow monitoring plan, in consultation with all signatories and within six months of license issuance, that provides for the installation and maintenance of a U.S. Geological Survey gaging station, unless Beebee Island justifies an alternative gaging system. The plan is also to include all gages or other equipment needed to determine the stage and/or flow of the Black River, all project flows, and headpond and tailwater elevations.

The Settlement Offer also requires Beebee Island to keep records of the impoundment elevation and all project discharges to NYSDEC's satisfaction and provide the recorded data as NYSDEC may prescribe. The plan is to be submitted to NYSDEC for approval, and all equipment shall be made fully operational within one year of license issuance.

Article 408 requires the licensee, within 180 days of license issuance, to consult with FWS, NYSDEC, and the Black River Advisory Council (Advisory Council), ^{25/} and to file, for Commission approval, a plan to monitor compliance with the flow requirements of this license. The plan is to include a gaging system, calibration, a schedule for making the gages and ancillary equipment operational within one year, and provisions for contact persons to respond to questions about flow or impoundment conditions. The article requires the licensee to consult with FWS, NYSDEC and Advisory Council representatives prior to filing its plan and schedule. The Commission reserves the right to make changes to the plan or schedule, and requires its implementation within one year of approval.

Article 409 requires the licensee to file, within 180 days of license issuance and for Commission approval, a plan describing its current or proposed practices for keeping records of impoundment levels and water flows, and their changes and rates of change. The plan is also to include the licensee's method of advance notification to FWS, NYSDEC, and the Advisory Council before the licensee proposes to the Commission any future changes to the record keeping practices. The plan must also accommodate FWS, NYSDEC and Advisory Council requests for access to the records both for inspection and for copies. The licensee

^{25/} The Settlement Offer establishes a Black River Advisory Council whose goal is to protect resources of the Black River Basin and to promote recreation there. Its members are to be nearly all the signatories to the Settlement Offer plus Jefferson County. See Settlement Offer at pp. A1-1 and A1-2.

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is required to consult with FWS, NYSDEC and the Advisory Council before filing the plan.

D. Fish and Wildlife Protection

1. Fish entrainment

To prevent entrainment of adult fish, the Settlement Offer requires Beebee Island to replace the existing trashracks with trashracks having 2-inch-clearance bar spacing. From May 1 through October 1, Beebee Island is to install overlays having 1-inch-clearance bar spacing over the trashracks in the top half of the water column. Installation of the new trashracks and overlays at the Beebee Island Project and at the five developments of the Black River Project is to begin within two years of license issuance, for both projects, and is to be completed, for both projects, by twelve years from the date the two licenses issue.

Article 410 requires the licensee, within one year of license issuance, and after consultation with FWS and NYSDEC, to file, for Commission approval, design drawings for permanent 2-inch-clearance bar spacing trashracks and for 1-inch-clearance bar spacing overlays for installation from May 1 through October 1, and an implementation schedule. The article also reserves the Commission's right to require changes to the plan and schedule.

2. Fish passage

The Settlement Offer requires Beebee Island to provide downstream fish passage between April 1 and November 30 via a modification to the existing stop-log ice sluice, to be designed in consultation with FWS and NYSDEC, and with a 37-cfs attractant flow. Beebee Island is to install the structure within two years of license issuance. The Settlement Offer does not require upstream fish passage measures.

Article 411 requires the licensee to file, within one year of license issuance, its detailed design drawings of the proposed flow release structure and fish conveyance measure, including an attractant flow of 37 cfs, and to include copies of FWS and NYSDEC comments on the drawings and a schedule for the structure's construction and implementation.

E. Recreation

The Settlement Offer requires Beebee Island, within two years of license issuance, to provide and maintain the recreational facilities described in its license application and its additional information responses, including pedestrian

access, the impoundment for fishing, scenic overlook facilities, and a fishing platform. ^{26/} Additionally, Beebee Island is to provide and maintain a car-top boat ^{27/} take-out on the south bank of the impoundment, and signs giving directions to potential downstream put-in locations. The Settlement Offer also requires Beebee Island to develop the recreational facilities in consultation with the members of the Advisory Council.

Article 413 requires the licensee to file, within 180 days of license issuance, its plan to construct, operate and maintain these recreational facilities, together with a schedule that will permit their construction within one year of Commission approval. The licensee must first consult with appropriate federal, state and local agencies, and with the Advisory Council.

F. Aesthetics

From May 1, or as soon thereafter as flashboards can be safely installed, through October 31, the Settlement Offer requires Beebee Island to provide a 92-foot-long veiling flow over the spillway at the middle section of the main (north) dam, utilizing a half-inch gap under the flashboards, or a functionally equivalent alternative.

The Settlement Offer also requires Beebee Island to paint or finish in a dark green-brown color all new and replacement fencing, including support structures. It must maintain the color scheme for existing fences or structures that need re-painting.

Article 414 requires the licensee, after consultation with NYSDEC, Watertown, and owners of real property adjacent to the project, to file its plan for veiling flows within 180 days of license issuance. Article 415 requires the uniform color scheme.

G. Water Quality Certification

The Settlement Offer foresees NYSDEC's issuance of water quality certification, pursuant to Section 401 of the Clean Water Act to the Beebee Island Project. It provides that, to the extent that certification incorporates the Settlement Offer's provisions, or that the Commission incorporates these provisions into the terms and conditions of the issued new license, any

^{26/} See the EA, Table 15 and figure 7, as amended by notice issued November 22, 1996.

^{27/} The Settlement Offer defines a car-top boat as a boat that requires neither a ramp nor a trailer for launching or retrieving.

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signatory may enforce the Settlement Offer's provisions. If the certification or the issued new license contains conditions that conflict with the Settlement Offer's provisions, any signatory may withdraw from the Settlement Offer.

As discussed below (section VI), valid water certification conditions become part of an issued license and are enforced by the Commission.

H. Other Provisions

The signatories agreed not to request the Commission to include in the issued license any terms or conditions inconsistent with the Settlement Offer's provisions. The Settlement Offer also provides that if the Commission rejects or modifies the provisions of the Settlement Offer, each signatory has the right to modify or withdraw from the Settlement Offer, but the rest of the agreement would remain in effect.

The Settlement Offer's provisions are to remain in effect during the term of an issued license and any annual license issued subsequently, subject to any authority that the Commission may reserve to itself to require modifications during the term of the new license. Should a signatory wish to modify a term or condition through a license reopener, the signatory must first request all signatories to commence negotiations for 90 days to resolve the issue and to try to agree on modification of the Settlement Offer. Should a dispute arise over the provisions of the Settlement Offer, the signatories agree to negotiate in good faith for at least 90 days to resolve the dispute. If resolution can not be attained, the dispute may be referred to the Commission pursuant to the Commission's Rules of Practice and Procedure. As noted (see section III, supra), the dispute resolution process must not interfere with Beebee Island's compliance with license requirements.

V. ENVIRONMENTAL ANALYSIS

The staff's environmental assessment of Beebee Island's new license application, as amended by the Settlement Offer, analyzed the effects of continued project operation on water quality, maintenance of stable minimum flows, fisheries (including fish passage), vegetation and wildlife, geological resources, recreation, aesthetic resources, and cultural resources.

It concluded that Beebee Island's implementation of the Settlement Offer's proposed project conditions will produce beneficial effects. Reducing fluctuations of the impoundment's water levels will enhance habitat and reproduction conditions for resident fish. Fish stranding will be reduced, and the more stable wetlands around the impoundment's shorelines will provide

increased habitat for birds and other animals. Fish entrainment at the intake will be reduced and fish passage will be improved. Fish habitat will be improved at the South Channel bypassed reach. The 1,000 cfs continuous flow and surge control will stabilize riverine fish habitat downstream of the project. Boating, picnicking and other recreational activities will be expanded. The project will be subject to mitigation measures to protect aesthetics values.

VI. WATER QUALITY CERTIFICATION

Under Section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341 et seq., applicants for a federal license or permit for any activity that may result in any discharge into navigable waters of the United States must request, from the state in which the discharge originates, certification that any such discharge will comply with applicable state water quality standards. The Commission may not issue a license for a hydroelectric project unless the state certifying agency has issued water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable time, not to exceed one year. 28/

On November 3, 1995, after signing the Settlement Offer, NYSDEC issued water quality certification for the Beebee Island Project. 29/ Its provisions are contained in the appendix to this order. The certification includes both NYSDEC's standard conditions and the terms and conditions of the Settlement Offer.

NYSDEC's standard conditions include: (1) inspection of the project and project records by NYSDEC to determine project compliance with the certification conditions; (2) cessation of generation and flow through turbines before dredging in any intake or forebay area; (3) contaminant testing of sediments to be disturbed or removed from project waters; (4) NYSDEC approval of an erosion and sediment control plan prior to the licensee's commencement of activities that could adversely affect water quality; (5) placement of cofferdams, ramps, roads and other

28/ On December 20, 1991, Beebee Island submitted to NYSDEC a request for water quality certification. On December 21, 1992, NYSDEC denied the request without prejudice. Beebee Island requested a NYSDEC hearing on the certification denial. Subsequent negotiations led to the Settlement Offer.

29/ November 3, 1995 letter to Niagara Mohawk from NYSDEC, included in Beebee Island's November 6, 1995 filing. NYSDEC's water quality certification covered both the Beebee Island and the Black River Projects.

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structures encroaching on the Black River in accord with the erosion and sediment control plan; (6) maintenance, during construction, of adequate flows to ensure that established water quality standards are met; (7) upstream and downstream turbidity monitoring during construction, and correction of activities that cause downstream turbidity to exceed upstream turbidity; and (8) prior notification to NYSDEC of any activities subject to the above conditions.

These standard conditions are valid certification conditions and are adopted as license requirements. However, we note that the state's power under the Clean Water Act is not unbounded, and that it is the Commission, not the state certifying agency, that administers and enforces all license conditions, including those in a Section 401 certification. ^{30/} Accordingly, whereas standard certification condition 4 requires NSYDEC approval of an erosion and sediment control plan prior to undertaking any activity that affects water quality, it will be the Commission that authorizes Beebee Island to commence those activities, and NYSDEC's prior approval notwithstanding.

The certification (p. 2) states that NYSDEC "reserves the right to reconsider the entire Certification if there is a significant change in the scope of the proposal or the project license, or in the event that the referenced application or Settlement Agreement are further amended." To the extent that the reservation referred to pre-relicensing amendments to the proposed project, it was governed by section 4.38(f)(7) of our regulations, which requires a new request for water quality certification "if the amendment would have a material adverse impact on the water quality in the discharge from the project or proposed project." ^{31/} However, to the extent that the reservation purports to give NYSDEC the right to revise certification conditions after the license has been issued and becomes final, we reject such reservation as outside the scope of Section 401 of the CWA. ^{32/}

Although NYSDEC's certification requires verbatim adoption of the Settlement Offer's provisions, we have declined to do so. As described above (section IV), we have modified the provisions to comport with our policies and practices. Further, we adopted for this new license only those provisions that apply to the Beebee Island Project and that can be performed by the licensee.

^{30/} See Great Northern Paper, Inc., 77 FERC ¶ 61,068 at pp. 61,271-72 (1996).

^{31/} 18 C.F.R. § 4.38(f)(7)(iii) (1996).

^{32/} See Niagara Mohawk, supra, 76 FERC at p. 61,832.

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VII. FELTS MILLS OPPOSITION TO SETTLEMENT OFFER

Pursuant to the Offer of Settlement, NYSDEC would acquire rights to Niagara Mohawk-owned lands that are included in the project boundary for the proposed 13.2 MW Felts Mills Project No. 4715, for which an original license application has been filed by Felts Mills Energy Partners, L.P. 33/

Felts Mills has intervened in both this and the Black River Project proceeding to oppose Commission adoption of the Settlement Offer. Its objection is that, under the River Fund aspect of the Black River settlement, the parties have deliberately selected for conservation easements lands proposed for inclusion in the Felts Mills Project. It asserts that the settlement should be dismissed because it places the Black River and Felts Mills Projects in competition long after the deadline for the filing of competing applications; and that approving the Black River settlement will necessitate the denial of the Felts Mills license application.

For the reasons set forth in the license we issue concurrently for the Black River Project, we have found that the Commission has no jurisdiction over Niagara Mohawk's transfer of interest in lands not within a Niagara Mohawk licensed project, and that approval of the River Fund component (which is also included in the Black River Project's water quality certification) does not preclude issuance of a license of the Felts Mills project. Moreover, this land use issue does not involve the Beebee Island Project in any way.

VIII. SECTION 18 FISHWAY PRESCRIPTION

Section 18 of the FPA, 16 U.S.C. § 811, states that the Commission shall require construction, maintenance, and operation by a licensee of such fishways as the Secretaries of Commerce and the Interior may prescribe. Commerce did not submit a prescription. Interior requested reservation of its authority to prescribe upstream and downstream fishways in the future. 34/ FWS, in the Settlement Offer, agreed to defer installation of upstream fish passage devices at Beebee Island until development of salmonid restoration management goals for the Black River Basin, but specifically reserved Interior's authority to

33/ The Felts Mills Project would comprise two developments, to be located at what are currently partially breached dams on the Black River at river miles 19.2 and 21.7, between two (of five) Black River Project No. 2569 developments, Kamargo (mile 17) and Deferiet (mile 26).

34/ Interior's filing of December 19, 1995, at 8.

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prescribe fishways as may be deemed necessary in the future. 35/ FWS subsequently specified that the reservation includes both upstream and downstream fishways. 36/

With recent installation of fish ladders at the two projects between the Beebee Island Project and Lake Ontario, the Dexter Project No. 2695 at river mile 1 and the Glen Park Project No. 4796 at river mile 6, anadromous salmonids (Atlantic salmon and steelhead trout) can now migrate upstream to the base of the Beebee Island Dam. Interior's reservation of its fishway prescription authority is reasonable. Consistent with Commission practice, Article 412 reserves our authority to require Beebee Island to construct, operate, and maintain such fishways as the Secretary of the Interior may prescribe. 37/

IX. CULTURAL RESOURCES

The Historic Preservation Field Services Bureau, New York's state historic preservation office (the SHPO), 38/ notified Beebee Island, on April 23, 1993, that the Beebee Island Hydroelectric Plant met the criteria for inclusion in the National Register of Historic Places, and that the proposed fish barrier overlays would have no effect on cultural resources. 39/ Earlier, the SHPO had found the project area to be archaeologically sensitive. 40/

35/ Settlement Offer at 4.

36/ FWS' April 8, 1996 filing.

37/ See Wisconsin Public Service Corporation, 62 FERC ¶ 61,095 at p. 61,685-86 (1993), aff'd sub nom. Wisconsin Public Service Corporation v. FERC, 32 F.3d 1165 (7th Cir. 1994).

38/ See National Historic Preservation Act, 16 U.S.C. § 470 et seq. In issuing licenses, the Commission must act to preserve the nation's historic, cultural and archaeological heritage, and must consult with the appropriate State Historic Preservation Officer.

39/ April 23, 1993 letter to Kleinschmidt Associates (Beebee Island's consultant) from Deputy Commissioner for Historic Preservation, Historic Preservation Field Services Bureau, New York State Office of Parks, Recreation and Historic Preservation.

40/ September 11, 1985 letter to Niagara Mohawk from Director, Historic Preservation Field services Bureau. Included in new license application, Appendix A.

On July 19, 1996, a Programmatic Agreement was executed between the Commission, the (U.S.) Advisory Council on Historic Preservation (Historic Preservation), the SHPO, and Niagara Mohawk and its associated or subsidiary companies. Historic Preservation found that the Programmatic Agreement satisfied the Commission's responsibilities under the National Historic Preservation Act, 16 U.S.C. § 470 et seq., and regulations thereunder. 41/ On December 1, 1996, the Commission's staff revised the appendices to the Programmatic Agreement for the Beebee Island and Black River Projects, including the changes proposed by Historic Preservation, the SHPO, and Niagara Mohawk (acting for both projects). 42/ The Programmatic Agreement requires the licensees to administer each project in accord with the project's cultural resources management plan (CRMP), which specifies how historic properties will be protected.

Article 416 requires Beebee Island: to implement the Programmatic Agreement, including the filing of a CRMP; to implement the provisions of an approved CRMP; and, should the Programmatic Agreement be terminated prior to Commission approval of the CRMP, to obtain Commission approval before engaging in any ground disturbing or other activities that may affect historic properties.

X. SECTION 10 OF THE FEDERAL POWER ACT

Section 15(a)(2) of the FPA, 16 U.S.C. § 808(a)(2), provides that the requirements of Section 10 of the FPA, 16 U.S.C. § 803, pertaining to conditions of licenses are applicable also to Commission consideration of new license applications.

A. Federal and State Comprehensive Plans

Section 10(a)(2)(A) of the FPA, 16 U.S.C. § 803(a)(2)(A), requires us to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving waterways affected by the project. 43/ Under this statutory provision, federal and state agencies filed 27 comprehensive plans that address various

41/ August 5, 1996 filing by the Advisory Council on Historic Preservation.

42/ December 1, 1996 letter from Director, Division of Licensing and Compliance, to the Advisory Council on Historic Preservation, the New York State Office of Parks, Recreation and Historic Preservation, and Niagara Mohawk.

43/ Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (1996).

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resources in New York. Of these, the Commission's staff identified and reviewed ten plans relevant to the project, 44/ and found no conflicts between these plans and the Beebe Island Project. 45/

44/ The federal plans are: (1) Nationwide Rivers Inventory, National Park Service, U.S. Department of the Interior, Washington, D.C., January 1982; (2) North American Waterfowl Management Plan: A Strategy for Cooperation, Fish and Wildlife Service, U.S. Department of the Interior, and Canadian Wildlife Service, Environment Canada, Washington, D.C., May 1986; and (3) Fisheries USA: the Recreational Fisheries Policy of the U.S. Fish and Wildlife Service, Washington, D.C., undated.

The state plans are: (1) Adirondack Park State Land Master Plan, Adirondack Park Agency, Ray Brook, New York, January 1985; (2) New York State Wild, Scenic, and Recreational Rivers System Field Investigation Summaries, Adirondack Park Agency, Albany, New York, undated; (3) Fisheries Enhancement Plan for the Black River, New York, Fish and Wildlife Service, U.S. Department of the Interior and New York State Department of Environmental Conservation, Amherst, New York, March 1994; (4) New York State Wild, Scenic, and Recreational River System Act, New York State Department of Environmental Conservation, Albany, New York, March 1985; (5) Article 27 -- Adirondack Park Agency Act, New York State Executive Law, Albany, New York, July 15, 1981; (6) Regulation for Administration and Management of the Wild, Scenic, and Recreational Rivers Systems in New York State excepting the Adirondack Park, New York State Department of Environmental Conservation, Albany, New York, March 26, 1986; and (7) State Comprehensive Outdoor Recreation Plan, New York State Parks, Recreation, and Historic Preservation, 1994.

45/ FWS' November 7, 1996 filing argues that the Settlement Offer qualifies as a comprehensive plan pursuant to this section of the FPA, and accordingly, to the extent that the Felts Mills Project conflicts with the Settlement Offer, it cannot be considered to be in the best interest of the comprehensive development of the waterway involved. We disagree; although two federal and two state agencies are among the signatories to the Settlement Offer, the signatories, as a body, do not constitute an agency authorized by the United States or New York State to prepare such a plan. See the definition of comprehensive plan 18 C.F.R. § 2.19. In any event, a project's conflict with a comprehensive plan does not preclude licensing. Section 10(a)(2)(A), 16 U.S.C. § 803(a)(2)(A), of the FPA
(continued...)

B. Recommendation of Other Agencies

Section 10(a)(2)(B) of the FPA, 16 U.S.C. § 803(a)(2)(B), requires us to consider the recommendations of relevant federal and state agencies exercising administration over flood control, navigation, irrigation, recreation, cultural, and other relevant resources, as well as the recommendations of Indian tribes affected by the project. The Settlement Offer constitutes the recommendations of NYSDEC concerning relevant state resources. No federal agency recommendations were filed concerning flood control or navigation, and no Indian tribe made any filings.

C. Consumption Efficiency Improvement Program

Section 10(a)(2)(C) of the FPA, 16 U.S.C. § 803(a)(2)(C), requires that the Commission, in acting on a license application such as this, consider the electricity consumption efficiency 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.

As noted, Beebee Island sells most of the project's energy to its major shareholder, Niagara Mohawk. Responding to a request from the New York State Public Service Commission, Niagara Mohawk, prepared twelve demand-side management programs whose goals are to encourage efficient use of energy resources. These programs include measures ranging from water heater wraps to high efficiency lighting and equipment. Niagara Mohawk also has innovative rate options that include time-of-use rates, real-time pricing, and voluntary interruptible and curtailable rate

45/ (...continued)

does not limit the Commission's ability to carry out its broad responsibilities under Sections 10(a)(1) and 4(e) of the FPA, 16 U.S.C. §§ 803(a)(1) and 797(e), to consider and balance all aspects of the public interest in determining whether, and under what conditions, a hydroelectric license should be issued. See Richard Balagur, 57 FERC ¶ 61,315 at p. 62,016 (1991).

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programs. ^{46/} We conclude that the application is consistent with the requirements of Section 10(a)(2)(c) of the FPA.

D. Recommendations of Federal and State Fish and Wildlife Agencies

Section 10(j) of the FPA, 16 U.S.C. § 803(j), requires the Commission to include license conditions based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act ^{47/} for the protection, mitigation, and enhancement of fish and wildlife resources. The Settlement Offer represents the recommendations of FWS and NYSDEC. We have required their implementation in Articles 401 through 410.

XI. APPLICANT'S PLANS AND CAPABILITIES

In accordance with Section 15(a) of the FPA, 16 U.S.C. § 808(a), which requires us to determine whether the proposed license is best adapted to serve the public interest, we have evaluated Beebe Island's record as a licensee. Under Section 15(a)(2), we evaluated: (1) plans and abilities to comply with the new license; (2) safe management, operation, and maintenance of the project; (3) ability to provide efficient and reliable electric service; (4) need for power; (5) transmission services; and (6) cost-effectiveness of plans. Under Section 15(a)(3), we evaluated: (7) compliance record and (8) actions affecting the public.

^{46/} Time-of-use rates are prices that vary according to the time of day, week, or year of the power bought, with power during high demand times being more costly.

Real-time pricing means that the cost to the customer for power bought will be the market price for the power at the time of sale.

Interruptible rates are prices that are lower than rates for non-interruptible service. Customers buying at this lower rate run the risk that the power will be cut off during periods of unusually high demand or loss of generation in order to maintain service to customers paying higher rates for non-interruptible service.

Curtailable rates are prices that are lower than would otherwise be charged because only an agreed-upon amount of power will be sold at these rates. Additional power will be more costly.

^{47/} 16 U.S.C. § 661 et seq.

1. Plans and Abilities to Comply with the New License

Section 15(a)(2)(A) requires us to consider Beebee Island's plans and abilities to comply with the articles, terms, and conditions of any license issued, and with other applicable provisions of Part I of the FPA. We have reviewed Beebee Island's license application, and have also reviewed Beebee Island's record for good faith compliance with the articles, terms, and conditions of its current license. As a result of our review, we believe that Beebee Island has or can acquire the resources and expertise to comply with the conditions of the new license.

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

Section 15(a)(2)(B) requires us to consider Beebee Island's plans to manage, operate, and maintain the project safely. Niagara Mohawk, the major shareholder, routinely inspects the Beebee Island Project and makes needed repairs. The project is an automated station whose energy output is continuously monitored by Niagara Mohawk staff. Any equipment failure or water conduit failure would be noticed by the monitoring staff so that remedial action could be taken promptly. Niagara Mohawk has a comprehensive employee safety program that includes regularly scheduled safety meetings. Public safety at the project is promoted by fencing hazardous areas, particularly near the project intake, to prevent access by unauthorized personnel.

Commission staff in the New York Regional Office (NYRO) inspected the project most recently on June 5, 1995. NYRO staff described the project as being in good condition and having no significant public or dam safety problems. The project dam has low hazard potential as defined by the U.S. Army Corps of Engineers. ^{48/} On the basis of Niagara Mohawk's March 1991 dambreak analysis, NYRO staff exempted the project, on October 23, 1991, from the requirement of filing an Emergency Action Plan (EAP) unless conditions changed so as to require

^{48/} See 33 C.F.R. Part 222. The hazard potential pertains to the potential for loss of human life or property in the area downstream of the dam in the event of a failure or errant operation of the dam. Low hazard potential requires the downstream area to have no permanent structures for human habitation and to be relatively undeveloped so that only minimal economic loss would occur.

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revision of the hazard potential. 49/ On June 13, 1996, NYRO staff, after review of the project's safety and adequacy, reported that the dam and project works are in safe condition, and recommended that the new license include no special article related to dam safety. 50/

Niagara Mohawk has incorporated the notification procedure in case of dam failure or errant operation for all its projects on the Black River, including the Beebee Island Project, into a Black River Drainage Basin EAP, which it updates quarterly.

We conclude that the project will be safe for continued operation during the new license term, and will pose no threat to public safety if operated and maintained according to good engineering practices and our regulations governing hydroelectric projects.

3. Ability to Provide Efficient and Reliable Electric Service

Section 15(a)(2)(C) requires us to review the plans and abilities of Beebee Island to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. Niagara Mohawk periodically evaluates the feasibility of increasing capacity or generation at its hydroelectric projects, including the Beebee Island Project.

Based upon our review of past operations, we conclude that Beebee Island has been operating the project in an efficient manner within the constraints of the existing license, and that it will continue to provide efficient and reliable electric service in the future.

4. Need for Power

Section 15(a)(2)(D) requires us to review the need for project power. As noted, Beebee Island sells most of the project's power to Niagara Mohawk. The Beebee Island Project has

49/ October 23, 1991 letter from NYRO staff to Niagara Mohawk, exempting the Beebee Island and the Black River Projects from the requirement of filing an EAP. NYRO staff confirmed the continuing exemption in December 1993 and November 1994. On January 4, 1996, Niagara Mohawk filed, with the New York Regional Office staff, its report attesting to its continued compliance with Commission regulations (18 C.F.R. § 12.21(c)) enabling exemption.

50/ June 13, 1996 internal memorandum from Director, NYRO, to Director, Division of Dam Safety and Inspections.

provided and can continue to provide a portion of Niagara Mohawk's power requirements, and contribute to Niagara Mohawk's resource diversity, as well as to the capacity needs of the New York Power Pool (NYPP). The NYPP forecasts an average annual increase in peak capacity demand of 0.6 percent during the summer months and 0.5 percent during the winter months for the 1995 to 2004 planning period. Hydroelectric generation accounts for over 10 percent of Niagara Mohawk's total generation capability. Niagara Mohawk meets approximately 33 percent of its power needs from "non-utility generators," such as Beebee Island. Relicensing the project will contribute to maintaining available capacity. ^{51/}

We conclude that Niagara Mohawk will continue to need power for the short and long term, and that the Beebee Island Project can contribute to meeting that need.

5. Transmission Services

Section 15(a)(2)(E) requires us to consider Beebee Island's transmission services in relation to system reliability, costs and other applicable economic and technical factors. Beebee Island proposes no new or additional transmission facilities at the project because no added generation is proposed and the existing transmission system suffices. We are satisfied that the existing transmission facilities are adequate.

6. Cost-effectiveness of Plans

Section 15(a)(2)(F) requires us to consider whether Beebee Island's plans will be achieved in a cost-effective manner. After review of the new license application, we conclude that the project as presently configured and operated, as Beebee Island proposes, will continue to provide power in a cost-effective manner. We agree that adding additional capacity at this time is unnecessary.

7. Compliance Record

Section 15(a)(3)(A) requires us to consider Beebee Island's record of compliance with the terms and conditions of its existing license. We have reviewed Beebee Island's record of making timely filings and of complying with the terms and conditions of its existing license, including the reports of the NYRO staff. We conclude that Beebee Island's overall record is satisfactory.

^{51/} See the EA at II. B.

8. Actions Affecting the Public

Section 15(a)(3)(B) requires us to consider Beebee Island's actions relating to the project that affect the public. The project has a beneficial effect on the socioeconomics of the Watertown, New York, area by contributing taxes to state and local governments, and by its expenditures to increase recreational opportunities that attract recreational users. Under the new license, Beebee Island will continue and increase these recreational services.

XII. COMPREHENSIVE DEVELOPMENT

Sections 4(e) and 10(a)(1) of the FPA, 16 U.S.C. §§ 797(e) and 803(a)(1), require the Commission, in acting on applications for a license, to give equal consideration to the power and 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 beneficial public uses. Our decision to issue a new license for this project, and the terms and conditions included herein, reflects such consideration.

We have analyzed the Settlement Offer and have adopted license terms and conditions consistent with it. The environmental and recreational enhancements that will occur under the new license include: improved habitat and reproductive conditions for resident fish; improved fish protection at intakes; improved fish passage through the project; additional recreational facilities; and improved visual aspects.

We have also analyzed the economic benefits of power produced by the project. Under our new approach to evaluating the economics of hydropower licensing, as articulated in Mead Corporation, Publishing Paper Division, 52/ our analysis 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 our economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to issuing the license.

52/ 72 FERC ¶ 61,027 (1995), reh'g granted and clarification denied, 76 FERC ¶ 61,352 (1996).

Based on current economic conditions, without future escalation or inflation, the Commission's staff predicts that the project, if licensed as proposed in the Settlement Offer, will produce approximately 38.7 gigawatt hours of energy annually at a cost of approximately \$715,500, about 18.7 mills per kilowatt hour (kWh). The staff estimated the cost of an equivalent amount of power from alternative sources to be \$893,100, or about 23.3 mills/kWh, based on 1995 data of natural gas-fueled electric plants in the Middle Atlantic area. Thus, the cost of Beebee Project power is approximately \$177,600, or about 4.6 mills/kWh, less than the cost of an equivalent amount of power from comparable alternative sources. 53/

We find, therefore, that operation of the Beebee Island Project under the terms and conditions of this license, which contains the environmental and recreational enhancement measures provided in the Settlement Offer, will be economically beneficial. The project will continue to be a dependable and inexpensive source of electric energy for the project's two customers. Moreover, the electricity it generates will reduce use of fossil-fueled electric generating plants, conserve non-renewable energy resources, and reduce atmospheric pollution.

We conclude that issuance of a new license for the Beebee Island Project will not constitute a major federal action significantly affecting the quality of the human environment.

XIII. LICENSE TERM

Pursuant to Section 15(e) of the FPA, 16 U.S.C. § 808(e), relicensing terms shall be not less than 30 years nor more than 50 years. Our general policy is to establish 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigative and enhancement measures; 40-year terms for projects with a moderate amount of proposed redevelopment, new construction, new capacity, or mitigative and enhancement measures; and 50-year terms for projects with proposed extensive development, new construction, new capacity, or mitigative and enhancement measures.

According to the Settlement Offer filed in this proceeding, the parties contemplate a 30-year license for the Beebee Island Project. Because the term of the new license was likely an important element in the negotiations that led to the Settlement Offer, and because Beebee Island proposes no additional capacity or new construction, we will issue the license for a term of 30 years.

53/ See EA at VI. Developmental Analysis and Table 20.

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XII. SUMMARY

In light of all of the above, including our review of the staff's environmental analysis of the proposed project and alternatives to it, we conclude that issuing a new license for the Beebee Island Project with the requirements included herein will not conflict with any planned or authorized development and will best adapt the project to a comprehensive plan for developing the Black River for beneficial public purposes.

The Commission orders:

(A) This license is issued to Beebee Island Corporation (licensee), for a term of 30 years, effective the first day of the month in which the license is issued, to operate and maintain the Beebee Island Project. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, shown by the following drawings in Exhibit G, which were included in the application for new license filed on December 23, 1991:

Exhibit	FERC Drawing No.	Description
G-1	2538-1001	Location Map
G-2	2538-1002	Project Boundary Map

(2) Project works consisting of: (1) a 20-acre reservoir, at normal maximum surface elevation of 431.0 feet U.S. Geological Survey Datum (USGS) and gross storage capacity of 60 acre-feet; (2) an 18-foot-high by 266-foot-long, U-shaped concrete gravity main dam with permanent crest elevation of 428.0 feet, topped with 3-foot-high wooden flashboards; (3) a 50-foot-long by 15-foot-high, concrete-capped stone auxiliary non-overflow dam, equipped with a skimmer gate; (4) an intake structure that is an integral part of the powerhouse, 82 feet long and 27 feet wide, equipped with steel trashracks, four steel gates, a skimmer section, and slots for stop-logs; (5) an 8-foot-(wide) by 15-foot-(high) ice sluice, controlled by stop-logs, between the steel gates and a retaining wall, that permits ice and debris to circumvent the powerhouse; (6) a 47-foot-wide by 82-foot-long powerhouse equipped with two vertical generating units, each rated at 4,000 kilowatts (kW), a design head of 32.0 feet, and a

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hydraulic capacity of 1,800 cubic feet per second (cfs); (7) a tailrace with a normal surface elevation of 397.4 feet USGS; (8) a 300-foot-long, 4.8-kilovolt (kV) primary transmission line; and (9) appurtenant facilities.

The project works generally described above are more specifically shown and described by the following exhibits, which were also included in the application for new license filed on December 23, 1991:

Exhibit A:

The existing mechanical, electrical, and transmission equipment as described on pages A-3 through A-15 of Exhibit A.

Exhibit F:

Exhibit	FERC Drawing No.	Description
F-1	2538-1003	Dam Plan and Sections
F-2	2538-1004	Dam Elevations and Sections
F-3	2538-1005	Existing Powerhouse Plan Sections

(3) All of the structures, fixtures, equipment, or facilities used to operate or maintain the project and located within the project boundary, all portable property that may be employed in connection with the project and located within or outside the project boundary, and all riparian or other rights that are necessary or appropriate in the operation and maintenance of the project.

(C) The Exhibits A, F, and G described above are approved and made part of the license.

(D) This license is subject to the articles set forth in Form L-3 (October 1975), entitled, "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States," 54 F.P.C. 1792, 1817-24, and the following additional articles:

Article 201. The licensee shall pay the United States the following annual charges, effective as of the first day of the month in which this license is issued, for the purposes of reimbursing the United States for the costs of administering Part I of the Federal Power Act, a reasonable amount as determined in accordance with the provisions of the Commission's

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regulations in effect from time to time. The authorized installed capacity for that purpose is 8,000 kilowatts.

Article 202. If the licensee's project was directly benefitted by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license.

Article 203. Pursuant to Section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensee shall set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment.

To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensee shall deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensee shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensee shall maintain the amounts established in the project amortization reserve account until further order of the Commission.

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

Article 301. Within 45 days of the date of issuance of this license, the licensee shall file an original set and two duplicate sets of aperture cards of the approved drawings. The set of originals must be reproduced on silver or gelatin 35 mm

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microfilm. The duplicate sets are copies of the originals made on diazo-type microfilm. All microfilm must be mounted on type D (3-1/4" x 7-3/8") aperture cards.

Prior to microfilming, the FERC Drawing Number (2538-1001, 1002, etc.) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number must be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (e.g., F-1, G-1, etc.), Drawing Title, and date of this license must be typed on the upper left corner of each aperture card.

The original and one duplicate set of aperture cards must be filed with the Secretary of the Commission. The remaining duplicate set of aperture cards shall be filed with the Commission's New York Regional Office.

Article 302. Within 90 days of completion of construction of the facilities authorized by this license (flow release structure, recreation, etc.) the licensee shall file, for approval, revised Exhibits A, F and G to show those project facilities as built.

Article 401. The licensee shall operate the project in a run-of-river mode. The licensee shall at all times act to minimize fluctuations of the impoundment's surface elevation by maintaining a discharge from the project so that, at any point in time, flows, as measured immediately downstream from the project tailrace, approximate the sum of inflows to the project reservoir.

To respond to instantaneous changes in inflow, and to the extent practicable, the licensee shall set the turbine intake controls to actuate incremental changes of unit discharge within 0.2 foot of the top of flashboard elevation (431.0 feet U.S. Geological Survey (USGS)), or 0.2 foot of the spillway crest (428.0 feet USGS) when flashboards are not in use. For compliance purposes, the impoundment shall not fall below elevation 430.5 feet USGS when the flashboards are in place, or below elevation 427.5 feet USGS when the flashboards are not in use.

These conditions and run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement between the licensee and the New York State Department of Environmental Conservation (NYSDEC). If the flow is so modified, the licensee shall notify the Commission, the U.S. Fish and Wildlife Service and NYSDEC, if not already notified, as soon as possible, but no later than ten days after each such incident.

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If flashboard problems prevent the licensee from maintaining the impoundment elevation above 427.5 feet USGS, the licensee shall so notify the Commission, FWS and NYSDEC. The licensee shall propose remedial action, for Commission approval, together with the comments and recommendations of these agencies on the proposed remedies. The Commission reserves the right to require changes to these proposed remedies.

Article 402. The licensee shall install flashboards each year by May 1 or as soon thereafter as safely possible. The licensee shall remove the flashboards in the fall each year as the licensee deems appropriate, based on ice conditions.

Article 403. Within 270 days of the date of issuance of this license, the licensee shall provide a continuous outflow from the project of not less than 1,000 cubic feet per second (cfs), except when inflow is less than 1,000 cfs, in which case outflow will be determined by and be equivalent to inflow.

Article 404. To provide protection of fish and invertebrate habitat in the South Channel bypassed reach, the licensee shall, after installation of the flow release structure required in Article 406, release a year-round minimum flow of 14 cubic feet per second from the project impoundment into the South Channel bypassed reach.

This minimum flow into the South Channel bypassed reach may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon agreement between the licensee and the New York State Department of Environmental Conservation (NYSDEC). If the flow is so modified, the licensee shall notify the Commission, the U.S. Fish and Wildlife Service, and NYSDEC, if not already notified, as soon as possible, but no later than ten days after each such incident.

Article 405. Within two years of the date of issuance of this license, and after consultation with the New York State Department of Environmental Conservation, the licensee shall manually remove debris and trash from the South Channel, without use of heavy, motorized equipment. The licensee shall monitor the status of the South Channel and repeat the debris and trash removal, as necessary.

Article 406. Within one year of the date of issuance of this license, the licensee shall file, for Commission approval, detailed design drawings of the licensee's proposed minimum flow release structure to provide a year-round minimum flow of 14 cubic feet per second via a pipe through the project dam into a plunge pool in the South Channel bypassed reach, together with a schedule for constructing and installing the structure. The

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licensee shall complete construction of this structure within one year of Commission approval of the design drawings.

The licensee shall prepare the aforementioned drawings and schedule after consultation with the U.S. Fish and Wildlife Service and the New York State Department of Environmental Conservation. The licensee shall include, with the drawings and schedule, documentation of consultation, copies of agency comments and recommendations on the drawings and schedule after they have been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the licensee's proposed structure and schedule. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the drawings and schedule with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the proposed structure and schedule. Construction of the new structure shall not begin until the licensee is notified by the Commission that the filing is approved. Upon Commission approval, the licensee shall implement the proposal, including any changes required by the Commission.

Article 407. Within one year of the date of issuance of this license, the licensee shall install, and make fully calibrated and operational, permanent staff gages to allow measurement of headpond and tailwater elevations to the nearest 0.1 foot. The licensee shall provide access for reading the staff gages to staff and representatives of the U.S. Fish and Wildlife Service and the New York State Department of Environmental Conservation.

Article 408. Within 180 days of the date of issuance of this license, the licensee shall file, for Commission approval, a plan to monitor its compliance with the continuous flow requirement of this license.

The plan's provisions shall include:

(1) installation and maintenance of a gaging system to measure: (a) stages and flows of the Black River; (b) project headpond and tailwater elevations; and (c) all other project flows, including flows through the turbines and any other bypass or diversion flows;

(2) calibration of stage versus discharge ratings when rating changes occur;

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(3) a schedule for installing all necessary gages and necessary ancillary equipment and making them operational and fully calibrated within one year of Commission approval of the plan;

(4) provision for contact persons who will be available every day to respond to questions about abnormal flow or impoundment conditions.

The licensee shall prepare the monitoring plan and schedule after consultation with the U.S. Fish and Wildlife Service, the New York State Department of Environmental Conservation, and the Black River Advisory Council. The licensee shall include, with the plan and schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the consulting entities and specific descriptions of how the entities' comments are accommodated by the plan and schedule. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan and schedule. Upon Commission approval, the licensee shall implement the plan and schedule, including any changes required by the Commission.

Article 409. Within 180 days of the date of issuance of this license, the licensee shall file, for Commission approval, a plan of its current or proposed procedures for keeping accurate and sufficient records of the project impoundment elevations and all project discharges. The plan shall include: the format of the data; the sampling techniques used; the frequency of collection; and the locations of data logging equipment. The plan shall provide a procedure for future notification to the U.S. Fish and Wildlife Service (FWS), the New York State Department of Environmental Conservation (NYSDEC) and the Black River Advisory Council (Advisory Council) of any changes the licensee proposes to make to its methods of data collection. The plan shall also provide for inspection of the records by NYSDEC, FWS, or Advisory Council representatives, within five business days of request for inspection, and for licensee provision of copies of these records to NYSDEC, FWS, or Advisory Council representatives within 30 business days of receipt of a written request for copies.

The licensee shall prepare the aforementioned plan after consultation with FWS, NYSDEC, and the Advisory Council. The licensee shall include with the plan, documentation of

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consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the consulting entities, and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 410. Within one year of the date of issuance of this license, the licensee shall file, for Commission approval, detailed design drawings for the licensee's proposed new trashracks (or equivalent) with 2-inch-clearance bar spacings, and provision for trashrack overlays having 1-inch-clearance bar spacing to be placed on the trashracks in the top half of the water column, from May 1 through October 1, and an implementation schedule. This implementation schedule is to be prepared in coordination with a corresponding implementation schedule required by Article 410 of the new license for the Black River Project No. 2569. The new trashracks and overlays are to be installed at the Beebee Island Project and the five developments of the Black River Project at the rate of one development every two years, and installation of the required trashracks and overlays at both projects is to be completed within twelve years of the issuance date of the contemporaneous new licenses for both projects.

The licensee shall prepare the aforementioned drawings and schedule after consultation with the U.S. Fish and Wildlife Service and the New York State Department of Environmental Conservation. The licensee shall include with the drawings and schedule documentation of consultation, copies of agency comments and recommendations on the drawings and schedule after they have been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the licensee's proposed structure and schedule. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the drawings and schedule with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the proposed drawings and schedule. Upon Commission approval, the licensee shall implement the proposal, including any changes required by the Commission.

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Article 411. Within one year of the date of issuance of this license, the licensee shall file, for Commission approval, detailed design drawings of the licensee's proposed fish conveyance structure and associated measures, with a 37 cfs attractant flow, as described at page 11 of the Settlement Offer filed October 13, 1995, to be operational April 1 through November 30, together with a schedule for its installation and implementation.

The licensee shall prepare the aforementioned drawings and schedule after consultation with the U.S. Fish and Wildlife Service and the New York State Department of Environmental Conservation. The licensee shall include with the drawings and schedule documentation of consultation, copies of agency comments and recommendations on the drawings and schedule after they have been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the proposed structure and schedule. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the drawings and schedule with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the proposed drawings and schedule. Upon Commission approval, the licensee shall implement the proposed measures, including any changes required by the Commission.

Article 412. Authority is reserved by the Commission to require the licensee to construct, operate, and maintain, or to provide for construction, operation, and maintenance of, such fish passage facilities as may be prescribed by the Secretary of the Interior under Section 18 of the Federal Power Act.

Article 413. Within 180 days of the date of issuance of this license, the licensee shall file, for Commission approval, a detailed plan for constructing, operating, and maintaining the existing and proposed recreational facilities at the project development, as specified in: (1) pages E.7-11 through E.7-13 of Exhibit E, and page 3 and Figure 1 of Appendix J of the application for new license filed on December 23, 1991; (2) responses 11 and 16 of Beebe Island Corporation's Responses to Ferc Additional Information Requests, filed September 30, 1993; (3) Beebe Island Corporation's December 13, 1993 letter, filed on December 17, 1993; and (4) pages 11 and A3-6a of the Settlement Offer filed on October 13, 1995.

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The recreation plan shall include, but not be limited to:

- (1) pedestrian access to the impoundment for fishing; scenic overlook facilities and a fishing platform in conjunction with the City of Watertown (Watertown)'s proposed Heritage Trail, and to be constructed only if Watertown actually constructs the Heritage Trail; a boat barrier upstream of the dam; a car-top boat take-out; and signage to downstream boat put-in locations;
- (2) final site plans for the facilities;
- (3) identification of any additional lands underlying the new recreational facilities that the licensee recommends be incorporated within the project boundary; and revised Exhibit G maps, for Commission approval, showing the additional lands that must be incorporated within the project boundary; and
- (4) the name(s) of the entity or entities responsible for operating and maintaining each of the facilities;
- (5) a discussion of how the facilities design takes into consideration the guidelines established by the Architectural and Transportation Barriers Compliance Board (36 C.F.R. Part 1191 (1995));
- (6) erosion and sediment control measures and measures for revegetation of disturbed areas to be implemented during and after construction of the new recreational facilities;
- (7) a schedule for constructing the facilities within one year of Commission approval of the plan.

The licensee shall use consistent design themes in path widths, signage typeface, colors, and the like to make apparent that the recreation features are components of an integrated system.

The licensee shall prepare the plan and schedule after consultation with the U.S. Fish and Wildlife Service, the U.S. National Park Service, the New York State Department of Environmental Conservation, the New York State Office of Parks, Recreation and Historic Preservation, Jefferson County, the City of Watertown, and the Advisory Council.

The licensee shall include, with the plan and schedule, documentation of consultation, copies of consulting entity comments and recommendations on the completed plan and schedule, after they have been prepared and provided to the consulting

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entities, and specific descriptions of how the entities' comments are accommodated by the plan and schedule. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan and schedule with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan and schedule. No land-disturbing activities shall begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan and schedule, including any changes required by the Commission.

Article 414. Within 180 days of the date of issuance of this license, and in consultation with the New York State Department of Environmental Conservation, the City of Watertown, and owners of real property adjacent to the project, the licensee shall develop a plan, for Commission approval, to implement the licensee's proposal to provide one-half inch veiling flows over the 92-foot center section of the project dam from May 1 (or as soon as flashboards are installed) to October 31, during the daytime, and in the evening, with lighting during all or some evening flows.

The licensee shall include with the plan documentation of consultation, copies of the consulting entities' comments and recommendations on the completed plan after it has been prepared and provided to the entities and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information. The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 415. The licensee shall paint or finish all new and replacement fencing, including support structures, in a dark brown-green color. Existing fencing will be finished to the same color, when maintenance includes painting or refinishing, as will outbuildings and other improvements to existing structures.

Article 416. The licensee shall implement the "Programmatic Agreement Among the Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, and the New York State Historic Preservation Officer for Managing Historic Properties that may be Affected by Licenses Issuing to Niagara Mohawk Power

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Corporation, Beebee Island Corporation, or Moreau Manufacturing Corporation for the Continued Operation of Fourteen Hydroelectric Power Projects in Upstate New York", executed on July 19, 1996, 54/ including but not limited to the Cultural Resource Management Plan (CRMP) for the project. In the event that the Programmatic Agreement is terminated, the licensee shall implement the provisions of its approved CRMP. The Commission reserves the authority to require changes to the CRMP at any time during the term of the license. If the Programmatic Agreement is terminated prior to Commission approval of the CRMP, the licensee shall obtain approval from the Commission before engaging in any ground-disturbing activities or taking any other action that may affect any historic properties within the project's area of potential effect.

Article 417. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article.

If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal or any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and water for which the licensee may grant permission without prior Commission approval are:

54/ The Programmatic Agreement was supplemented by the Commission's letter of December 1, 1996, which added Appendix A. III.

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- (1) landscape plantings;
- (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings;
- (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and
- (4) food plots and other wildlife enhancement.

To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements.

Before granting permission for construction of bulkheads or retaining walls, the licensee shall:

- (1) inspect the site of the proposed construction;
- (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site; and
- (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline.

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

(c) The licensee may convey easements or rights-of-way across, or leases of, project lands for:

- (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained;

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

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

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for:

- (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained;
- (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained;
- (3) other pipelines that cross project lands or waters but do not discharge into project waters;
- (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained;
- (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina;

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

At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of the period.

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

- (1) Before conveying the interest, the licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.
- (2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.
- (3) The instrument of conveyance must include the following covenants running with the land; (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to insure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and

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environmental values of the project; and (iii) the grantee shall 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 or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

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

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

(F) This order is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in Section 313(a) of the Federal Power Act. The filing of a

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request for rehearing does not operate as a stay of the effective date of this order, except as specifically ordered by the Commission. The licensee's failure to file a request for rehearing shall constitute acceptance in this order.

By the Commission.

(S E A L)



Lois D. Cashell,
Secretary.

Appendix

Water Quality Certification Conditions
for the Beebee Island Project No. 2538

New York State Department of Environmental Conservation
Division of Regulatory Services
November 3, 1995

The Department of Environmental Conservation (the Department) hereby certifies that, based on our review of all pertinent information presented by Niagara Mohawk Power Corporation (NMPC) in its application for federal licenses for the Black River and Beebee Island Hydroelectric Projects and the Settlement Agreement dated September 14, 1995, NMPC has provided reasonable assurance that the subject Projects will comply with all applicable effluent standards, standards of performance and other state statutes, regulations and criteria applicable to the affected waterbody as required by the State regulatory provisions implementing Section 401 of the Federal Water Pollution Control Act.

This certification is issued pursuant to Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. 1341. The Department makes this certification provided that the attached standard conditions are met, as well as the terms and conditions of the attached Settlement Agreement signed by the Department, NMPC, Beebee Island Corporation, the U.S. Fish and Wildlife Service, the National Park Service, New York Rivers United, the Adirondack Mountain Club, the National Audubon Society, the American Whitewater Affiliation, American Rivers, the New York State Conservation Council, the New York State Council of Trout Unlimited, and the National Heritage Institute. The terms and conditions of this settlement describe the operations of the five developments comprising the Black River Project and the one development of the Beebee Island Project located in the Towns of Champion, Wilna, Rutland, and LeRay, the Villages of Black River and Deferiet, and the City of Watertown, Jefferson County.

The Department reserves the right to reconsider the entire Certification if there is a significant change in the scope of the proposal or the project license, or in the event the referenced application or Settlement Agreement are further amended.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STANDARD WATER QUALITY CONDITIONS

A. OVERSIGHT AND ADMINISTRATION

1. Inspections: The projects, including relevant records, are subject to inspection at reasonable hours and intervals, upon reasonable notice to the certificate holder, by an authorized representative of the

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Department to determine whether the certificate holder is complying with this certification. A copy of this certification, including all referenced maps, drawings, and special conditions, must be available for inspection by the Department during such inspections at the project.

B. PROJECT MAINTENANCE AND CONSTRUCTION

2. Maintenance Dredging: The certificate holder shall curtail generation and install stoplogs or otherwise shut off flow through the turbine(s) prior to commencing any maintenance dredging activities in any intake/forebay area.
3. Sediment Analysis and Disposal: The certificate holder must sample any sediments to be disturbed or removed from the projects' waters and test them for contaminants. Sampling and testing shall be accomplished according to a protocol submitted to and approved by the Department beforehand. Prior to dredging or other excavation, the certificate holder must secure Department approval for all disposal locations for any contaminated sediments to be removed from the project waters.
4. Erosion and Sediment Control: Prior to commencing activities which could adversely affect water quality, the certificate holder must receive Department approval of an Erosion and Sediment Control Plan. This plan must be submitted at least 60 days before the intended date for commencing work. Actions undertaken in response to an emergency and governed by the procedures contained in 6 NYCRR Section 621.12 are exempt from this condition. At minimum, the certificate holder must:
 - a. isolate instream work from the flow of water and prevent discolored (turbid) discharges and sediments from entering the waters of the river due to excavation, dewatering and construction activities.
 - b. avoid using heavy construction equipment below the mean high water line of the river until the work area is protected by an approved structure and dewatered.
 - c. stabilize any disturbed banks by grading to an appropriate slope, followed by armoring or

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vegetating as appropriate, to prevent erosion and sedimentation into the waterbody.

- d. minimize soil disturbance, provide appropriate grading and temporary and permanent revegetation of stockpiles and other disturbed areas to minimize erosion/sedimentation potential.
 - e. install and maintain, in a fully functional condition, effective erosion control measures on the downslope of all disturbed areas before commencing any other soil disturbing activities.
 - f. protect all waters from contamination by deleterious materials such as wet concrete, gasoline, solvents, epoxy resins or other materials used in construction, maintenance and operation of the project.
 - g. ensure complete removal of all dredged and excavated material, debris, or excess materials from construction from the bed and banks of all water areas to an approved upland disposal site.
 - h. ensure that all temporary fill and other materials placed in the waters of the river are completely removed promptly upon completion of construction unless otherwise directed by the Department.
5. Placement of cofferdams, construction of temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the river: The design of all such structures will be developed in accordance with Condition #4 (above).
6. Maintenance of River Flow: During all periods of construction, the certificate holder shall maintain adequate flows immediately downstream of worksites to ensure that the water quality standards established for the water body are met.
7. Turbidity Monitoring: During all periods of construction, the certificate holder will monitor the waters of the river at a point immediately upstream of project activities and at a point no more than 100 feet downstream from any discharge point or other potential source of turbidity, to the extent practicable; and if not practicable, then at the nearest point beyond 100 feet downstream, but in no event beyond 200 feet downstream from the turbidity source. If at any time, turbidity measurements from the downstream locations

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exceed the measurements from the locations upstream of the work areas, certificate holder specifically agrees to immediately take all action necessary to identify the activities causing the turbidity and to correct the situation.

8. Notifications: At least two (2) weeks prior to commencing any work subject to conditions 2 through 7 of this certificate the certificate holder shall provide written notification to:

Chief, Project Management Section
New York State Department of Environmental
Conservation, Division of Regulatory Services
50 Wolf Road, Room 538
Albany New York 12233-1750

Document Content(s)

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