

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

25 FERC 162, 081

Oglethorpe Power Corporation )

Project No. 6951-000

COPY

ORDER ISSUING LICENSE (MAJOR)

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( Issued October 24, 1983 )

Oglethorpe Power Corporation (Applicant) filed, on December 21, 1982, an application for license under Part I of the Federal Power Act (Act) to construct, operate and maintain the Tallassee Shoals Hydroelectric Project No. 6951. <sup>1/</sup> The project would be located on the Middle Oconee River in Clarke and Jackson Counties, Georgia, and would affect the interests of interstate or foreign commerce.

Notice of the application has been published and comments have been received from interested Federal, State, and local agencies. No protests or petitions to intervene have been received and none of the agencies objected to the issuance of the license. The Georgia Department of Natural Resources, the U. S. Fish and Wildlife Service, the U. S. Environmental Protection Agency, and the U. S. Department of the Interior commented on the subject application. The significant concerns of the commenting agencies are discussed below.

Project Description

The proposed project would consist of a concrete ogee-shaped dam to be constructed immediately against the front face of the old existing dam; a refurbished 1400-foot-long headrace and two penstocks, which are 2 feet in diameter, one 60-foot-long and one 100-foot-long; a new powerhouse with an installed capacity of 1.9 MW; and a transmission line less than one mile in length. A more detailed project description is contained in ordering paragraph (B) of this license.

<sup>1/</sup> Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under §375.308 of the Commission's regulations. 18 C.F.R. §375.308 (1983). This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902. 18 C.F.R. §385.1902 (1983). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically directed by the Commission.

#### Safety and Adequacy

The existing dam has a 70-foot breach created when the project was retired in 1964. The Applicant intends to reconstruct the breached section and to use it as a cofferdam while a new concrete dam is constructed immediately against the front face of the existing dam. Applicant intends to build a water diversion structure within the reconstructed section of the existing dam, containing several gated conduits, to convey water downstream of the construction area of the new dam section. Article 25 of this license requires the Licensee to review and approve the design of contractor-designed cofferdams and to submit the approved cofferdam construction drawings and specifications for approval to the Director, Office of Electric Power Regulation, at least 30 days prior to start of construction of the cofferdam. Article 26 of the license requires the Licensee to submit drawings and specifications for water retention structures and water conveyance structures for approval 60 days prior to the start of construction. The Applicant intends to leave the existing dam (cofferdam) in place upon completion of the new dam. The cofferdam will serve no function in the stability and integrity of the project upon completion of the new ogee dam and will have no effect on the operation of the project.

Staff analyses of the preliminary drawings of the proposed dam shows that it is safe against sliding and overturning for normal pool, normal pool and earthquake, and for flood conditions up to the flood of record (19,600 cfs). However, the Exhibit F drawings of the application are preliminary and conceptual in nature and Article 28 of this license requires the Applicant to submit revised Exhibit F drawings and supporting design reports for approval by the Director, Office of Electric Power Regulation, at least 90 days prior to the start of construction of any portion of the project. Article 26 requires the Applicant to submit a copy of the construction contract plans and specifications 60 days prior to start of construction. Article 27 requires the filing of as-built drawings.

It is concluded that the project, under the conditions of this license, will be safe and adequate.

#### Minimum Flows

Applicant proposes to operate the project in a run-of-river mode, with provision for daily storage, and to maintain a minimum flow of 53 cubic feet per second (cfs) in the 2100-foot-long reach of the Middle Oconee River between the project dam and the tailrace (bypassed reach). This flow would be the base flow below the tailrace during off generation intervals while the reservoir is filling to normal levels. Filling is estimated to take up to 5-1/2 hours or more per day during low-flow periods.

The Georgia Department of Natural Resources (DNR), Game and Fish Division, concurred with Applicant's proposed 53 cfs minimum flow release from the dam. The DNR further stated that if reservoir water level fluctuations do not exceed 1-foot per day, any impacts to the fishery could be offset by providing additional fisherman access to project waters.

The U. S. Department of the Interior (Interior) stated that a minimum flow of 138 cfs would be necessary to maintain the fishery resources in the river, but recommended that Applicant release an interim flow of 53 cfs from the dam, and conduct a 3 to 5 year instream flow study to assess the impact of the 53 cfs flow on fish populations. Interior further recommended that the interim minimum flow be subject to later adjustment to offset any fishery losses that may be detected by the study.

The Applicant stated that it could not accept a potential requirement to increase minimum flows after project construction, and requested further review and comments by Interior. Based on further review of Applicant's proposal, Interior recommended that: (1) a minimum flow of 70 cfs be maintained below the dam at all times; (2) during the month of May, an additional flow of 68 cfs be released either through the dam, or from the powerhouse, to maintain a total continuous flow of at least 138 cfs, or inflow to the project impoundment, whichever is less, to protect the fishery during spawning; and (3) an instream flow study be conducted, not for amending flows at the subject project, but to provide generic information that would be of value on a regional basis. Applicant stated that, if ordered by the Commission, it would not object to Interior's recommendations and would be willing to participate in the flow study by contributing finances and manpower.

Staff's assessment of Applicant's proposed minimum flow of 53 cfs from the dam indicates that the proposed flow would likely only maintain short-term survival habitat in the bypassed reach. A flow of 70 cfs would, however, provide somewhat better survival conditions. Below the tailrace, impacts to the fishery resources could occur during periods of daily peaking due to fluctuating water levels and the resultant reduction in habitat. Although a 138 cfs minimum flow from the project would provide a greater degree of habitat protection, the relationship between flows and available aquatic habitat in the project vicinity has not been

defined. Article 29, included in this license, provides for a permanent minimum flow release of 70 cfs from the project dam; an interim release of 138 cfs as measured below the project tailrace during the month of May; and a minimum flow study to assess the relationship between streamflows and available aquatic habitat below the project. The study results would provide the basis for further instream flow negotiations between Licensee and the agencies. A water quality certificate was issued to the Applicant on February 10, 1983, by the DNR, Environment Protection Division.

#### Recreational Development

Applicant proposed no recreational development at the project. Interior, the U. S. Fish and Wildlife Service (FWS) and DNR commented that public access to the project should be provided as mitigation of project effects on the fishery resources. Applicant responded that the proposed project reservoir would be too small to significantly increase sport fishing opportunities, and that access to the river that already exists upstream of the project area would not be diminished. The Applicant also indicated that increased public access would result in increased potential for public-landowner conflicts, since the lands surrounding the project are privately-owned.

The project and its surroundings would likely increase demand for public use by local residents, with the possibility of future residential development adjacent to the project. A review of the project maps indicates that existing transmission line rights-of-way, old roads, and proposed improvements in roads for access to the project site for construction and operation would also facilitate public access to the project. This may, however, cause concern to the Applicant or adjacent landowners, especially if the area is developed in the future. Planning and providing for public access could lessen potential problems.

Accordingly, Article 30 in this license would require the Licensee, in consultation with the DNR and the FWS, to develop plans for public access to the project, and to file such plans with the Commission.

#### Cultural Resources

In 1982, the proposed project area was surveyed for significant archeological and historical resources. Only one site, the remains of the Tallassee Shoals Dam and Powerhouse, was noted as potentially possessing eligibility for the National Register of Historic Places (Register). Applicant has consulted with the Georgia State Historic Preservation Officer (SHPO) who stated that the Tallassee Shoals Dam and Powerhouse is a resource that

may be capable of yielding information on early 20th century hydroelectric operations. The SHPO has noted that the proposed project would have an adverse effect on this property and suggested that the Applicant work closely with the SHPO to formulate a management plan (plan) which would satisfy the need to mitigate the proposed project's impact as much as possible. This plan was developed by the Applicant in consultation with the SHPO and subsequently accepted by the SHPO on April 14, 1983.

Staff has reviewed the application and concurs with the SHPO that the site meets the minimum requirements for the Register. The proposed project would have an adverse effect on these historical attributes, however, the effects can be mitigated. Article 31 requires the implementation of the plan and other measures to ensure cultural resources protection. The Advisory Council on Historic Preservation has been consulted, and concurs with Staff's conclusions and recommendations concerning the proposed project.

#### Environmental Impacts

Construction and operation of the project would not affect any Federally listed threatened or endangered species. Construction activities would produce minor short-term environmental impacts to include dust and noise from vehicles and machinery, disturbance to wildlife and vegetation during clearing of the reservoir zone, and periods of turbidity and attendant sedimentation in the Middle Oconee River resulting from removal of debris and silt in the tailrace and headrace.

After project construction, the creation of an impoundment would result in the development of a minor reservoir fishery. However, the reduction in natural river flows in the reach of river from the dam to the tailrace, and for periods of time below the tailrace, would adversely impact the stream fishery. Further, water level fluctuations below the tailrace due to daily peaking would have a negative effect on resident fishes. The license articles, however, provide appropriate measures to mitigate those impacts.

No Federally-listed threatened or endangered species are known to occur in the project area.

On the basis of the record, and Staff's independent analysis, it is concluded that issuance of a license for the project as conditioned would not constitute a major Federal action significantly affecting the quality of the human environment.

Economic Feasibility and Other Aspects of Comprehensive Development

The Tallassee Shoals Project will operate in a run-of-river mode with a 40-foot head and have a hydraulic capacity of 700 cfs. The estimated average annual generation will be 8,000,000 kWh. <sup>2/</sup> The installed capacity will be 1900 kW. It has been determined that the project will be economically feasible, based upon the estimated annual cost of purchasing an equivalent amount of power from the Georgia Power Company, adjusted for escalation.

The FERC "Planning Status Report and Water Resources Appraisals for Hydroelectric Licensing, Altamaha River Basin, Georgia" discusses the existing water resources developments and reconnaissance level plans of possible future developments within the basin. Potential development in the basin would not affect the proposed project, and it is concluded that the Tallassee Shoals Project will be best adapted to the comprehensive development of the Altamaha River Basin under present conditions upon compliance with the terms and conditions of the license.

Term of License

The proposed development of this project using an existing dam is similar to relicensing an existing licensed project at which a moderate amount of new development is proposed; therefore, consistent with the Commission's policy, a 40-year license term is reasonable in this instance. <sup>3/</sup>

It is ordered that:

(A) This license is issued to the Oglethorpe Power Corporation (Licensee), under Part I of the Federal Power Act (Act), for a period of 40 years, effective the first day of the month in which this order is issued, for the construction, operation, and maintenance of the Tallassee Shoals Hydropower Project No. 6951, located in Clarke and Jackson Counties, Georgia, on the Middle Oconee River.

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<sup>2/</sup> The proposed project, with its average annual generation of 8.0 million kWh, will utilize a renewable resource that will save the equivalent of approximately 13,140 barrels of oil or 3,700 tons of coal per year.

<sup>3/</sup> Montana Power Company, 56 F.P.C. 2008 (1976); Village of Lynconville, 7 FERC ¶61,324 (June 29, 1979).

This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The Tallassee Shoals Hydropower Project No. 6951 consists of:

(1) All lands, to the extent of the Licensee's interests in those lands, constituting the project area and enclosed by the project boundary. The project area and boundary are shown and described by Exhibit G that forms part of the application for license and that is designated and described as:

<u>EXHIBIT</u>	<u>FERC NO.</u>	<u>TITLED</u>
G-1	6951-12	Project Boundary Map

(2) Project works consisting of: (a) a concrete ogee dam 365 feet long and 25 feet high; (b) an impoundment with a surface area of 37 acres and with a storage capacity of 350 acre-feet; (c) a 1400-foot-long and 20-foot-wide headrace; (d) two 8-foot-diameter penstocks which are 60 and 100 feet long respectively; (e) a powerhouse containing two 950 kW generator/turbine units for a total installed capacity of 1.9 MW; (f) a 700-foot-long tailrace; (g) a 12-kV powerline less than 300 feet in length and interconnecting with Georgia Power Company transmission lines; and (h) appurtenant facilities.

The location, nature, and character of these project works are generally shown and described by the exhibit cited above and more specifically shown and described by Exhibit A and Exhibit F that also form a part of the application for license and that are designated and described as:

Exhibit A - Paragraphs 2 and 3.

<u>Exhibit F</u>	<u>FERC NO.</u>	<u>TITLE</u>
1	6951-3	Existing Site Plan
2	6951-4	Proposed Improvements to Existing Site Plan
3	6951-5	Modifications to Existing Dam
4	6951-6	Section Through Existing Dam
5	6951-7	Headgate Plan
6	6951-9	Section of Headgate

<u>Exhibit F</u>	<u>FERC NO.</u>	<u>TITLE</u>
7	6951-9	Transition Structure Plan
8	6951-10	Powerhouse Plan
9	6951-11	Powerhouse Section

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

(C) Exhibits A, G and F, designated in ordering paragraph (B) above, are approved and made a part of the license only to the extent that they show the general location, description, and layout of the project works.

(D) This license is also subject to Articles 1 through 23 set forth in Form L-11 (revised October, 1975), entitled "Terms and Conditions of License for Unconstructed Major Project Affecting the Interests of Interstate or Foreign Commerce", (54 F.P.C. 1864 (1975)), attached to and made a part of this license. The license is also subject to the following additional articles:

Article 24. The Licensee shall commence construction of the project within two years of the date of issuance of the license, and shall complete construction of the project works within four years of the date of issuance of the license.

Article 25. The Licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations are consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the Licensee shall file with the Commission's Regional Engineer and Director, Office of Electric Power Regulation, one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

Article 26. The Licensee shall file with the Commission's Regional Engineer and the Director, Office of Electric Power Regulation, one copy each of the contract drawings and specifications for pertinent features of the project such as water retention structures powerhouse and water conveyance structures at least 60 days prior to start of construction. The Director, Office of Electric Power Regulation, may require changes to the plans and specifications to ensure a safe and adequate project.



Article 27. The Licensee shall within 90 days of completion of construction, file for approval of the Director, Office of Electric Power Regulation, revised Exhibits A and F to describe and show the project as-built.

Article 28. The Licensee shall file revised Exhibit F drawings and a supporting design report for approval with the Director, Office of Electric Power Regulation, (OEPR) at least 90 days prior to the start of construction of any portion of the project. Licensee shall not commence construction of any portion of the project until the Director, OEPR, has approved the Exhibit F drawings and supporting design report.

Article 29. Licensee shall discharge from the Tallassee Shoals Dam a continuous minimum flow of 70 cubic feet per second (cfs) or the inflow to the project reservoir, whichever is less, for the purpose of protecting the aquatic resources of the Middle Oconee River below the project dam.

The Licensee shall discharge an interim continuous minimum flow of 138 cfs during the month of May, as measured immediately below the project tailrace, or inflow to the project reservoir, whichever is less, for the purpose of protecting the aquatic resources of the Middle Oconee River below the project. This interim flow shall remain in effect until a permanent minimum flow is approved by the Commission. Further, Licensee shall, after consultation with the Georgia Department of Natural Resources and the U. S. Fish and Wildlife Service, develop a mutually satisfactory study plan to determine the impacts of project operation on the aquatic resources of the Middle Oconee River below the project, and determine long-term minimum flow releases necessary to minimize impacts to these resources. Within 6 months after the date of issuance of this license, the Licensee shall file the plan with the Commission, along with comments on the plan from the above agencies.

If a mutually satisfactory plan cannot be developed, the Licensee shall file for Commission approval a proposed study plan, along with comments from the above agencies on the plan.

Within 6 months after the date of completion of the study, the Licensee shall file, with copies to the agencies consulted, a report on the results of the study, and for Commission approval recommendations for minimum flow releases and/or modifications to project facilities or operation deemed necessary to minimize impacts to the aquatic resources of the Middle Oconee River. Copies of agencies' letters

of comment on the adequacy of the recommendations shall be included in the report.

Article 30. Licensee shall, in consultation with the U. S. Fish and Wildlife Service and the Georgia Department of Natural Resources, develop plans for providing public access to the project. Within 6 months from the date of issuance of this license, Licensee shall file a copy of its plans with the Commission along with the comments from the agencies consulted. The Commission reserves the right to require reasonable changes in the plan for providing public access to the project area.

Article 31. The Licensee shall, prior to any construction activity within the project area, consult with the Georgia State Historic Preservation Officer (SHPO) and the Historic American Engineering Record (Record) of the U. S. Department of the Interior in order to: (1) record the remains of the Tallassee Shoals Dam and Powerhouse according to the standards of the Record; and (2) ensure that the super-structure of the new powerhouse is in keeping with the character, scale, and materials of the existing structures by adhering to the Secretary of the Interior's Standards for Historic Preservation Projects.

Documentation of mitigation to the Tallassee Shoals Dam and Powerhouse as provided for above, and acceptance of this mitigation by the SHPO and Record, shall be filed with the Commission at least 30 days prior to any construction that would impact the historical attributes of the dam and powerhouse. The Licensee shall make available funds in a reasonable amount for any such work as required.

If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or other facilities at the project, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Licensee shall consult with the SHPO to develop a mitigation plan for the protection of significant archeological or historical resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historical work related to the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any such work found necessary.

Article 32. Pursuant to Section 10(d) of the Act, after the first 20 years of operation of the project under the license, the rate, as computed below, shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One-half of the project surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve

account as of the end of each fiscal year: Provided, that, if and to the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year or years after the first 20 years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the weighted cost components of long-term debt, ~~preferred stock~~, and the cost of common equity, as defined herein. The weighted cost for each component for each element of the reasonable rate of return is the product of its capital ratios and cost rate. The current capital ratios for each of the above elements of the rate of return shall be calculated annually based on an average of 13 monthly balances of amounts properly includable in the Licensee's long-term ~~debt~~ and proprietary capital accounts as listed in the Commission's Uniform Systems of Accounts. The cost rates 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 33. The Licensee shall pay the United States an annual charge to reimburse the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 2,530 horsepower.

Article 34. (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 other 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 uses 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, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the Licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single family type dwelling; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. 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 uses 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 and roads for which all necessary State and Federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support

structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the Licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The Licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary State and Federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary Federal and State water quality certificates 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 from any other private or public marina; (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 the edge of the project reservoir at normal maximum 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 45 days before conveying any interest in project lands under this paragraph (d), the Licensee must file a letter to the Director, Office of Electric Power Regulation, 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 that period.

(e) The following additional conditions apply to any intended conveyance under paragraphs (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 covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

(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.

(E) The Licensee's failure to file a petition appealing this order to the Commission shall constitute acceptance of this license. In acknowledgment of acceptance of this order and its terms and conditions, it shall be signed by the Licensee and returned to the Commission within 60 days from the date this order is issued.

Lawrence R. Anderson  
Director, Office of Electric  
Power Regulation