

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon,  
Charles A. Trabandt and C. M. Naeve.

Utah Power & Light Company

Project No. 2381-001

ORDER ISSUING NEW LICENSE  
(Major Project - Existing Dam)  
(Issued August 3, 1987)

Utah Power & Light Company (UP&L) has filed an application for new license under Section 15 of the Federal Power Act (FPA), 16 U.S.C. § 807, to continue to operate and maintain the Ashton—St. Anthony Project No. 2381, located in Fremont County, Idaho, on the Henry's Fork of the Snake River. The project, which occupies 0.39 acres of federal land administered by the Bureau of Land Management, consists of two developments: the Ashton Development and the St. Anthony Development. The Ashton Development is located on the Henry's Fork of the Snake River. The St. Anthony Development is located on the Henry's Fork and on the Egin Irrigation Canal (EIC), a diversion of the Henry's Fork. The license for the project, which was issued on December 19, 1977, with an effective date of January 1, 1938, expires on December 31, 1987.<sup>1</sup> UP&L proposes to replace a turbine-generator unit within the Ashton Development powerhouse and to install a fish passage facility at the St. Anthony Development diversion dam.

Notice of the application has been published. The motions to intervene that have been granted and the comments filed by agencies and individuals have been fully considered in determining whether to issue this license, as discussed below.

The Idaho Department of Water Resources (IDWR) filed a timely motion to intervene on July 12, 1985, which was automatically granted pursuant to Commission regulations. IDWR requested that

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<sup>1</sup> See 1 FERC ¶ 61,263 (1977).

any new license issued to UP&L for the Ashton-St. Anthony Project include provisions making the license consistent with the Idaho State Water Plan. In addition, IDWR requested that UP&L be required to have filed an application for a water rights permit prior to issuance of the license. The issues raised by IDWR are addressed in the Comprehensive Plans portion of this order.

The Idaho Department of Fish and Game (IDFG) filed an untimely motion to intervene on July 22, 1985, and was granted late intervention on November 6, 1985. IDFG is concerned with the potential adverse impacts on the fish and wildlife resources related to entrainment and impingement, flow fluctuations during and after construction, and upstream migration of resident fish past the project diversion structure. The issues raised by IDFG are addressed in the Recommendations of Federal and State Fish and Wildlife Agencies portion of this order and in the Environmental Assessment (EA) attached to this order.

Although the original license for the project included as a project work the headworks structure from the power canal to the EIC at the St. Anthony Development, UP&L's application for new license excluded this structure. However, the irrigation canal headworks structure is being included in this license as a project facility, because operation of the structure could affect flows to the St. Anthony powerhouse. Pursuant to Standard Article 5 of the license, UP&L will be required to obtain all rights in the headgate structure necessary to operate and maintain the project. Article 304 requires that the irrigation canal headworks structure be included in the as-built exhibits.

#### Section 10 of the Federal Power Act

Section 3 of the Electric Consumers Protection Act of 1986 (ECPA), Pub. L. No. 99-495 (Oct. 16, 1986), amended Section 10 of the FPA, 16 U.S.C. § 803, with regard to various aspects of the Commission's hydroelectric program. Section 15(a)(2) of the FPA, as added by Section 4 of ECPA, provides that the requirements of Section 10 of the FPA are applicable to Commission consideration of applications for new license under Section 15 of the FPA. Following is a discussion of the relevant provisions of Section 10.

#### 1. Recommendations of Federal and State Fish and Wildlife Agencies (Section 10(j))

Section 10(j) of the FPA requires the Commission to include license conditions based on recommendations of federal and state fish and wildlife agencies for the protection, mitigation, and enhancement of fish and wildlife. The EA for the Ashton-St. Anthony Project, which was prepared prior to the enactment of ECPA and which is attached to and made part of this license, addresses the concerns of the federal and state fish and wildlife agencies. For example, agencies requested that UP&L implement a wildlife enhancement plan, which UP&L agreed to do. Article 405 requires UP&L, in consultation with IDFG and the U.S. Fish and Wildlife Service (FWS), to file with the Commission for approval a wildlife report showing the final locations and design specifications of 15 goose nesting structures, 10 raptor perch structures, 10 osprey nesting platforms, a bald eagle nesting platform, and other facilities proposed in the wildlife enhancement plan. In addition, the article requires UP&L to monitor the effectiveness of the plan and to submit monitoring reports to the Commission, IDFG, and FWS. However, as discussed next, the EA did not recommend adoption of one of the recommendations contained in IDFG's motion to intervene.

For the protection of fish resources in the Henry's Fork River, IDFG recommended various measures that would minimize project effects on these resources. The EA generally concurred in IDFG's assessment of the project impacts, except for its recommended mitigation regarding fish entrainment. IDFG recommended screening at the St. Anthony Development to prevent mortality of wild trout and also as mitigation for the loss of predominantly hatchery trout at the upstream Ashton Development. However, review of the St. Anthony Development intake design and position relative to that of the EIC intake suggests that, if entrainment is occurring, the majority of fish would be entrained

to the EIC rather than to the St. Anthony Development intake. Because of this, the EA concluded that entrainment and turbine-related mortality of trout would be insignificant; however, to ensure that fish entrainment mortality would not be significant, the EA recommended a post-operational monitoring study at the St. Anthony Development.

Consistent with Section 10(j)(2) of the FPA, Commission staff negotiated with IDFG to resolve the intake screening issue. By letter dated April 2, 1987, the Director of the Division of Environmental Analysis (Director) advised IDFG of the difference between the EA's and IDFG's recommended mitigation for entrainment at the St. Anthony Development. By letter filed with the Commission on May 11, 1987, IDFG notified the Director that, while it continues to believe that screening at the St. Anthony Development is appropriate as a license condition, it would accept the EA's recommendation for requiring a post-operational monitoring study if entrainment and turbine-related losses of trout are quantified for both the St. Anthony Development and the Ashton Development and if the loss of wild trout is prevented or an equivalent off-site enhancement of wild trout populations is provided.

On May 26, 1987, UP&L filed with the Commission additional information regarding mitigation and enhancement of the fish resources at the St. Anthony Development. In light of IDFG's recommendation for screening at the St. Anthony Development, UP&L proposed therein to create additional off-site fish habitat as mitigation for any fish losses by providing a 35-cubic-feet-per-second minimum flow to the EIC during the 7-month non-irrigation season. At times when the canal is dewatered for maintenance, UP&L proposes to conduct fish salvage operations if deemed necessary by IDFG. Further, UP&L proposes to evaluate other non-screening alternatives, such as behavioral barriers, to minimize the potential for fish entrainment to the St. Anthony Development intake.

IDFG has reviewed UP&L's proposed alternative mitigation measures and has stated that it would consider these alternative measures to screening the St. Anthony Development intake pending results of the post-operational monitoring study and further evaluation of non-screening alternatives.<sup>2</sup> IDFG also states that its consideration of these alternatives does not preclude the potential for requiring screening if the results of the post-operational monitoring studies show screening is necessary.

Continued operation of the Ashton-St. Anthony Project could result in some entrainment and turbine-related mortality of fish. However, based on available information, we conclude that project operation would not result in significant entrainment and subsequent turbine-related mortality and that screening of the St. Anthony intake is not necessary at this time. To ensure that entrainment mortality is low, UP&L should conduct monitoring studies to fully assess fish entrainment mortality at the St. Anthony Development. Further, because this license does not require immediate screening at the St. Anthony Development, which IDFG says would mitigate for the turbine-related loss of trout at the Ashton Development as well, UP&L should quantify the losses of trout at both developments through post-operational monitoring studies. Accordingly, Article 404 of the license requires UP&L to conduct such studies in consultation with IDFG and FWS and to submit the study results to the Commission after receiving the comments of IDFG and FWS. In the event that the monitoring studies show that turbine-related fish mortality is significant, UP&L must submit to the Commission its recommendations for mitigation measures, together with comments from the above agencies on its recommendations; and the Commission, through the authority reserved in Article 404, will require UP&L to implement appropriate mitigative measures such as screening the intake, providing an equivalent off-site enhancement of a wild trout population, providing supplemental stocking of upstream reservoirs, and providing other non-screening alternatives such as behavioral barriers, to minimize and compensate for any fish losses. Further, IDFG could petition the Commission under Standard Article 15 for further mitigation measures if evidence of mortality warrants additional mitigation.

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<sup>2</sup> Personal communication, Al Van Voren, Staff Biologist, Idaho Department of Fish and Game, Boise, Idaho, June 1, 1987.

2. Comprehensive Plans (Section 10(a)(2)(A))

Section 10(a)(2)(A) of the FPA, as amended by ECPA, requires the Commission to consider the extent to which a project is consistent with comprehensive plans (where they exist) for improving, developing, or conserving a waterway or waterways affected by the project that are prepared by an agency established pursuant to federal law that has the authority to prepare such a plan or by the state in which the facility is or will be located. The Commission considers plans to be within the scope of Section 10(a)(2)(A) only if such plans reflect the preparers' own balancing of competing uses of a waterway, based on their data and applicable policy considerations (i.e., consider and balance all relevant public use considerations). With regard to plans prepared at the state level, such plans are within the scope of Section 10(a)(2)(A) only if they are prepared and adopted pursuant to a specific act of the state legislature and developed, implemented, and managed by an appropriate state agency.<sup>3</sup>

The Commission has identified the Northwest Power Planning Council's (Council) Northwest Conservation and Electric Power Plan (Plan) and Columbia River Basin Fish and Wildlife Program (Program) as falling within the scope of Section 10(a)(2)(A). UP&L's application is consistent with the goals and policies of the Program, since, as required therein, fish and wildlife agencies, Indian tribes and the Council have been consulted with regard to the project, and the license is being conditioned to mitigate fish and wildlife impacts. Furthermore, Article 203 of the license reserves to the Commission the authority to order alterations of project structures and operations to take into account to the fullest extent practicable the Program. With regard to the Council's Plan, the project is in a part of UP&L's service area that lies within the Council's geographic area of planning responsibility. However, since UP&L's load within the Council's geographic planning area is served by generation of UP&L from outside that area, it does not represent load for which the Council must plan resources. Therefore, we considered the power development plans and feasibility of the capacity addition based upon UP&L's data. However, if the project were evaluated as a project within the Council's resource planning responsibilities, the proposed capacity at the project would be feasible based upon the Council's economic yardstick, since it is less expensive than coal-fueled steam generation. Based on the above, the project is not inconsistent with the Council's Plan.

In its intervention request filed July 12, 1985, IDWR stated that the Idaho State Water Plan provides a comprehensive plan for the development of the water resources of the State of Idaho and requested that the new license for Project No. 2381 include provisions making the license consistent with the Idaho State Water Plan. The Idaho State Water Plan is a self-described statement of objectives and policies that will be followed by the state in allocating water rights. The allocations are made on a case-by-case basis upon application by the user based on consideration of the flows required to satisfy existing and potential users of the water. However, the Idaho State Water Plan does not provide information on the uses, or combination of uses, that could be developed to utilize the flows in any particular river section to the extent that it reflects an explicit balancing of the competing uses of a waterway in the public interest. We do not need to decide whether the Idaho State Water Plan is a comprehensive plan under Section 10(a)(2)(A), as we believe the license as conditioned herein is consistent with the Idaho State Water Plan, since the use of water by the additional generating capacity to be licensed herein is not in conflict with the water uses prescribed in the Idaho State Water Plan for the reach of the river where the project would be located. Therefore, no further conditions are necessary to achieve such consistency.<sup>4</sup>

<sup>3</sup> Fieldcrest Mills, Inc., 37 FERC 1 61,264 (1986).

<sup>4</sup> IDWR also requested that UP&L apply for an additional state water rights permit prior to the issuance of the new license for Project No. 2381. UP&L subsequently applied for such a permit, which was approved by IDWR on January 20, 1986. Thus, IDWR's request has been met. However, the permit contains a condition purporting to subordinate UP&L's water rights for hydroelectric use to other water rights and uses. As we explained in Boise Cascade Corporation, 36 FERC ¶ 61,135 (1986), we do not believe that general subordination clauses unsupported by factual record evidence are in the public interest. Since we have not been provided with factual justification for the subordination clause included in

Three resources plans<sup>5</sup> that touch on various aspects of waterway management were brought to our attention and have been reviewed in relation to the proposed project as part of our broad public interest examination under Section 10(a)(1) of the FPA. No conflicts were found.

3. Recommendations of Other Agencies (Section 10(a)(2)(B))

Section 10(a)(2)(B) of the FPA requires the Commission to consider the recommendations of relevant federal and state agencies exercising administration over flood control, navigation, irrigation, recreation, cultural and other relevant resources, and the recommendations of Indian tribes affected by the project.

Other than the recommendations submitted by IDWR discussed previously, no specific state and federal agency comments or recommendations were made addressing flood control, navigation, or irrigation requirements in the basin. The Idaho State Historic Preservation Officer indicated that procedures should be implemented to preserve the historic turbine that will be removed from the Ashton Development. Article 408 of the license requires UP&L to implement a cultural resources management plan to mitigate any impacts to the historic turbine. The Idaho Department of Parks and Recreation and the National Park Service recommended a variety of measures to improve recreational facilities at the Ashton Reservoir, which UP&L incorporated into its Recreation Area Improvement Plan. Article 406 of the license requires UP&L to implement the plan within one year from the effective date of this license.

4. Consumption Efficiency Improvement Program (Section 10(a)(2)(C))

Section 10(a)(2)(C) of the FPA, added by ECPA, requires the Commission to consider the consumption efficiency improvement programs of, *inter alia*, utility applicants. Under covering letter dated February 27, 1987, UP&L submitted to the Commission a supplemental filing which included a comprehensive document entitled "Conservation Report". The report addresses UP&L's efforts to cooperate with the regulatory agencies in three states (Utah, Idaho and Wyoming) on issues regarding conservation and demand control. For the most part, the regulatory agencies have solicited voluntary cooperation in pilot programs designed to assess the effectiveness and associated costs of programs which may, at a later date, be mandated by state regulatory agency rulemaking. The orders issued by the three states' regulatory agencies cited in Section IV of UP&L's report deal principally with regulations which UP&L must comply with in order to recover its costs for implementing voluntary pilot programs through adjustments in approved rate schedules. The matters addressed in the report include improvement of the energy efficiency of UP&L's power system, residential weatherization, education of customers on energy conservation, conservation practices which can be implemented by crop irrigation customers, thermal insulation of domestic electric water heaters, solar water heaters, time-of-day (TOD) reduced rates for irrigation, air conditioning, electric heating of inhabited space, and direct load control combined with TOD.

Based upon our review of the foregoing, we conclude that UP&L has made, and is continuing to make, a successful good-faith effort to promote cost-effective energy conservation and to

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UP&L's water rights permit, we cannot determine if the clause is appropriate. Accordingly, our issuance of this license should not be interpreted as an affirmation of the appropriateness of the clause. Furthermore, operation of the subordination clause will not excuse UP&L from fulfilling its obligation during the term of the license to acquire and retain all rights, including water rights, necessary for project purposes.

<sup>5</sup> US Department of Agriculture~ Forest Service, Targhee National Forest, Land Management Plan, 1985; Idaho Department of Fish and Game, Fisheries Management Plan, 1986 — 1990, January 1986; and Idaho Department of Parks and Recreation, Idaho Outdoor Recreation Plan, 1983.

educate end-use customers as to the financial rewards accruing from conservation. Commission staff's contact with pertinent regulatory authorities substantiated UP&L's assertion that the ongoing energy consumption efficiency improvement programs are in compliance with the relevant state agency recommendations in these matters. Section 15(a) of the Federal Power Act Section 4 of ECPA amended Section 15 of the FPA to specify a number of factors the Commission is required to consider in acting on applications for new license following the expiration of existing licenses.

1. The plans and abilities of the applicant to comply with the articles, terms, and conditions of any license issued to it and other applicable provisions of Part I of the FPA (Section 15(a)(2)(A))

UP&L states that, since obtaining the existing license, it has been committed to meeting the requirements of all the articles, terms, and conditions of the existing license. UP&L maintains that its past performances in conjunction with its future operation and maintenance plans, and its record of compliance with the requirements of the jurisdictional agencies, demonstrate that it is committed to meeting the future requirements for the continued operation of the project.

Our review of the compliance record of UP&L substantiates that UP&L has complied in a good faith manner with all articles, terms, and conditions of its existing license. Also, it appears that UP&L has the financial and personnel resources necessary to fulfill its obligations under the license and Part I of the FPA. Based on the above, and in consideration of the requirements of the new license, we conclude that UP&L will be able to comply with the terms and conditions of the new license and other provisions of Part I of the FPA.

2. The plans of the applicant to manage, operate and maintain the project safely (Section 15(a)(2)(B))

UP&L states that it is operating the generating facilities with a foremost concern for the safety of its employees and the public. Records indicate that there has never been an employee fatality, and the only lost-time employee injury occurred in 1956. Also, there has been no injury or death to any member of the public within the project boundary. UP&L has adopted an official safety code based on its operating experience, and this code is continually updated. The project is, and will continue to be, operated run—of— river, which causes no extreme fluctuations, thus posing no project-caused hazard for fishermen and boaters. UP&L has prepared an emergency action plan with a notification procedure to the public in case of a potential threat to life or property downstream.

Based upon our review of the specific information provided by UP&L on various aspects of the project that affect public safety, inspection reports by the Commission's Regional Director, and independent consultant reports filed under Part 12 of our regulations, 18 C.F.R. Part 12 (1987), we conclude that UP&L's plans to manage, operate, and maintain the project safely are adequate. However, as discussed in detail in the Dam Safety section of the Safety and Adequacy Assessment attached to this order, unresolved dam safety concerns exist with the Ashton dam. In order to assure continued safe operation of the project during all conditions, including floods up to the probable maximum, UP&L was directed by letter dated May 14, 1987, to perform remedial measures. Completion of these remedial measures and compliance with the provisions of this license and any future dam safety requirements imposed pursuant to Part 12 will assure a safe and adequate project.

3. The plans and abilities of the applicant to operate and maintain the project in a manner most likely to provide efficient and reliable electric service (Section 15(a)(2)(C))

UP&L states that it acquired the St. Anthony plant in 1913 and immediately replaced the existing unit with the present 500—kW unit. The plant is operated in a semi—automatic mode in a manner that maximizes generating efficiency. Maintenance upkeep has included upgrading electrical systems and repairs to the project works.

UP&L acquired the Ashton plant in 1924 with an 1,800-kW unit installed in a powerhouse constructed for three units. It proceeded to install two additional 2,000-kW units in the powerhouse. The plant is operated at a constant head to maximize efficiency and generating capacity. Electrical systems and the project facilities are continually maintained. Unit Nos. 2 and 3 have been semi-automated, and Unit No. 1 would be semi-automated and upgraded from 1,800 kW to 3,400 kW installed capacity under the new license. The increase in hydraulic capacity of Unit No. 1 would reduce the flows currently being spilled and utilize these flows for more efficient generation. Other efficiency and reliability measures include preventative maintenance programs, training of hydro plant operators, and closer coordination on upstream releases from the Island Park Reservoir with the U.S. Bureau of Reclamation.

Operation of the Ashton and St. Anthony plants enables UP&L to reduce the loading of its transmission lines and the substation, which are approaching limits of their thermal capacity. The hydroelectric plants provide low-cost generation in UP&L's system, and these benefits are expected to increase in the future because of the escalation of fuel costs.

Based on the above considerations and our review of the operation inspection reports by the Regional Director and UP&L's past performance and future plans to operate the project, we believe that the project is, and under the new license will continue to be, operated and maintained in an efficient and reliable manner.

4. The need of the applicant over the short and long term for the electricity generated by the project to serve its customers (Section 15(a)(2)(D))

The proposed modifications to the project would increase its capacity from 6.3 MW to 7.9 MW and would provide an estimated average of 10,000,000 kilowatt hours (kWh) of additional electrical energy and 49,922,000 kWh of total energy per year from the project. The project is part of UP&L's existing electric generating resource base and is currently used to meet part of UP&L's electric system load requirements. Being small in comparison to current total system power capability requirements (2600 megawatts), the project has a negligible effect on UP&L's need for power status. UP&L's projections show surplus generating capacity through 1995, and loss of the project capacity would not change these projections. However, the project is an inexpensive source of energy that does, and would continue to, provide benefits through the displacement of more expensive thermal generation.

UP&L's proposal to upgrade the project is made in accordance with a letter of agreement between UP&L, the United States, the City of Idaho Falls, and the Fremont—Madison Irrigation District relating to the operation of the U.S. Bureau of Reclamation's Island Park reservoir. Among other things, the agreement requires that water spills past the Ashton plant be minimized to the greatest extent possible. The increased hydraulic capacity of the project would use the available head more effectively and capture capability that is currently lost. The upgrading would provide additional economic benefits through increased thermal displacement. This displacement of thermal generation also conserves fossil fuel and reduces the emissions that are a product of the combustion of fossil fuels. Finally, the project is located in the northeast corner of UP&L's Idaho service area, and its continued generation would defer the need to reinforce transmission and transformer facilities that provide a second power source for the area.

If a new license is not issued for Project No. 2381, UP&L would have to cease operating the project. In the short term, replacement power would have to be provided from existing operating capacity, installed reserve capacity, deactivated but available capacity, or from purchased power.

UP&L does not have capacity which is in a deactivated status, but could use existing operating capacity and installed reserves for replacement power in the short term. However, each was found to be less desirable on an economic and environmental basis than continued project generation. Also,

because of the current surplus of generating capacity on UP&L's power system, purchased power was not viewed as an appropriate alternative for replacement power in the short term.

Long term, UP&L's resource acquisition strategy is to purchase power under contract as long as surplus market conditions exist, installing its own generating capacity only when necessary. UP&L viewed cogeneration and small power producer generation as potential replacement power in both the short and long term, but, because of the questionable availability and reliability experienced in past relationships with cogeneration and some small power producers, such resources were deemed inadequate replacements for project generation. Similarly, since load management measures were already treated in the development of load projections and involve considerable uncertainty, additional conservation and other load management techniques were considered inappropriate to replace the project generation on a firm, long-term basis. The purchase of firm power and the construction of additional coal-fired generating capacity were deemed the most likely long-term alternatives, and both were found to be less desirable than continued project generation. Continued operation of the project would save UP&L's customers approximately \$1,862,000 per year over the estimated most likely replacement energy cost. This would equate to \$3.67 per year per customer.

With the exception of load management measures, none of the above alternatives would affect the load characteristics of UP&L's system, and only purchased power would affect the system operation or customers of the supplier of the purchased power. Any effect of purchased power on the supplier of that power and its customers would have to be viewed as positive by the supplier of the power, or it would not be made available to UP&L on a long-term firm basis.

The overall effect of the cessation of the operation of the project on the customers of, and communities served by, UP&L or the supplier of purchased power would be minimal because of the small size of the project, but continued project generation would be more beneficial than the alternative means of replacing project power. Accordingly, despite the existence of capacity surpluses on UP&L's system, Project No. 2381 as proposed to be modified by UP&L would provide system benefits that would be lost if a new license were not issued for the project and that justify a new license for the project from a need-for-power perspective.

5. The applicant's existing and planned transmission services (Section 15(a)(2)(E))

Review of the license application and UP&L's supplemental filing of December 30, 1986, indicates that UP&L's existing project transmission service would not change if a new license were granted. If a non-power license were issued, a requirement for additional system transmission capacity to the area would occur sooner than it would with the project in operation. Specifically, the project provides power to the Rigby-St. Anthony 69-kV transmission network on the northeast corner of the UP&L's Idaho service area. Additional power is supplied to the 69-kV network via the 161-kV to 69-kV step-down transformer at the Rigby substation and the 161-kV transmission line to the Rigby substation. Project generation defers the cost of reinforcing the 161-kV transmission network and the Rigby step-down transformer by reducing the power requirement at the Rigby substation.

UP&L has commenced plans to rebuild the 65-year-old Rigby-St. Anthony 69-kV line and has long range plans to rebuild the 60-year-old Ashton-St. Anthony 46-kV line. Rebuilding the Rigby-St. Anthony and the Ashton-St. Anthony lines should improve the reliability of the existing project transmission service by reducing the number of transmission line outages.

From the above, we conclude that, although loss of the project would have minimal affect on UP&L's system reliability, issuance of a non-power license for the project would reduce reliability in the Rigby area and would impose additional costs on UP&L's customers sooner than with the project in operation.



6. Whether the plans of the applicant will be achieved, to the greatest extent possible, in a cost effective manner (Section 15(a)(2)(F))

With regard to the Ashton Development, UP&L plans to semi-automate the plant, upgrade and modernize the equipment, and reduce the overall operating expenses. Semi-automation will result in a 35 percent reduction in work force. Unit No. 1, being the oldest, is the least efficient and would be replaced by the upgraded unit proposed in the application for new license. Since the present unit is experiencing increased down-time, the flow utilization is not being optimized. UP&L has implemented its advanced project management planning program to achieve the above objectives for the selection of the most cost-effective alternative.

As to the total project, UP&L plans to improve recreational facilities and their operation and maintenance to enhance day-use recreation in the project area. UP&L plans to acquire additional lands, upgrade a boating ramp and fishing-observation pier, add new picnic facilities, improve vehicular and pedestrian traffic, assume greater responsibility for recreational facility operation and maintenance, and reevaluate the need for additional recreational facilities in the near future.

We have reviewed UP&L's plans and have determined that the measures proposed would be cost-effective. The upgrading of Unit No. 1 would result in the hydraulic capacity of the Ashton plant being increased and would optimize the utilization of flows at the project. Upgrading of the unit would involve minimal amount of incidental work and additional costs. Improvement of the recreational facilities would enhance day-use recreation at reasonable costs.

7. Such other factors as the Commission deems relevant (Section 15(a)(2)(G))

As discussed elsewhere in this order and in the attached EA, the issuance of a new license for the project would not result in any major, long-term adverse environmental impacts. Moreover, the issuance of a new license will permit the implementation of UP&L's proposed fish and wildlife mitigation and recreational improvements, which would benefit the environmental resources of the project area.

8. The applicant's record of compliance with the terms and conditions of the existing license (Section 15(a)(3)(A))

Based on a review of Regional Director and other Commission records, we conclude that UP&L has complied with the terms and conditions of its existing license. Specifically, UP&L, as required by the existing license, satisfactorily installed signs and public safety devices at the Ashton dam, and filed an amended Exhibit R and provided the facilities described therein. Also, pursuant to Part 12 of our regulations, UP&L has filed an emergency action plan and periodic updates, all of which were found acceptable. Also, in accordance with Part 12, UP&L has submitted an initial independent consultants report that was found satisfactory. The second report submitted by UP&L has been reviewed and, as a result, UP&L has been directed to undertake remedial measures. UP&L has adequately complied with Commission requirements regarding this second report. Thus, UP&L's compliance record indicates that it can be expected to fully comply with the terms and conditions of any new license issued for Project No. 2381.

9. The actions of the applicant related to the project which affect the public (Section 15(a)(3)(B))

The record indicates that UP&L has an excellent record of providing recreation facilities at the project. Also, UP&L's regard for public safety is demonstrated by the installation of a boating safety barrier, transformer yard fencing, warning signs and lifesaving devices at Ashton dam. Thus, the actions affecting the public taken by UP&L in relation to Project No. 2381 support the issuance of a new license.

## Summary of Findings

Background information, analysis of impacts, support for related license articles, and the basis for a finding of no significant impact on the environment are contained in the EA<sup>6</sup> attached to this order. Issuance of this license is not a major federal action significantly affecting the quality of the human environment.

Pursuant to Section 15(a)(2) of the FPA, as amended by ECPA, the Commission considers UP&L's plans and abilities to be adequate in regard to compliance with the articles, terms, and conditions of the license and in managing, operating, and maintaining the project safely and in a manner that would provide efficient and reliable electric service.

UP&L has demonstrated its need for project power, taking into consideration system reliability and reasonable costs and availability of alternative sources of power and their effect on the provider of the alternative power sources, its customers, and UP&L's operating and load characteristics.

The project will be safe if operated and maintained in accordance with the requirements of this license and Part 12 of the Commission's regulations. Analysis of dam safety issues is provided in the Safety and Design Assessment attached to this order.

Pursuant to Section 15(a)(3) of the FPA, we conclude that UP&L has also demonstrated an adequate record of compliance with the terms and conditions of the existing license, and has taken appropriate actions related to the project which affect the public. Maintenance of the project has been adequate. No significant environmental problems are apparent. The primary dam safety concern is the ability of the spillway to pass the probable maximum flood, which is being addressed pursuant to Part 12 of our regulations.

## Conclusion

As amended by ECPA, Section 15(a)(2) of the FPA requires the Commission to issue new licenses "to the applicant having the final proposal which the Commission determines is best adapted to serve the public interest." As explained previously, the provisions of Section 10 of the FPA are applicable to applications for new license under Section 15. Consequently, Section 10(a)(1) of the FPA, as amended by ECPA, governs Commission consideration of applications for new license, and the Commission may issue a new license only if the proposal "will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in [Section 4(e) of the FPA]." <sup>7</sup>

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<sup>6</sup>Section II of the EA, entitled "Resource Development", is superseded by the portion of the attached Safety and Design Assessment entitled "Economic Feasibility" and by the analysis of Section 15(a)(2)(D) of the FPA contained in this order.

<sup>7</sup>Section 4(e) of the FPA authorizes the Commission to issue licenses for project works "necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power...." Also, Section 4(e) provides, in a provision added by Section 3(a) of ECPA, that:

"In deciding whether to issue any license under this Part for any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities and the preservation of other aspects of environmental quality."

Based upon our review of the agency and public comments filed in this proceeding, and our independent analysis of the requirements of Sections 4(e), 10, and 15 of the FPA as discussed herein, we conclude that the Ashton-St. Anthony Project would not conflict with any planned or authorized development and is best adapted to a comprehensive plan for the Henry's Fork of the Snake River, taking into consideration the equal consideration requirements of Section 4(e) of the FPA and the beneficial public uses described in Section 10(a)(1) of the FPA.

Section 15(e) of the Federal Power Act

Section 5 of ECPA added a new subsection (e) to Section 15 of the FPA specifying that any license issued under Section 15 shall be for a term which the Commission determines to be in the public interest, but not less than 30 years, nor more than 50 years. This new provision is consistent with pre-ECPA Commission policy, which was to establish 30-year terms for those projects which proposed no or less than moderate new construction or capacity, 40-year terms for those projects that proposed a moderate amount of new development, and 50-year terms for those projects that proposed a substantial amount of new development.<sup>8</sup>

UP&L proposes to replace an existing 1,800-kW generator unit at the Ashton Development with a new 3,400-kW unit and to install a fish passage facility at the St. Anthony diversion dam. This work constitutes a moderate amount of new development that warrants a 40- year license. Accordingly, the new license for the project will be for a term of 40 years.

The Commission orders:

- (A) This license is issued to Utah Power & Light Company (licensee) for a period of 40 years, effective January 1, 1988, to operate and maintain the Ashton-St. Anthony Project. This license is subject to the terms and conditions of the Federal Power Act (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 project consists of:
  - (1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by Exhibit G:

<b>Exhibit</b>	<b>FERC Drawing</b>	<b>Development</b>	<b>Title</b>
G-1	2381-33	Ashton	General Location Map
G-2	2381-34	Ashton	Project Boundary Map
G-3	2381-35	Ashton	Project Boundary Map
G-4	2381-36	Ashton	Project Boundary Map
G-5	2381-37	Ashton	Project Boundary Map
G-6	2381-38	Ashton	Plant Facilities Map
G-1	2381-46	St. Anthony	Location and Boundary Map

- (2) Project works consisting of two developments. The Ashton Development is comprised of: [Order Amending License, Approving As-Built Exhibits, and Revising Annual Charges, Ashton-St. Anthony Project FERC No. 2381 (11/16/1993)]: (a) a 56-.6-foot-high, 226-foot-long, earth and

<sup>8</sup> See Montana Power Company, 56 F.P.C. 2008 (1976).

rock-filled dam having its downstream slope covered with roller compacted concrete, upstream slope stabilized by additional rock fill, and crest elevation at 5156.6 MSL; (b) two-foot-high flashboards on the dam crest to prevent spillage from reservoir wave-section; (c) an 82-foot-long reinforced concrete spillway surmounted by six 10-foot-high radial gates; (d) a reservoir having a surface area of 404 acres, a gross storage capacity of 9,800 acre-feet and a usable storage capacity of 3,988 acre-feet at normal water surface elevation 5156.6 feet MSL; (e) a reinforced-concrete powerhouse located at the right bank, having integral intakes controlled by vertical slide gates and containing two generating units, each rated at 2,000 kW, and one generating unit rated at 2,850 kW; (f) a tailrace; (g) a 46/2.3-kV step-up transformer; (g)[sic] a 133-foot-long, 46-kV transmission line; (h) a 2,160-foot-long access road; and (i) appurtenant facilities. [Order Amending License, Approving As-Built Exhibits, and Revising Annual Charges, Ashton-St. Anthony Project FERC No. 2381 (11/16/1993)]

The St. Anthony Development is comprised of: (a) a 9.5-foot-high, 863-foot-long concrete diversion dam having a 206-foot-long spillway with crest elevation 4,949.0 feet MSL surmounted by 2.5-foot-high flashboards, an 81.5-foot-long wasteway with crest elevation 4,947.0 feet MSL surmounted by 4.5-foot-high flashboards and a fishway; (b) a 41-foot-wide reinforced-concrete canal intake structure; (c) a 35-foot-wide, 1,350-foot-long power and irrigation canal; (d) an irrigation canal headworks structure; (e) a 16-foot-wide, 145-foot-long screened and rubber-lined wooden-box flume having an overflow spillway and an ice chute; (f) a reinforced concrete powerhouse containing a generating unit rated at 500-kW; (g) a tailrace; (h) the 2.3-kV generator leads; and (i) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibits A and F recommended for approval in the attached Safety and Design Assessment.

- (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 or maintenance of the project.
- (C) The portions of the Exhibit G described above and those sections of Exhibits A and F recommended for approval in the attached Safety and Design Assessment are approved and made part of the license.
  - (D) This license is subject to the articles set forth in [Form L-1](#) (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Lands of the United States". The license is also subject to the following additional articles:

Article 201. The licensee shall pay the United States the following annual charge, effective January 1, 1988:

- a. For the purpose of reimbursing 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 9,600 horsepower. [Order Amending License & Revision Annual Charges, Ashton-St. Anthony Project FERC No. 2381, 50 FERC ¶62,070. (02/02/1990)]; Order Amending License & Revision Annual Charges, Ashton-St. Anthony Project FERC No. 2381 (01/17/1992). [**NOTE:** Order Approving Revised Project Description and Exhibits F and G; Ashton-St. Anthony Hydroelectric Project, FERC No. 2381; 66FERC ¶62,198: March 31, 1994 officially changed installed capacity from 7,200-kW to 7,350-kW.]

- b. For the purpose of recompensing the United States for the use, occupancy and enjoyment of 0.39 acres of its lands, a reasonable annual charge as determined by the Commission in accordance with its regulations, in effect from time to time.

Article 202. Pursuant to Section 10(d) of the 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. One-half of the project surplus earnings, if any, accumulated 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 at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year under the license, the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts established in the project amortization reserved account shall be maintained until in the project amortization reserved account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the annual weighted costs of long-term debt, preferred stock, and common equity, as defined below. The annual weighted cost for each component of the reasonable rate of return is the product of its capital ratio and cost rate. The annual capital ratio for each component of the rate of return shall be calculated 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 System of Accounts. The cost rates for long-term debt and preferred stock shall be their respective weighted average costs 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 203. The Commission reserves the authority to order upon its own motion or upon the recommendation of federal or state fish and wildlife agencies or affected Indian Tribes, alterations of project structures and operations to take into account to the fullest extent practicable the regional fish and wildlife program developed pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

Article 301. The licensee shall commence construction of the modifications to the project within two years from the effective date of the license and shall complete construction of the project within four years from the effective date of the license.

Article 302. The licensee shall, at least 60 days prior to start of construction, submit one copy to the Commission's Regional Director and two copies to the Director, Division of Inspections, of the final contract drawings and specifications for pertinent features of the modifications to the project, such as water retention structures, powerhouse, and water conveyance structures. The Director, Division of Inspections, may require changes in the plans and specifications to assure a safe and adequate project.

Article 303. The licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction of the modifications to the project and shall ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the licensee shall submit to the Commission's Regional Director and Director, Division of Inspections, one copy each of the approved cofferdam construction drawings and specifications and the letter(s) of approval.

Article 304. The licensee shall within 90 days of completion of construction of the modifications to the project file, for approval by the Commission, revised Exhibits A, F, and G to describe and show

the project as built and to include the irrigation canal headworks structure at the St. Anthony Development.

Article 305. The Licensee shall, within 5 years, from the effective date of this amendment of license, prepare and submit to the Director, Office of Hydropower Licensing, a detailed economic feasibility study for the installation of additional generating capacity at the Ashton-St. Anthony Project. If the study shows that the installation of additional capacity is economically feasible, the Licensee shall, simultaneously, file an amendment of license application to install that additional capacity. [Order Amending License & Revision Annual Charges, Ashton-St. Anthony Project FERC No. 2381, 50 FERC ¶62,070. (02/02/1990)].

Article 401. The licensee shall operate the Ashton Development in an instantaneous run-of-river mode for the protection of fish and wildlife resources in the Henry's Fork. The licensee, in operating the development in an instantaneous run-of-river mode, shall at all times act to minimize the fluctuation of the reservoir surface elevation, i.e., maintain a discharge from the development so that flow in the Henry's Fork, as measured immediately downstream from the powerhouse tailrace, approximates the instantaneous sum of inflow to the project reservoir. Instantaneous 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 Idaho Department of Fish and Game.

Article 402. The following part of the Report on Fish, Wildlife and Botanical Resources, filed on December 31, 1984, as Section 3 of Exhibit E (the Environmental Report), is approved: pages E-26 to E-37 pertaining to the fishery mitigative plan for the Ashton Reservoir.

Article 403. The licensee shall consult with the Idaho Department of Fish and Game and the U.S. Fish and Wildlife Service and, within six months from the effective date of this license, file with the Commission, for approval, functional design drawings of fish passage facilities for the Egin Irrigation Canal diversion dam at the St. Anthony Development, and a plan to monitor the operation of the fish passage facilities. The filing shall include documentation of agency consultation and any agency comments on the drawings and monitoring plan. The Commission reserves the right to require changes in the design of the fish passage facilities and in the monitoring plan. The licensee shall file as-built drawings with the Commission within three months after completion of the construction of the fish passage facilities.

Article 404. The licensee, after consultation with the Idaho Department of Fish and Game and the U.S. Fish and Wildlife Service, shall develop a monitoring plan to evaluate turbine—induced injury and mortality to fish resources at the St. Anthony Development and at the Ashton Development. Within six months from the effective date of this license, the licensee shall file a copy of the monitoring plan, along with any comments from the above agencies on the plan, and a schedule for filing the results of the monitoring program. The Commission reserves the right to require modifications to the plan and the schedule.

The results of the monitoring shall be submitted to the Commission according to the approved schedule, along with any comments from the consulted agencies. If the results of the monitoring indicate that measures are necessary to minimize adverse effects to fish resources, the licensee also shall provide, for Commission approval, its recommendations for mitigation measures and a schedule for implementing the measures, along with comments from the above agencies on the recommended measures. Measures to be considered by the licensee shall include, but need not be limited to, screening the intakes, providing an equivalent off-site enhancement of a wild trout population, providing supplemental stocking, and providing other non-screening alternatives, such as behavior barriers, to minimize and compensate for any fish losses. At the same time, copies of the schedule shall be served upon the agencies consulted. The Commission reserves the right to require the licensee to

undertake measures different than those recommended by the licensee and to make changes in the implementation schedule.

Article 405. The licensee shall, after consultation with the U.S. Fish and Wildlife Service (FWS) and the Idaho Department of Fish and Game (IDFG), within 18 months from the effective date of the license, file, for Commission approval, a wildlife report that includes a series of maps and drawings indicating the final locations and design specifications of the 15 goose nesting structures, 10 raptor perch structures, 10 osprey nesting platforms, the bald eagle nesting platform, the cattle exclusion fence, the wetlands protected by preservation easements, and the restored grassland habitat. The report also shall include a plan for monitoring the effectiveness of the various enhancement measures and maintaining the aforementioned facilities, a schedule for filing annual monitoring reports with the Commission, FWS, and IDFG, and an implementation schedule. Agency comments on the adequacy of the wildlife report shall be included with the wildlife report. The Commission reserves the right to order changes in the final designs and in the monitoring program.

Article 406. The licensee, within one year from the effective date of this license, shall implement the plan described in the Report on Recreational Resources, filed December 31, 1984, as Section 5 of the Exhibit E (Environmental Report), pages E-49 through E-59, which provides for improved recreational facilities and operation and maintenance of a boat ramp and dock area at the Ashton Development.

Article 407. The licensee, after consultation with the City of St. Anthony, and within one year from the effective date of this license, shall repair or replace those portions of the diversion structure and retaining wall at the St. Anthony Development necessary to prevent flooding conditions at Keefer Park. Further, the licensee shall continue to maintain the above facilities during the license period.

Article 408. The licensee shall implement its cultural resources management plan to mitigate any impacts to the historic Unit No. 1 turbine, as described in the licensee's filing with the Commission dated July 22, 1985. Within 4 years of the effective date of this license, the licensee shall file with the Commission a report that includes: (a) documentation of the turbine's historical significance in terms of eligibility criteria for inclusion in the National Register of Historic Places; (b) a detailed plan for documenting or preserving the turbine to mitigate its removal, if it is determined that the turbine is eligible; (c) copies of letters from the Idaho State Historic Preservation Officer (SHPO) and the Historic American Engineering Record (HAER) of the National Park Service commenting on (a) and (b), or, if comments are not provided, copies of letters to the SHPO and the HAER indicating that these agencies have been afforded at least 60 days to comment. The Commission reserves the right to require changes in the report. Within six years of the effective date of this license, the licensee shall file with the Commission documentation that the turbine has been recorded or preserved in a manner consistent with the plan in the report, if required. This documentation shall include a copy of a letter from the SHPO indicating that the turbine has been protected as agreed upon or a copy of a letter indicating that the SHPO has been afforded at least 60 days to provide such a letter. The licensee shall make available funds in a reasonable amount for any required work.

If the licensee discovers any previously unidentified archeological or historic sites during the course of constructing or developing project works or other facilities at the project, the licensee shall stop all construction and development activities in the vicinity of the sites and shall consult a qualified cultural resources specialist and the SHPO concerning the eligibility of the sites for listing in the National Register of Historic Places and any measures needed to avoid the sites or to mitigate effects on the sites. If the licensee and the SHPO cannot agree on the amount of money to be spent for project-specific archeological and historical purposes, the Commission reserves the right to require the licensee to conduct the necessary work at the licensee's own expense.

Article 409. The licensee, within one year from the effective date of this license, and after consultation with the U.S. Fish and Wildlife Service, the Idaho Department of Fish and Game, and the

Idaho Board of Water Resources, shall prepare and file with the Commission a detailed, site-specific plan to minimize the quantity of sediment or other potential water pollutants resulting from construction of fish passage facilities at the Egin Irrigation Canal diversion dam. The plan shall address, among other things, measures to contain sediment, to filter sediment-laden discharges, and to store and dispose of excess sediment and other spoil materials. The plan shall also include functional design drawings and map locations of control measures, an implementation schedule, monitoring and maintenance programs for construction of these facilities, provisions for periodic review of the plan and for making any necessary revisions to the plan.

Documentation of consultation with agencies during preparation of the plan, and a summary of agency comments and recommendations, must be included in the filing. In the event that the licensee does not concur with any agency recommendations, the licensee shall provide a discussion of the reasons for not concurring, based on actual site geological, soil, and groundwater conditions. The Commission reserves the right to require changes to the plan. Unless the Director, Office of Hydropower Licensing, within 90 days from the filing date instructs otherwise, the licensee may commence instream construction or spoil-producing activities associated with installation of fish passage facilities at the Egin Irrigation Canal diversion dam at the end of that period.

Article 410. (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, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The 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) noncommercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single- family type dwellings; 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 utility 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 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 that period.

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

(1) Before conveying the interest, the licensee 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.

(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) This order is final unless an application for rehearing is filed within 30 days from the date of its issuance, as provided in Section 313(a) of the Act. The filing of an application for rehearing 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 ordered by the Commission. The licensee's failure to file an application for rehearing shall constitute acceptance of this order.

By the Commission. (SEAL)

Kenneth F. Plumb, Secretary.