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UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Benton Falls Associates

Project No. 5073-013  
Maine

ORDER AMENDING LICENSE

(Issued January 25, 1989)

Benton Falls Associates, licensee for the Benton Falls Project, filed, on December 28, 1987, an application to amend the license to include a new article to reflect an agreement that the licensees have entered into with the Maine Department of Marine Resources (DMR), the Maine Atlantic Sea Run Salmon Commission (ASRSC), and the Maine Department of Inland Fisheries and Wildlife (DFW) (state fishery agencies). The application was revised on April 18, 1988, and supplemented by letter dated October 17, 1988. The project is located on the Sebasticook River, in Kennebec County, Maine.

On December 16, 1986, a group of hydropower developers within the Kennebec River Basin formed the Kennebec Hydro Developers Group (KHDG).<sup>1/</sup> In January 1987, KHDG entered into an agreement with the state fishery agencies with respect to the restoration of American shad, alewife, and Atlantic salmon in the Kennebec River Basin. To facilitate the restoration of these anadromous fishes to the Kennebec River Basin, the agreement obligates KHDG to provide funding to the state fishery agencies to conduct a trap and truck operation, to install and operate downstream and upstream fish passage facilities according to a schedule, and to conduct studies, in accordance with the terms and provisions of the agreement and the state's "Lower Kennebec River anadromous fish restoration plans and inland fisheries management overview," as revised in 1986.

According to the agreement and restoration plan, permanent upstream fish passage facilities shall be installed and operational by May 1, 1999, with downstream facilities installed by May 1, 1991. Downstream fish passage facilities, however, have already been installed at the project.

Prior to filing the proposed amendment to the project, the licensee consulted with state and federal resource agencies. Of the agencies consulted, comments were received from the DFW, the ASRSC, the DEP, and the U.S. Fish and Wildlife Service (FWS). The comments were generally favorable.

<sup>1/</sup> KHDG includes Central Maine Power Company, Scott Paper Company, Pittsfield Hydro Company, Benton Falls Associates, and Kennebec Hydro Resources, Inc. (Merimil Limited Partnership).

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The FWS, however, requested that the licensee prepare a plan for operation, maintenance, and an assessment of the effectiveness of the downstream fish passage facilities at the project. The FWS also recommended three articles be added to the license that provide for monitoring and evaluating fish passage measures, the filing of annual reports describing the accomplishments and failures in implementing the agreement, study results, proposed mitigative measures based on the study results, and the need for modifying schedules in the agreement, and reserve the authority of the Secretary of the Interior to prescribe fish passage facilities pursuant to section 18 of the Federal Power Act. Because neither the FWS nor the Department of the Interior is a party to the agreement, the FWS believes it must have the ability through section 18 to bring about modifications to the restoration program if it finds that the fish passage provisions in the agreement are not satisfactorily accommodating current restoration plans.

The licensee and the state agencies believe that the agreement meets the fish resource needs in the Kennebec River and naturally oppose any language in the license that is inconsistent with the agreement regarding the timing of construction of fish facilities.

With respect to the FWS request for filing annual reports, the agreement provides that both KHDG and the state will exchange annual progress reports on their respective monitoring and other studies financed by KHDG. Further, the agreement requires the state to provide to KHDG an annual progress report on the Kennebec River fisheries restoration effort. Copies of these progress reports should be made available to the FWS and the Commission. Further, the Commission should retain the right to require changes in the designs, plans, and schedules, as appropriate.

With respect to fish passage facilities, although the FWS apparently does not oppose the fishway plans reflected in the amendment applications, it wishes to reserve its authority to prescribe fishways pursuant to section 18. An article requiring such should be included in the project license.

Incorporation of the agreement as a condition of the license will provide a definitive program and schedule for anadromous fish passage at the Benton Falls Project and assist the anadromous fish restoration effort in the Kennebec River Basin. Further, adequate provisions will be included in the amended license to enable the Commission to require changes to the fish passage designs, monitoring plans, and schedules as may be necessary for a successful restoration program.

The Director orders:

(A) The following articles shall be included in the license for the Benton Falls Project, FERC No. 5073.

Article 39. The licensees shall provide funding, shall install and operate downstream and upstream fish passage facilities, and shall conduct fisheries monitoring and other studies to facilitate the restoration of American shad, alewives, and Atlantic salmon to the Kennebec River Basin, in accordance with the terms and provisions of the "Agreement between the State of Maine and Kennebec Hydro Developers Group," (agreement) dated January 22, 1987. In order to meet the schedule in the agreement, the licensees, after consultation with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Maine Department of Marine Resources, the Maine Department of Inland Fisheries and Wildlife, the Atlantic Sea Run Salmon Commission, and the Maine Department of Environmental Protection, shall file for Commission approval by April 30, 1997, functional design drawings of upstream fish passage facilities for the project. Letters documenting consultation and comments on the drawings from the resource agencies consulted shall be included in the filing. The Commission reserves the right to require changes in the design and schedule. Within 6 months after completion of construction, the licensees shall file as-built drawings of the fish passage facilities.

Article 40. The licensee, after consultation with the Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, the Maine Atlantic Sea Run Salmon Commission, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service, shall file for Commission approval a monitoring plan to evaluate the effectiveness of the fish passage facilities provided for in article 39 no later than June 30, 1992, for downstream passage facilities, and, for upstream passage facilities, within 6 months after completion of construction. The plan shall provide for modifications to the facilities, as needed, to ensure effective passage.

The licensee shall include in the filing comments from the consulted agencies on the plan, and a schedule for filing the results of the monitoring. The Commission reserves the right to require changes in the plan or schedule.

The results of the monitoring shall be submitted to the Commission according to the approved schedule, along with comments from the consulted agencies on the results. If the results of the monitoring show that modifications to the fish passage facilities and operation are necessary to maintain anadromous fish migration past the project, the licensee shall file for Commission approval a schedule for implementing the proposed modifications. At the same time, a copy of the schedule shall be served on the agencies consulted. The Commission reserves the right to require changes to the facilities or schedule.

Article 41. The licensee, beginning on or before December 31, 1989, shall file with the Commission the annual progress reports prepared by the licensee and the State of Maine fishery resource agencies in accordance with the terms and provisions of the "Agreement between the State of Maine and Kennebec Hydro Developers Group," dated January 22, 1987. Copies of the reports shall also be provided to the U.S. Fish and Wildlife Service, when filed with the Commission. The Commission reserves the right to require modifications to the schedules stipulated in the agreement, based on the information contained in the reports.

Article 42. Authority is reserved to the Commission to require the licensee to construct, operate, and maintain, or provide for the construction, operation, and maintenance of such fishways as may be prescribed by the Secretary of the Interior.

(B) This order is issued under authority delegated to the Director, and is final unless appealed to the Commission under Rule 1902 within 30 days from the date of this order.



J. Mark Robinson  
Director, Division of Project  
Compliance and Administration

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

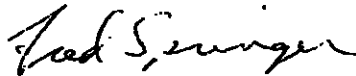
Project No. P-5073-013

January 25, 1989

Benton Falls Associates  
One Lincoln Center, Suite 1225  
Syracuse, New York 13202  
Attn: David R. Bristol

Gentlemen:

Enclosed is the order designated Amendment No. 2 , Instrument  
No. 6 , in the above-entitled matter.



Fred E. Springer  
Director, Office of  
Hydropower Licensing