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93 FERC ¶ 61,047

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
William L. Massey, Linda Breathitt,
and Curt Hébert, Jr.

FPL Energy Maine Hydro LLC

Project Nos. 2556-016
2557-013
2559-014

ORDER ON REHEARING

(Issued October 12, 2000)

On July 28, 1999, the Commission issued a new license to FPL Energy Maine Hydro LLC (FPL Hydro) for the continued operation of the 5.9-megawatt (MW) Messalonskee Project No. 2556, located on the Messalonskee Stream, a tributary of the Kennebec River, in Kennebec County, Maine.[1] On August 27, 1999 FPL Hydro filed a request for rehearing of the Commission's order. FPL Hydro contends that certain minimum flow requirements imposed in the license are inconsistent with the Commission's comprehensive development standard and are not supported by substantial evidence. For the reasons indicated in this order, we grant rehearing on this issue and will modify the flow requirements. We also address several less substantive requests for modification of other license articles.

BACKGROUND

The Messalonskee Project consists of four hydropower developments. Messalonskee Lake is a storage reservoir located at the beginning of Messalonskee Stream. Releases from Messalonskee Lake dam are designed to provide flows for generation at FPL Hydro's other three hydropower developments, which, proceeding downstream, are the Oakland, Rice Rips, and Union Gas developments, as well as at the

[1] 88 FERC ¶ 61,122.

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Kennebec Water District's Automatic Project No. 2555, located between the Rice Rips and Union Gas developments.[2]

Section 10(j)(1) of the Federal Power Act (FPA) requires the Commission, when issuing a license, to include conditions based upon recommendations of federal and state fish and wildlife agencies, submitted pursuant to the Fish and Wildlife Coordination Act, for the protection of, mitigation of damages to, and enhancement of, fish and wildlife. If the Commission believes that any such recommendation may be inconsistent with the purposes and requirements of Part I of the FPA or other applicable law, Section 10(j)(2) requires the Commission to attempt to resolve any such inconsistency with the recommending agency.

The U.S. Department of the Interior submitted Section 10(j) recommendations for the Messalonskee developments, including Kennebec Water District's Automatic Project.[3] As pertinent here, Interior recommended that the licensee discharge an instantaneous flow of 100 cubic feet per second (cfs) or inflow, whichever is less, from the Messalonskee Lake dam and from each of the four downstream developments, and discharge 25 cfs of those flows from the Rice Rips dam into the bypass reach at that development. These recommendations were advanced primarily to improve habitat for brown trout below the Union Gas dam and in the Rice Rips bypass reach.

In a January 1996 Draft Environmental Impact Statement (EIS) prepared for the Messalonskee and Automatic Projects, as well as for several other projects in the Kennebec River Basin, Commission staff made a preliminary finding that Interior's 100-cfs minimum flow would be inconsistent with the comprehensive development standard of Sections 10(a)(1) and 4(e) of the FPA and with the Maine Department of Environmental Protection's (Maine DEP) water quality certification condition that 15 cfs be released through all of the project developments at all times. The Draft EIS concluded

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[2]The Oakland, Rice Rips and Union Gas developments of the Messalonskee Project were originally licensed as separate projects, Project Nos. 2559, 2557, and 2556. Messalonskee Lake was included in the Oakland Project. The developments were consolidated into one project in the order issuing new license, but all three project numbers are listed in the title of this order because the request for rehearing was filed in all three dockets. A subsequent license for the Automatic Project was also issued on July 28, 1999. 88 FERC ¶ 61,117.

[3]At the time, the Oakland, Rice Rips, Automatic, and Union Gas developments were owned and operated by Central Maine Power Company, which had filed a single relicense application for these projects before transferring them to the present owners.

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that the 15-cfs minimum flow, which was also the flow release proposed by the license applicant for each development, including the Rice Rips bypass reach, would provide an acceptable degree of habitat enhancement for brown trout below the Union Gas dam and in the Rice Rips bypass reach. Subsequent discussions at a Section 10(j) meeting of Commission staff, Interior, and other interested entities failed to resolve this flow dispute.

In the Final EIS, issued in July 1997, staff continued to maintain that the 15-cfs minimum flow release would be preferable to Interior's flow releases. Nevertheless, staff recommended adoption of Interior's minimum flow recommendations as not inconsistent with applicable law. In October 1998, Commission staff held a technical conference to determine whether mutually agreeable flows could be determined for both the Union Gas and Rice Rips reaches. Although the licensee, Interior, and the Maine agencies stated that they would continue discussions on appropriate minimum flow requirements, no resolution of the issue was reached.

In issuing the new license, we adopted the recommendation of the Final EIS and required Interior's minimum flows in Article 401. Our decision to adopt Interior's flows, despite the staff's evaluation that the 15-cfs flows would be adequate, was based on several factors. Following the Section 10(j) meeting, Maine DEP notified the Commission that it found no conflict between Interior's minimum flows and its water quality certification, as long as its 15-cfs minimum flows were released regardless of inflow into Messalonskee Lake. Concerns expressed by the staff with regard to the effect of the higher Interior flows on water quality and temperature appeared to be satisfied by subsequent developments or information.[4] Staff had been unwilling to recommend Interior's more costly flow measures for what had been an experimental trout fishery below the Union Gas development; however, the fishery later became established and not

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[4]Staff had been concerned that, because flows would be too low to permit generation at the developments for most of the summer if Interior's minimum flows had to be released, the absence of periodic high generation flows to flush water through the Rice Rips impoundment would negatively affect water quality. However, Maine DEP concluded, based on a technical analysis conducted by its staff, that, under any operating scenario, sufficient flushing would be provided at the Rice Rips impoundment to meet water quality standards. Maine DEP also concluded that Interior's flow would probably benefit water quality, especially in the summer months. Staff had been concerned that Interior's high minimum flows could displace cool water in the trout habitat below Union Gas dam with warmer water from the Union Gas impoundment. At the technical conference held after issuance of the Final EIS, the license applicant, Interior, and the Maine resource agencies agreed that there would not be a significant difference in water temperature.

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merely experimental. Finally, we concluded that Interior's flows, in comparison to the proposed flows, would provide an increase in available brown trout habitat with a relatively small reduction in power benefits.

On rehearing, FPL Hydro argues that Interior's recommended minimum flows are inconsistent with the FPA's comprehensive development standard,[5] under which the Commission must ensure that any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway for all beneficial public uses. FPL Hydro contends that the recommended flows would not provide significantly greater fish habitat during much of the year than the flows proposed in the license application, and that any such increases in habitat would be considerably outweighed by the loss of generation from adopting the recommended flows and by the costs to the licensee of this generation loss. FPL Hydro also argues that the recommended minimum flows are not supported by substantial evidence, because there has been no demonstration that those flows would produce any measurable benefit, beyond FPL Hydro's own proposed flows, in providing needed habitat or meeting the management goals for the brown trout fishery.

DISCUSSION

1. Minimum flows.

In our license order, we concluded that Interior's flow regime was consistent with the comprehensive development standard in light of the importance of the brown trout fishery in Messalonskee Stream and of the relatively modest loss in power benefits that adopting these flows would entail. FPL Hydro challenges that conclusion in several respects.

Maine Department of Inland Fish and Wildlife (Maine DIFW) manages the brown trout fishery in the Union Gas tailwater to maximize fishing opportunity for brown trout from May 1 to June 15 and during the latter half of September. In adopting Interior's flows, we determined that a 100-cfs flow release would provide the maximum habitat, or maximum weighted usable area (WUA), for brown trout in the Union Gas tailwater. FPL Hydro states that, according to the record, the proposed 15-cfs minimum flow would provide 76 percent of the maximum brown trout habitat in the tailwater. FPL Hydro argues that the expected increase in brown trout habitat from adopting Interior's, rather than its own, flows will not be fully realized. FPL states that, from March through June, flows through the developments are so high that only 73 percent or less of the maximum

[5]Section 10(a)(1).

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WUA for adult brown trout is available in the Union Gas tailrace.[6] In addition, the average inflows into Messalonskee Lake during July, August and September are only 31, 22, and 20 cfs, respectively. Since only inflow would be released under those conditions, Interior's minimum flows would thus typically result in an actual flow increase through the four developments of only 16, 7, and 5 cfs for those three months, respectively, over a minimum flow of 15 cfs.

Brown trout stocked by Maine DIFW are probably present in the Rice Rips bypass reach from May to mid-June and from mid-September through October. The Final EIS determined that adult brown trout habitat in the bypass reach would be maximized at a flow of 27 cfs; thus, Interior's recommended 25-cfs flow would provide nearly the maximum available habitat. The EIS also determined that, at a flow of 16 cfs, 94 percent or more of the maximum brown trout habitat would be available. Under the original license, the bypass reach received leakage flows of 12 to 15 cfs during non-generation periods. FPL Hydro asserts that the Article 401 flows of 25 cfs for this bypass reach are unnecessary, because the leakage flows, roughly equivalent to the flows proposed in the application, were sufficient to allow the establishment of a brown trout fishery and would provide most of the necessary habitat.

FPL Hydro argues that the cost of Interior's minimum flows greatly outweighs any possible benefits. Citing figures from the Final EIS, FPL Hydro states that, while adopting the 15-cfs minimum flow would reduce project generation on Messalonskee Stream by only 0.848 gigawatt hours (GWh), adopting the 100-cfs minimum flow, with the 25-cfs flow in the Rice Rips bypass reach, would reduce annual project generation by 3.484 gigawatt hours (GWh). Adopting Interior's minimum flows would also increase the annual cost of lost generation to $66,200, as opposed to $20,500 using the 15-cfs minimum flows. FPL Hydro notes that this would represent a 310 percent annual increase in generation losses and a 222 percent annual increase in the value of lost generation, and that adoption of Interior's flows would result in a 70 percent decrease in summer generation on the stream.[7] FPL Hydro asserts that Interior's recommended flows would result in a 22 percent loss of kilowatt hours of the combined power generation at all of the developments on the stream. In respect to Rice Rips, FPL Hydro, again citing the EIS, states that the higher, 25-cfs, minimum flow in the bypass reach would result in an increase in annual lost generation at that development, over the 15-cfs flow, from

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[6]While 100-cfs flows would provide the maximum WUA, the WUA would decrease as flows either increase or decrease from that level.

[7]These figures include generation losses and lost generation costs at the combined Messalonskee developments, including the Automatic Project.

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0.295 GWh to 0.355 GWh, and an increase in the annual cost of lost generation from $5,800 to $6,900. Because the proposed 15-cfs minimum flow would provide most of the maximum brown trout habitat in the Rice Rips bypass and the Union Gas tailwater, FPL Hydro asserts that the habitat increases in these reaches using Interior's minimum flows are not justified by the disproportionate costs.

In adopting the recommended flows, we were aware of the circumstances, including the habitat gains and generation losses, to which FPL Hydro draws our attention, inasmuch as they were documented in the EIS. FPL Hydro is correct that, because flows are generally low from July through September, the maximum WUA for brown trout will usually not be attainable during these months. We also recognize that the 15-cfs flow regime would provide most of the available habitat for brown trout in both reaches. We acknowledge that adopting Interior's flow regime would reduce project generation, especially in the summer, and that this loss in generation would reduce the average annual value of the project's power.

However, as noted in the license order, Commission staff determined that the annual cost of providing Interior's 100-cfs minimum flow at all of the Messalonskee developments (including the Automatic Project) would be only 5.3 percent of the annual power value.[8] The staff also determined that, while the combined Messalonskee developments would be able to generate only about 3 percent of the time during the summer with a release of 100 cfs, they would be able to generate only about 10 percent of the time under existing conditions, which approximate the release of FPL Hydro's proposed flows. FPL's assertions, which mainly restate circumstances we have already considered, do not alter the fact that some gains in available habitat could be achieved with a loss of a relatively small percentage of the project's power benefits.

FPL Hydro also asserts that release of the required flows during the summer months will severely restrict its ability to accomplish a partial refill of Messalonskee Lake during low inflow periods. Although Maine DEP has stated that Interior's minimum flows would not conflict with the water quality certification minimum flow condition, FPL Hydro argues that it may not be able to maintain the level of Messalonskee Lake required by the certification if it must release not only the 15 cfs required by the

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[8]As noted, FPL Hydro asserts that Interior's flows would result in a 22 percent loss of kilowatt hours of generation. FPL Hydro contends that this figure (its own estimate), rather than staff's 5.3 percent, represents the cost of lost generation. However, the figures are not comparable. Staff estimated the percent loss in power value, while FPL Hydro estimated the percent loss of generation.

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certification at all times, but also Interior's higher minimum flows when they are available.[9]

We acknowledge that, if FPL Hydro is required to release 100 cfs or inflow during the summer months, inflow that could have been used for partial refill of Messalonskee Lake will have to be released through all project developments. Since FPL Hydro is also required by the water quality certification to release 15 cfs from Messalonskee Lake even when inflow is lower, its inability to refill the lake when somewhat higher inflows occur could cause the lake to drop below the levels specified in the certification. It is unclear how often this situation might actually be encountered. However, the water quality certification appears to provide relief from this conflict by requiring that the lake levels be maintained "[e]xcept as temporarily modified by . . . (2) inflows to the project area." This indicates that, if there is insufficient inflow to keep the lake at the specified levels while the licensee is releasing the 15 cfs required by the certification, the state would not consider the licensee to be in violation of the certification conditions.

Although we do not find FPL Hydro's arguments persuasive on the points discussed above, we agree with FPL Hydro that the recommended flows are not supported by substantial evidence. This lack of support also alters our evaluation of the recommendations' consistency with the FPA's comprehensive development standard.

As noted, Maine DIFW's management goal for the Union Gas tailrace is to maximize fishing opportunity for brown trout from May 1 through June 15, and for the latter half of September. FPL Hydro argues that our license order does not explain what the needs of a recreational brown trout fishery are at different times of the year, and why maximization of brown trout habitat can be achieved only by requiring 100-cfs minimum flows at all times throughout the year. FPL Hydro particularly questions the need for these higher flows in light of the progression of the fishery from an experimental to an established one under the existing flow regime. Further, FPL Hydro contends that there is no evidence that providing maximum habitat rather than 75 percent habitat is required to support a fishable population of brown trout in the tailrace, especially considering that current fishing access sites are at less than 25 percent capacity even though a fishable trout population exists. As to the fishery in the Rice Rips bypass reach, FPL Hydro states

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[9]The certification provides that the licensee must maintain Messalonskee Lake within 0.5 foot of full pond from June 1 through August 31 and within 1.0 foot of full pond from September 1 through May 31, and that the licensee shall use the top 0.5 foot of Messalonskee Lake to augment natural flows to meet the 15-cfs minimum flow requirement.

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that there is no substantial evidence that increasing the minimum flow from 15 to 25 cfs will have any significant beneficial impact on the trout fishing opportunity.

Reviewing the record, we find that we have no convincing responses to FPL Hydro's arguments. Interior's recommendations were grounded almost wholly on the premise that, according to the licensee's flow study, 100-cfs and 25-cfs flows would provide the maximum habitat for brown trout in the Union Gas tailrace and Rice Rips bypass reach, respectively. While there is no dispute that this study accurately determined the extent of habitat that would be produced if these flows were available, we can find no evidence that these fisheries would actually benefit from this additional habitat. The fisheries in both the tailrace and the bypass reach are managed by Maine DIFW to maximize brown trout availability at particular times of the year. The record demonstrates that fisheries have in fact developed in these reaches under existing flow conditions. Recreational use of the fishery appears to be limited, as use of unimproved recreation sites at both Union Gas and Rice Rips are at 25 percent or less capacity on weekends during the recreational season.[10] The establishment of the existing fishery and the limited use of the fishery suggest that the modest additional habitat that would be produced under Interior's flow regime is not warranted. The substantial evidence test is not met merely by the general assumption that additional habitat is beneficial for fish.

Because the recommendations lack substantial evidence, the balancing of benefits and costs that underlay our adoption of Interior's recommendations no longer applies. Although the reduction of generation under Interior's flow regime would result in the loss of a relatively small percentage of the total project power benefits, this loss of generation and power benefits would not be inconsequential. There is no justification for imposing these costs if there are no demonstrable benefits to outweigh them. Therefore, we also find that Interior's recommended flows are inconsistent with the comprehensive development standard of Section 10(a)(1) of the FPA.[11]

Because Interior's recommendations entail costs that outweigh any benefits to fish and are not reasonably related to the goal of maintaining or enhancing the fisheries in the

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[10]Final EIS at pp. 3-153 to 154.

[11]We note that, in its Section 10(j) recommendations, Interior stated that the 1,900-foot reach between the Messalonskee Lake dam and the Oakland impoundment would also benefit from the increased minimum flow. This statement does not alter our conclusions, as we can find no evidence in the record to indicate that any fishery in that reach would be improved by the higher releases.

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Messalonskee Stream,[12] we will modify Article 401 to require that a minimum flow of 15 cfs be released at all times from all of the project developments and from the Rice Rips bypassed reach.

2. Other requests.

In a letter accompanying the request for rehearing, FPL Hydro requested several other actions.[13]

FPL Hydro asks that we modify the language of Article 402 to conform to the language contained in the water quality certification issued for the project. Article 402 pertains to maintenance of pond levels and allows for the maximum drawdown limits to be "temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement" among the licensee and specified resource agencies. The water quality certification provides that the pond water levels shall be maintained "except as temporarily modified by (1) approved maintenance activities, (2) inflows to the project area, (3) operating emergencies beyond the applicant's control [definition omitted], (4) flashboard failure, or (5) upon mutual agreement" between FPL Hydro and Maine DEP.

The water quality certification appears to offer greater flexibility in modifying the drawdown limits than does Article 402. Since water quality certification conditions are mandatory license conditions, we would not apply Article 402, even with its present wording, to restrict those situations in which the licensee may modify the drawdown

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[12]See City of Centralia, Washington v. FERC, 213 F.3d 742 at 750 (2000).

[13]Some of these actions have already been taken by Commission staff pursuant to delegated authority. FPL Hydro indicated that it would be requesting an amendment of the license to reflect changes to the project facilities and lands that had been incorporated into the original license, but that had not been reflected in the order issuing a new license. It requested a stay of the requirement to file aperture cards of approved exhibits and drawings contained in Article 204 until after Commission action on the proposed application for amendment. It also requested the deletion of the Article 204 requirement to file Form FERC-587, relating to federal or public lands, with the aperture cards, since the Messalonskee Project includes no such lands. In addition, FPL Hydro asked for an extension of time to file the minimum flow release plan required by Article 405, since it was requesting rehearing of the minimum flow requirement. In an order issued October 13, 1999, the Chief, Engineering Compliance Branch, granted these requests. 89 FERC ¶ 62,022.

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limits under the certification. Nevertheless, to avoid any confusion in administering the license, we will modify Article 402 to encompass the certification's conditions for deviation from the pond levels.

We will make one other change, not requested by the licensee, to Article 402. Article 402 relates the drawdown requirements to a full pond elevation of 235.9 feet mean sea level (msl). Although this figure was referred to in the EIS and represented the full pond elevation of the lake at one time,[14] later reconstruction of the Messalonskee Lake dam resulted in a normal full pond elevation of 235.4 feet msl.[15] We will modify Article 402 to correct this inaccuracy.

FPL Hydro also asks that Article 404 be modified to remove language relating to the provision of notice to resource agencies prior to drawdowns of up to eight feet for flood control. The Messalonskee Project would have no flood storage drawdown of this magnitude. This language was inadvertently included in Article 404, and we will remove it.

FPL Hydro also asks that we modify Articles 409 and 411 by removing the requirement to consult with the Natural Resources Conservation Service (NRCS) regarding recreation plans, because FPL Hydro has not heard of the NRCS, and because the NRCS has never been involved with the project. The NRCS is an agency within the U.S. Department of Agriculture that administers programs dealing with wetlands, buffers, and other watershed protection programs. The NRCS has expertise which may be useful in preparing the recreation plans. Accordingly, we will not remove the requirement to consult with the NRCS from Articles 409 and 411.

For the reasons stated above, we grant FPL Hydro's request for rehearing of the minimum flow requirement in Article 401. We are also modifying Article 402 to conform with the language of the water quality certification and Article 404 in accordance with our discussion in this order.

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[14]See Central Maine Power Company, 21 FERC ¶ 62,481(1982).

[15]Revised exhibits reflecting this change were approved in Central Maine Power Company, 65 FERC ¶ 62,075 (1993). The text of the water quality certification also refers to a full pond elevation of 235.4 feet msl, although the certification conditions themselves do not specify a full pond elevation figure.

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The Commission orders:

(A) The request for rehearing filed by FPL Maine Hydro LLC in this proceeding is granted to the extent indicated in this order.

(B) Article 401 of the license issued July 28, 1999 for this project is modified to read as follows:

Article 401. Within 60 days of the installation of water level and streamflow monitoring devices required by Article 404, the licensee shall release minimum flows for the protection and enhancement of water quality and aquatic resources in Messalonskee Stream and the Kennebec River.

The licensee shall release instantaneous minimum flows of 15 cfs from Messalonskee Lake and from the Oakland, Rice Rips, and Union Gas developments as measured in the Union Gas tailrace immediately downstream of the Union Gas dam, and an instantaneous minimum flow of 15 cfs to Messalonskee Stream as measured immediately downstream of the Rice Rips dam.

Minimum flow releases from the developments 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, U.S. Fish and Wildlife Service, the Maine Department of Inland Fisheries and Wildlife, and the Maine Department of Environmental Protection. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

(C) Article 402 is modified to read as follows:

Article 402. Within 60 days of installation of water level and streamflow monitoring devices required by Article 404, the licensee shall manage impoundment fluctuation levels for the protection and enhancement of water quality and aquatic resources in Messalonskee Stream and the Kennebec River.

The licensee shall limit the maximum draw-down of water levels in Messalonskee Lake to within 0.5 foot from June 1 to August 31, and 1.0 foot for the remainder of the year, of full pond elevation of 235.4 feet mean sea level. The top 0.5 foot of Messalonskee Lake shall be managed to provide the guaranteed 15-cfs minimum flows required in Article 401 of this license. The licensee shall limit the maximum draw-down of water levels in the Oakland impoundment to 1.0 foot of full pond elevation of 207.1 feet mean sea level. The licensee shall limit the maximum draw-down of water levels in the Rice Rips impoundment to 1.0 foot of full pond elevation of 139.1 feet mean sea

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level. The licensee shall limit the maximum drawdown of water levels in the Union Gas impoundment to 1.3 foot of full pond elevation of 69.1 feet mean sea level.

The maximum drawdown limitations may be temporarily modified if required by operating emergencies beyond the control of the licensee, approved maintenance activities, inflows to the project area, flashboard failure, and for short periods upon mutual agreement between the licensee, the U.S. Fish and Wildlife Service, Maine Department of Inland Fisheries and Wildlife, and Maine Department of Environmental Protection. If the drawdown limitations are so modified, the licensee shall notify the Commission as soon as possible, but no later than ten days after each such incident. Notification of drawdowns that exceed the restriction for Messalonskee Lake or any of the three impoundments from ice-out through and including July 31 shall include the reason for the drawdown and documentation of prior consultation with the Maine Department of Inland Fisheries and Wildlife.

(D) Article 404 is modified to read as follows:

Article 404. Within six months of license issuance, the licensee shall file for Commission approval a plan to install, operate, and maintain water level and streamflow monitoring equipment necessary to monitor and record compliance with the minimum flows required by Article 401, impoundment drawdown limits required by Article 402, and downramping at Union Gas required by Article 403.

The plan shall include, but need not be limited to: a schedule for installing the monitoring equipment; the proposed location, design, and calibration of the monitoring equipment; the method of data collection; and a provision for providing the data to the consulted agencies, within 30 days from the date of the agencies' request for the data. This plan may incorporate existing monitoring equipment as long as it meets the standards of the U.S. Geological Survey.

The licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Geological Survey, Maine Department of Inland Fisheries and Wildlife, Maine Department of Marine Resources, and Maine Department of Environmental Protection.

The licensee shall include with the plan documentation of agency consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan

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with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on site-specific information.

The Commission reserves the right to require changes to the plan. The monitoring plan shall not be implemented until the licensee is notified that the plan is approved. Upon Commission approval, the licensee shall implement the plan including any changes required by the Commission.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.