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FEDERAL ENERGY
REGULATORY COMMISSION
March 9, 2005

Hon. Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: **Erie Boulevard Hydropower, L.P.'s
School Street Project No. 2539;
Filing of Settlement Agreement and Separate Explanatory Statement**

Dear Secretary Salas:

Pursuant to 18 CFR §385.602, Erie Boulevard Hydropower, L.P. ("Erie") is hereby submitting an original and eight copies of an offer of settlement together with an Explanatory Statement and a Settlement Agreement entitled School Street Project Settlement Agreement ("Settlement"). The enclosed Settlement was recently executed by Erie, the New York State Department of Environmental Conservation (NYSDEC), the United States Fish and Wildlife Service, the National Park Service, the New York Power Authority, New York Rivers United and other non-governmental organizations in regards to the relicensing of the above-referenced hydroelectric project.¹

School Street Project No. 2539 is a "Class of 1993" project for which a new license has yet to issue. The enclosed Settlement contains a number of resource protection, mitigation and enhancement measures which improve upon the measures proposed by the license applicant (Erie's predecessor, Niagara Mohawk Power Corporation) in the new license application for the project, filed in December 1991. To the extent there is any inconsistency between any measures proposed in the pending new license application and the Settlement, the Settlement governs.

Pursuant to 18 CFR §385.602(f), any comments pertaining to this Settlement must be filed with the Commission no later than twenty (20) days from the date of this submission (March 9, 2005) and any reply comment will be due no later than thirty (30) days from the Settlement filing date.

¹ For purposes of this filing, we include in Section 5.0 of the enclosed Settlement a letter from the Mayor of Cohoes indicating the Mayor's intention to sign this Settlement pending appropriate review and approval by the City's Common Council. We have also supplied a copy of the Settlement Agreement to NOAA Fisheries, who advise that they intend to sign this Settlement Agreement pending review.

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March 9, 2005
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If there are any questions pertaining to this submittal or additional copies of same are requested, please call the undersigned at (315) 413-2787.

Very truly yours,

Jerry L. Sabattis

Jerry L. Sabattis
Hydro Licensing Coordinator

Enclosures: Settlement
Explanatory Statement
Attached Service List
xc w/Encl: J. M. Robinson
T. Welch
S. S. Hirschey
W. J. Madden
Service List
Settlement Signatories

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

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ERIE BOULEVARD HYDROPOWER, L.P.)
) PROJECT NO. 2539
) (SCHOOL STREET)

**SUBMISSION BY ERIE BOULEVARD HYDROPOWER, L.P. OF OFFER OF
SETTLEMENT FOR NEW LICENSE FOR SCHOOL STREET PROJECT
AND OF EXPLANATORY STATEMENT OF THE SETTLEMENT**

Pursuant to Rule 602 (18 C.F.R. § 385.602) of the Commission's Regulations, Erie Boulevard Hydropower, L.P. ("Erie" or "Licensee") hereby submits the enclosed School Street Project Settlement Agreement dated March 7, 2005 ("Agreement" or "Settlement Agreement")) and requests that the Commission approve the Agreement and issue a new license for the School Street Project ("Project") which is consistent with the Agreement and with the conditions recommended therein for inclusion in the new license.

The Agreement has been executed by Erie, the New York State Department of Environmental Conservation ("NYSDEC"), the United States Fish and Wildlife Service ("USFWS"), the National Park Service, the New York Power Authority, New York Rivers United and other non-governmental organizations. Each of these entities may be referred to individually as a "Party" and collectively as the "Parties"

EXPLANATORY STATEMENT

I. INTRODUCTION

This Agreement reflects the culmination of a negotiating process which began more than 10 years ago following the November 19, 1992 denial without prejudice by the New York Department of Environmental Conservation (NYSDEC) of Section 401 water quality certification requests for ten projects for which Niagara Mohawk Power Corporation (“NMPC”)¹ was seeking new licenses.

Upon NMPC’s subsequent petition for administrative rehearing, the administrative law judge assigned to the NYSDEC proceedings urged the staff of the NYSDEC to pursue negotiated settlements for each of the ten projects. Under the leadership of NYSDEC representatives it was decided among interested parties that mainly because of resource constraints, negotiations would be pursued separately and sequentially for each of the projects and that resolution of both Section 401 and FERC licensing issues would be pursued. The parties understood that this sequential approach would inevitably result in one project having to be last, and that negotiations for that last project would not begin for quite some time following commencement of the process

Offers of Settlement were filed with FERC for the Beaver River Project (FERC No. 2645) in May 1995, the Black River Project (FERC No. 2569) and the

¹ At the time it filed new license applications for these projects with FERC in December of 1991, NMPC also filed requests for 401 certifications with NYSDEC. Those requests were subsequently denied and NMPC appealed. Each of its nine appeals was set for hearing before a NYSDEC administrative law judge. In 1999, NMPC sold those and several other hydro projects to Erie. *Niagara Mohawk Power Corp. et al.*, 88 FERC 62,082. The ownership of Erie has subsequently undergone several changes. Erie is now an indirect wholly-owned subsidiary of Brascan Corporation, an Ontario corporation. See *Orion Power Holdings et al.*, 108 FERC ¶ 61,297 (2004).

Beebee Island Project (FERC No. 2538) in October 1995, the Middle and Lower Raquette Projects (FERC Nos. 2320 and 2330) in March 1998, and the E. J. West, Hudson River and Feeder Dam Projects (FERC Nos. 2318, 2482 and 2554) in April 2000.

Subsequent to the completion of those settlements², NYSDEC convened a Plenary Session on January 29, 2001, to advance the Section 401 process on the three remaining Class of '93 projects: the Hoosic River Project (FERC No. 2616), the Oswego River Project (FERC No. 2474) and the School Street Project. An invitation by NYSDEC to potentially interested parties was distributed to 67 separate individuals, agencies, municipalities and conservation groups on December 18, 2000 and was filed with FERC (see **Attachment A**). A summary of the plenary negotiating session was filed with FERC by NYSDEC on February 12, 2001 and circulated to some 85 parties (see **Attachment B**). That summary documents the decision to discuss settlement for the School Street Project after completion of the negotiations over the Hoosic River and Oswego River Projects. NYSDEC's summary also contains a concise timeline of all major prior activities for these three projects. Since that plenary session in 2001, Offers of Settlement have been filed with the Commission for the Hoosic River Project (August 2002) and the Oswego River Project (November 2003).

² In conjunction with the initiation of the FERC's NEPA process for the Parishville Project (FERC No. 10461) and the Allens Falls Project (FERC No. 10462) that were the subject of a separate Section 401 rehearing process before the NYSDEC, Erie, NYSDEC, USFWS and NYRU agreed to prioritize completion of settlement negotiations for these projects ahead of the Hoosic River, Oswego River and the School Street Projects. See Erie correspondence filed with the Commission on September 18, 2000 and November 14, 2000.

The filing of this Settlement Agreement completes the process of successfully negotiating settlements for all of the original Class of '93 Projects now owned by Erie.

A broad group of stakeholders, including groups which had not intervened in either the state Section 401 or the FERC license proceeding, were invited to participate in settlement discussions for the School Street Project. FERC Staff were kept informed of the negotiations, and from time to time had representatives at the settlement meetings, including settlement meetings that eventually resulted in the execution of this Agreement on the School Street Project.³ All told, some 24 separate meetings, conference calls and site visits took place between mid-2002 and the final settlement meeting held December 21, 2004 which concluded with resolution of all issues addressed in the Settlement Agreement.⁴

II. THE SCHOOL STREET PROJECT

The School Street Project consists of a 38.8 MW development located on the Mohawk River in Albany and Saratoga Counties, New York some 2.5 miles above the confluence of the Mohawk with the Hudson River. The project works include a dam located some 4,000 feet above Cohoes Falls, a reservoir with a surface area of approximately 100 acres, a 4,400 foot long power canal, and a powerhouse with five generating units .

³ See attached NYSDEC summary of the January 29, 2001 Plenary Session in **Attachment B**.

⁴ The Commission recently noted the reasons for the protracted history of the relicensing process for the School Street Project in its Order Dismissing Application for Preliminary Permit, Green Island Power Authority (110 FERC ¶ 61,034).

III. FERC APPLICATION

The application for a new license for School Street was filed by NMPC in December of 1991. FERC issued notice of the filing of the application and solicited comments and requests for additional information. In March and October of 1995, FERC staff issued two scoping documents identifying the issues to be covered in their analysis under the National Environmental Policy Act. On November 16, 1995 FERC issued its Ready for Environmental Analysis Notice and upon NYSDEC's June 4, 1996 issuance of a draft Section 401 certification, FERC staff issued its Draft Environmental Assessment ("DEA") on November 20, 1996 for public comment. Between April 1993 and January 1996, when comments were due on the staff's DEA, interventions on the School Street license application were filed by twelve entities.⁵

Following the release of the staff's DEA, both DOI and NOAA Fisheries submitted to FERC in 1997, similar downstream fish passage prescriptions pursuant to §18 of the Federal Power Act. The fish passage system prescribed at that time generally consisted of an angled louver guidance device in the power canal designed to guide fish migrating down the Mohawk into the power canal past the powerhouse turbines.

On April 18, 1997, staff conducted a Section 10(j) conference call with state and federal resource agencies in an effort to resolve various fish and wildlife conditions proposed by those agencies and on April 28, 1997 the staff suspended the

⁵ The intervenors were the Adirondack Mountain Club, the City of Cohoes, the Department of the Interior, NOAA Fisheries, American Rivers, Inc., New York Rivers United, The Natural Heritage Institute, the National Audubon Society, NYSDEC, New York State Electric and Gas Corp., and R.Pisani and W. Corrigan.

relicensing process on this and the other NMPC projects in order to allow negotiations on the 401 certifications and FERC license conditions to continue.

On September 28, 2001, staff resumed its processing of the School Street application and issued its Final Environmental Assessment ("FEA"). Generally, the staff recommended that: (1) the operating drawdown limitation of the Project impoundment be reduced to 0.5 feet; (2) the Project be operated in a run-of-river mode; (3) a minimum flow of 200 to 300 cfs be provided in the by-passed reach; (4) upstream fish passage not be provided; (5) the downstream fish passage measures prescribed by DOI and NOAA-Fisheries be installed; (6) a 500 cfs aesthetic flow over Cohoes Falls be provided during peak viewing hours; and (7) various recreation and fishing access improvements be provided including several not originally proposed by NMPC.

IV. THE SETTLEMENT AGREEMENT

A. Introduction

By December 2004, the Parties had reached agreement on the principal 401 and FERC licensing issues which had been the focus of so much attention since negotiations had begun in earnest in 2001. The Agreement was then put into writing using templates previously utilized in other Erie licensing proceedings, and was executed during January 2005. Erie expects that NYSDEC, a signatory to this Agreement, will now move expeditiously to issue a 401 certification consistent with this Agreement. In the Agreement the Parties have resolved all of the major environmental issues which have arisen since the new license application was prepared and which have surfaced in the various pleadings and comment letters filed in this proceeding and which are reflected in the staff's FEA issued in 2001.

B. The Settlement Agreement is Consistent with FERC's FEA

On all major issues, the Agreement recommends the issuance of a new license with conditions that would implement the environmental conditions recommended in the staff's 2001 FEA at pp. 66 - 67. The Parties to the Agreement did not, however, support the development of the impoundment fishing area recommended in the FEA. The staff recommendation that an adaptive study approach be used to determine the ultimate bypass reach flows was instead replaced with a firm commitment by Erie to release specific agreed upon flows derived from site-specific flow demonstrations and analyses in which Erie, USFWS and NYSDEC participated (see Attachment B to the Settlement Agreement at p. B-2). Going beyond the recommendations of the FEA, the Settlement Agreement contains comprehensive provisions for greatly expanded recreational enhancements, additional steps to protect cultural resources, and provisions to begin releases of interim aquatic habitat flows and aesthetic flows immediately upon issuance of license.

C. The Agreement Introduces "Next Generation" Fish Passage Capability.

The Agreement also provides in Section 3.6 that Erie would be permitted, pursuant to additional analysis, to install a new, "next generation" advanced turbine design which, if at least as effective as the more traditional downstream passage system described in Section 3.5 of the Settlement Agreement, will become the principal fish passage system at the Project. Pending design and installation of the new turbine, the screen and by-pass system described in Section 3.5 of the Settlement Agreement, similar to the one previously prescribed by DOI and NOAA-Fisheries, will be installed. The concept of a new unit and powerhouse addition described in Section 3.6 of the

Agreement is consistent with the new unit and powerhouse addition concept originally proposed in the new license application. The Agreement also establishes time schedules and a monitoring process for the implementation of the downstream passage protection system.

D. The Settlement is Structured to Institute Protection and Enhancement Measures Within 18 Months of License Issuance

The terms of the Settlement Agreement are designed to achieve the natural resource and community benefits under an accelerated timetable. As noted above, interim aquatic habitat flows and the permanent aesthetic flows will be provided immediately upon issuance of license. Downstream fish passage, all recreation enhancements, and permanent aquatic habitat flows are planned to be in place within 18 months of license issuance once the final water release structures are constructed. In fact, Erie and other signatories designed a detailed sequence of construction activities that will require Erie to move aggressively to accomplish a number of engineering and construction steps, in consultation with signatories, to achieve this goal. The carefully scheduled implementation steps are shown in Figure 1 of the Settlement Agreement, also appended hereto as **Attachment C**.

IV. SPECIFIC PROVISIONS OF THE AGREEMENT

Sections 1.0 through 2.11 of the Agreement set forth the basic understandings of the Parties as to the nature of the settlement, including not uncommon provisions dealing with the non-precedential nature of the settlement, withdrawal rights, the use of reopeners and subsequent amendments to the license and the Agreement. Importantly, Section 1.3 provides that the Parties do not intend for all provisions of the Agreement to become conditions of the license, but that it is their agreement that all the

commitments of the Licensee set forth in Sections 3.0 through 3.9 of the Agreement shall be included as license conditions.

Sections 3.0 through 3.9 of the Agreement set forth the commitments of the Licensee, which the Parties agree should be included as license conditions.⁶ A summary of those commitments is set forth in Table 3.0A of the Settlement Agreement. Attachment B to the Settlement Agreement provides a detailed a justification statement for each of the resource measures in Sections 3.0 through 3.9 which justifications were collaboratively developed by the Parties.

Section 3.1: Provides for run of river operations similar to the operations recommended in the staff's 2001 FEA, but fine-tuned to accommodate the realities of the flashiness of the Mohawk River.

Section 3.2: Provides for an interim 90 cfs flow into the by-passed reach of the Mohawk River. Within 18 months of license issuance the Licensee is to design and install a new structure described in Section 3.2 from which permanent instantaneous aquatic habitat flows ranging between 120 and 245 cfs (depending on the season) will be released into the by-passed reach of the river. The permanent flows are within the ranges recommended in the staff's FEA. The time spent negotiating the Agreement, including two field flow demonstrations conducted in 2002 and 2003, and a total of 11 meetings of the Fish Passage and Minimum Flow Technical Group, has enabled the Parties to assess the operational, structural and habitat issues which require consideration. As a result, the

⁶ **Attachment D** to this Explanatory Statement sets forth the estimated costs of each of the commitments that Erie has agreed to implement pursuant to this Settlement Agreement.

adaptive management study approach recommended in staff's FEA is no longer considered necessary.

Section 3.3: This section provides for a 500 cfs aesthetic flow over Cohoes Falls during daylight hours during weekends and federal holidays from May 15 to October 31. This means flows will be provided over a considerably longer period of time than was originally proposed in the new license application and for a somewhat longer period of time than was recommended by the staff in its 2001 FEA. These flows will be provided upon license issuance.

Section 3.4: This section provides for the installation of gages and equipment to monitor the flows required of the Licensee under this Agreement and for a record keeping and reporting system to be maintained by the Licensee. Flow and water level monitoring is necessary to ensure effective implementation and compliance with run-of-river measures (Section 3.1), aquatic habitat flows (Section 3.2) and aesthetic flows (Section 3.3).

Section 3.5: This section sets forth a detailed description of the downstream fish passage protection facilities to be installed by the Licensee including such items as the angled bar racks, plates for protection of American Eel, intakes, and downstream passage pipes and flumes. This section also describes various operational measures to be implemented for fish attraction and protection purposes and establishes *time schedules and a fish passage effectiveness monitoring system.*

The facilities and implementation schedules described here are more detailed than those previously addressed in the Section 18 fishway prescriptions and in the staff's FEA. The efforts of the Parties in addressing these issues in the Agreement

should substantially facilitate the early installation and operation of these fish passage improvement measures.

Section 3.6: This section sets forth the general design and time schedule for the Licensee to follow with respect to its plan for implementing next generation advanced turbine design ⁷ in a powerhouse addition next to the existing powerhouse. The plan calls for a significant amount of testing before it can be used for fish passage purposes.

Section 3.7: This section sets forth the timing for the fish passage effectiveness studies and the process to be used by the Licensee in designing and implementing those studies and the monitoring program agreed upon by the Parties. Again, this schedule is more detailed than that which the staff was able to describe in its FEA and the work of the Parties in developing this schedule and implementation process should facilitate an orderly and timely fish passage program at the Project.

Section 3.8: This section provides for the development of a Historic Properties Management Plan within six months of license issuance and sets forth four matters to be considered by the Licensee in developing that plan; (1) continuation of the Licensee's program of allowing access to members of the Haudenosaunee (Iroquois) Confederacy to lands in the vicinity of Cohoes Falls; (2) special consideration of the

⁷ This turbine is expected to comport with one of two conceptual designs that resulted from Advanced Turbine Systems research studies commissioned by the U.S. Department of Energy (DOE). See DOE/ID-10821, *Final Turbine and Test Facility Design Report, Alden/NREC Fish Friendly Turbine*, Published September 2000, Prepared by Alden Research Laboratory, Inc. – Northern Research and Engineering Corporation, for the U.S. Department of Energy Idaho Operations Office. The Commission authorized Grant County PUD to install the other alternative design emanating from DOE's Advanced Hydropower Turbine Systems Program at the Wanapum dam in an order issued on April 30, 2004 in *Public Utility District No. 2 of Grant County*, 107 FERC ¶ 62,088.

cultural importance of that site when placement of new diversion structures begins; (3) preservation of certain dams and bridges in the immediate area; and (4) impact of all new construction at the Project on historic sites and structures. Attachment C to the Settlement Agreement is a Draft Revised Appendix A for the School Street Project, which has been developed by Erie to update and replace the project-specific Appendix A filed by Erie on April 11, 1997 for the approved comprehensive Programmatic Agreement for a number of Erie's hydroelectric projects. Erie includes this draft Revised Appendix A in the Settlement Agreement for FERC's use in order to facilitate its adoption so that a Historic Properties Management Plan can be filed with the Commission as promptly as possible after license issuance.

Section 3.9: This section describes some six projects to be undertaken by the Licensee for the improvement of public recreation at the Project and in the immediate Project area. As noted above, these projects provide enhancements beyond those recommended by FERC staff in the FEA as a result of an improved understanding of local community and regional needs, with particular regard to the values of aesthetic and cultural resources in the immediate project area.

Sections 4.0 through 4.5 of the Agreement describe several public access improvements to be made and enhancement funds to be established by the Licensee. Sections 4.1 through 4.3 provide specific benefits to the local community while Sections 4.4 and 4.5 provide an expanded role for non-governmental organizations to participate as consulted parties in implementing the Settlement Agreement. The Parties have agreed, however, that none of the Licensee commitments listed in Section 4.0 should be made license conditions. All of the planned community improvements involve areas outside of

the Project boundary and require considerable interaction with and involvement by local officials who will, in due course, assume ownership of the areas in question and management of the enhancement funds.

V. TREATMENT OF PROPOSED NEW TURBINE UNIT

Consistent with Section 3.6 of the Settlement Agreement, Erie requests that, as part of the new license order, the Commission authorize the installation of a new turbine-generator unit and powerhouse addition having a proposed electrical capacity of approximately 11,000 kilowatts and a hydraulic capacity of approximately, 1,600 cfs. This proposal supplants the 21,000 kilowatt, 3,000 cfs new turbine-generator unit and powerhouse addition proposed in NMPC's 1991 license application. The plan view configuration of this new unit and powerhouse addition (shown in Figure 3 appended to the Settlement Agreement) will occupy the same footprint of the new unit and powerhouse addition proposed in the 1991 application. In light of the innovative new design of this proposed emerging technology, the final detailed configuration of this new unit and the final installed capacity of this new unit will be subject to additional optimization and preliminary design studies that are a future requirement of the Settlement Agreement. Therefore, Erie proposes to file appropriate as-built Exhibit F drawings upon completion, but will be providing the Commission and its Regional Engineer with detailed plans and specifications prior to construction.

VI. REQUEST FOR EXPEDITED TREATMENT

Based on the concentrated effort of Parties to achieve a balanced and comprehensive package of resource measures, and their commitment to see them implemented within 18 months of new license, Erie requests that FERC conduct its

review of the Settlement Agreement and issue a new license for the School Street Project as expeditiously as possible. Erie believes that it is clearly in the public interest, with the support of the major state and federal resource agencies as evidenced by their concurrence in this Settlement Agreement, to proceed without delay to issuance of a license consistent with the terms of the Settlement Agreement.

CONCLUSION

Erie respectfully requests that the Commission issue an appropriate order approving the Settlement Agreement submitted herewith and issue a new license for the School Street Project which is consistent with that Agreement and which includes as license conditions the terms and conditions which the Parties to that Agreement have concluded should be included in the new license.

Respectfully submitted,



William J. Madden, Jr.
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WMadden@winston.com
(202) 371-5715

ATTORNEY FOR
ERIE BOULEVARD HYDROPOWER, L.P.

March 9, 2005

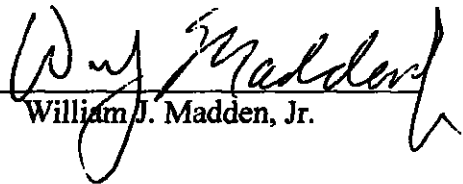
Attachments

cc: Service List
Parties to Settlement Agreement

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2000).

Dated at Washington, D.C., this 9th day of March, 2005.



William J. Madden, Jr.

ATTACHMENT A

New York State Department of Environmental Conservation
Division of Environmental Permits, Room 538
50 Wolf Road, Albany, New York 12233-1750
Phone: (518) 457-2224 • FAX: (518) 457-7759
Website: www.dec.state.ny.us

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FEDERAL ENERGY
REGULATORY
COMMISSION



December 18, 2000

To all interested parties:

On January 29, 2001 the Department of Environmental Conservation will hold a Plenary Session on the three "Class of 93 " hydroelectric projects owned by Orion Power New York currently undergoing relicensing: **P-2616 Hoosic River ; P-2474 Oswego River; and P-2539 School Street.**

As part of the Federal relicensing of these projects, the state must certify that water quality standards are not contravened. The purpose of this Plenary Session will be to confirm the process and establish a schedule to advance the 401 Water Quality Certification process for these projects. Issues to be discussed include the order in which to address each project, the scope of proceeding that is appropriate for each project, identifying which parties wish to be involved in settlement negotiations for each project and, reestablish a calender for each and all of the projects if necessary, and identifying the issues that warrant negotiations for each of the projects.

The Plenary Session will be held at:

Department of Environmental Conservation
Room 404
80 Wolf Road
Albany, New York 12233
10:00 AM - 4:00 PM
January 29, 2001

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Please RSVP no later than January 17, 2001. Please respond directly to: Kent P. Sanders, Project Manager, Division of Environmental Permits, New York State Department of Environmental Conservation, Room 538, 50 Wolf Road, Albany, New York 12233-1750 (e-mail kpsander@gw.dec.state.ny.us, Phone (518) 485-9219).

Sincerely,

Lenore R. Kuwik
Chief, Environmental Analysis Unit

Attachment: List of Parties

010130-0265-3

mpc
FERC DOCUMENT
DEC 20 2000

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ATTACHMENT B



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February 12, 2001

To all interested parties:

On January 29, 2001 the Department of Environmental Conservation held a Plenary Session to advance the 401 Water Quality Certification process on the three "Class of 93 " hydroelectric projects owned by Orion Power New York currently undergoing relicensing: P-2616 Hoosic River ; P-2474 Oswego River; and P-2539 School Street.

Parties attending the plenary agreed to hold a meeting on May 17-18, 2001, facilitated by the FERC Office of Dispute Resolution, to further a negotiated settlement for these projects. DEC will formally request the facilitation and recommend that a facilitator talk one on one with all parties before conducting the May meeting.

Sincerely,

Kent P. Sanders
Environmental Analyst I

Attachments: Plenary Minutes
Attendance List
List of Parties

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Class of '93 Plenary Meeting Minutes
January 29, 2001

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x 2539 "

Introduction: The purpose of this plenary session was to focus on the remaining Orion Class of '93 hydro relicensing projects and establish a plan of action for resolution of the Water Quality Certification process.

Update of Background Information

Class of '93 Project Status
Revised at January 29, 2001 Plenary

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Hoosic River

- December 19, 1991, NMPC applies to DEC for a 401 WQC
- November 19, 1992, DEC denies, without prejudice, the 401 WQC
- December 16, 1992, NMPC requests hearing on denial of 401 WQC
- August 5, 1993, Administrative Hearing held on denied 401 WQC
- March 13, 1996, FERC issues Ready for Environmental Review Notice
- May 24, 1996, Interior provides Initial Fishway Prescriptions
- July 18, 1996, NMPC reply comments to DOI submittal
- October 24, 1996, FERC issues Draft Environmental Analysis (DEA)
- February 19, 1997, NMPC comments on DEA
- September 30, 1997, DOI letter of intent to prescribe fishway
- October 15, 1999, FERC revises DEA and initiates 10j process
- November 30, 1999, FERC holds 10j Conference
- June 30, 2000, FERC issues revised Environmental Assessment (EA)

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Oswego River

- December 4, 1991, NMPC applies to DEC for a 401 WQC
- November 19, 1992, DEC denies, without prejudice, the 401 WQC
- December 16, 1992, NMPC requests hearing on denial of 401 WQC
- August 5, 1993, Administrative Hearing held on denied 401 WQC
- May 26, 1995, DOI submits comments, terms and conditions and prescriptions
- January 30, 1996, FERC issues Ready for Environmental Review Notice
- March 26, 1996, DOI submits preliminary fishway prescriptions
- January 4, 1999, DEC comments on DEA
- November 24, 1999, FERC issues Draft Environmental Analysis (DEA)
- May 2, 2000, FERC initiates 10j process
- September 12, 2000, FERC holds 10j Conference
- October 26, 2000, DOI submits schedule for issuing modified prescriptions and administrative record

School Street

- **December 20, 1991, NMPC applies to DEC for a 401 WQC**
- **November 19, 1992, DEC denies, without prejudice, the 401 WQC**
- **December 16, 1992, NMPC requests hearing on denial of 401 WQC**
- **August 5, 1993, Administrative Hearing held on denied 401 WQC**
- **June 16, 1994, NMPC submits downstream fish passage enhancement plan**
- **November 16, 1995, FERC issues Ready for Environmental Review Notice**
- **February 8, 1996, DOI submits initial fishway prescriptions**
- **June 14, 1996, NMPC returns comments on fishway prescriptions**
- **April 30, 1996, NMPC submits revised downstream fish passage enhancement plan**
- **June 4, 1996, DEC Issues Draft Water Quality Certificate**
- **June 19, 1996 DOI comments on WQC**
- **November 20, 1996, FERC issues DEA**
- **February 3, 1997, DOI submits "modified" fishway prescriptions & Administrative Record**
- **February 21, 1997, DOI submits modified fishway prescriptions & Administrative Record**
- **April 18, 1997, FERC conducts 10j teleconference**
- **April 28, 1997, FERC suspends its relicensing process for all Niagara Mohawk "Class of '93" cases to allow for negotiations to continue**
- **May 3, 1997, FERC issues 10j report**
- **February 3, 1998, NMFS submits amended fishway prescription**
- **May 12, 1999, FERC conducts site visit**

Identified Issues

Based on October 2000 to January 2001 Discussions

Revised at January 29, 2001 Plenary

Hoosic River:

Fish Protection / Passage
Run of River Operation
Habitat Bypass Flows
Recreational Access
Road Access
Recreational Flows
Staff Gauges
River Fund

Oswego River:

Fish Protection / Passage
Run of River Operation
Habitat Bypass Flows
Recreational Access
Portage at Minetto
Pneumatic Crest at Varick and
its Potential effects on
Navigation
Consistency with the City of
Oswego Approved Waterfront
Revitalization Plan
Use of Canal Corp Lands
Use of surplus canal water
Fees for Use of Canal Corp
Water and Lands
River Fund
American Eel Upstream
Passage
Are introduced Salmonids
naturalized species and
require upstream passage

School Street:

Downstream Fish
Protection/ Passage
Run of River Operation
Habitat Bypass Flows
Aesthetic Overlook
Aesthetic Bypass Flows
Cohoes Water Supply
Recreational Access
River Fund
Use of surplus canal water
Fees for Use of Canal Corp
Water and Lands

Party Interest in Each Class of 93 Project

Based on October 2000 to January 2001 Discussions

Revised at January 29, 2001 Plenary

Party	Project:	Hoosic River	Oswego River	School Street
Rensselaer Conservation Alliance		yes	yes	yes
Adirondack Mountain Club (ADK)		yes	yes	yes
Trout Unlimited		yes	yes	no
New York Power Authority		no	no	yes
New York Rivers United		yes	yes	yes
American Whitewater		yes	no	no
New York State Conservation Council		yes	yes	yes
Orion Power New York		yes	yes	yes
United States Fish & Wildlife Service		yes	yes	yes
New York State Department of Environmental Conservation		yes	yes	yes
City of Cohoes		no	no	yes
New York State Department of State		no	yes	no
New York State Canal Corporation		no	yes	no
Mercer Companies		yes	no	no
National Park Service		yes	yes	yes
FERC		yes	yes	yes

Discussion

Need For Negotiation / Level of Negotiations

FERC: A negotiated settlement is preferable because it would alleviate the possibility of a rehearing on the licence.

F&W Service: The Service has little to gain from continued negotiations. Continued negotiations will only delay the implementation of the existing Section 18 prescriptions and environmental conditions in the DEAs. The Service is not prepared to change conditions in the fishway prescriptions.

Orion: Company is wed to a whole cloth negotiation philosophy. All items should be on the table including 10j and 401 WQC conditions. Some progress was made in the Hoosic 10j Conference. Flashboards at Varick are an outstanding issue.

NYRU: Does not see the need for extended negotiations. Most issues are covered in the DEAs. There is some need for narrow scope negotiations on recreational issues.

ADK: There is a need to negotiate all three projects. Biological data has become dated. Recreational and aesthetic issues are unresolved.

NYSDEC: Whole cloth settlement could resolve some recreational and access issues. The procedure should be short.

Renns. Con. Alliance We need to continue to negotiate on all three projects.

Trout Unlimited: The bypass flows at Varick on the Oswego need to be negotiated. The EA is sufficient at Hoosic, nothing to gain from further negotiations there.

NYS Canal Corp.: Oswego and School Street need to be negotiated. Canal Corp is entitled to revenue from the use of Canal Corp lands and surplus water.

FERC: FERC has a preference for a negotiated settlement for all three projects. Projects should be settled concurrently. FERC can offer third party neutrals to help with negotiations, either facilitators or subject matter experts.

Order of Approach for Class of 93 Projects

Proposed at January 29, 2001 Plenary

<u>Project</u>	<u>Complete Date</u>	<u>Number of Meetings</u>
Hoosic River	May 31, 2001	3
Oswego River	August 31, 2001	3
School Street	November 30, 2001	4

FERC: Proposed order is fine because it mirrors the status of these projects in the NEPA process. Would like to see concurrent or combined proceedings with breakout sessions. FERC Dispute Resolution Service will do some background work.

F&W Service: Process should start with a full scope issues conference. The decision should then be made as to which if any need to go forward. Bring FERC in. Define which issues will go forward. Work from DEAs and Draft 401 WQCs.

NYRU: We should start as soon as FERC facilitator can get on board. The first meeting needs to define the issues.

Orion: Issues conference would be positional based. A crash issues conference would not work. Workloads preclude the ability to address all three projects at the same time. A FERC facilitator guided negotiation may be effective. A May start is possible. Allens Falls / Parishville negotiations should be coming to a close by then. Closure is a conceptual agreement. A written settlement will take months more.

City of Cohoes: Mediator should design format. Let the facilitator decide how to move the process forward.

ADK: Completed projects are creating additional workload. We need to hold off until Allens Falls / Parishville are completed. Information gathering will take time.

Decision

DEC will request FERC provide for a facilitator. Parties agreed to a facilitated meeting on May 17-18, 2001. Orion will see if their large meeting room in Syracuse is available. The goal is resolution of all Class of '93 projects by 12/31/2001. The FERC facilitator will decide the best method for advancement of this goal. DEC will recommend that a facilitator talk one-on one with all parties before conducting the meeting in May.

Miscellaneous

Central Office NYSDEC should maintain a Hydro Review Calendar. Availability of Draft 401 WQC needs to be determined.

Attendance: Sign in Sheet Attached

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Class of 93 Plenary Session
 January 29, 2001

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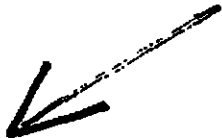
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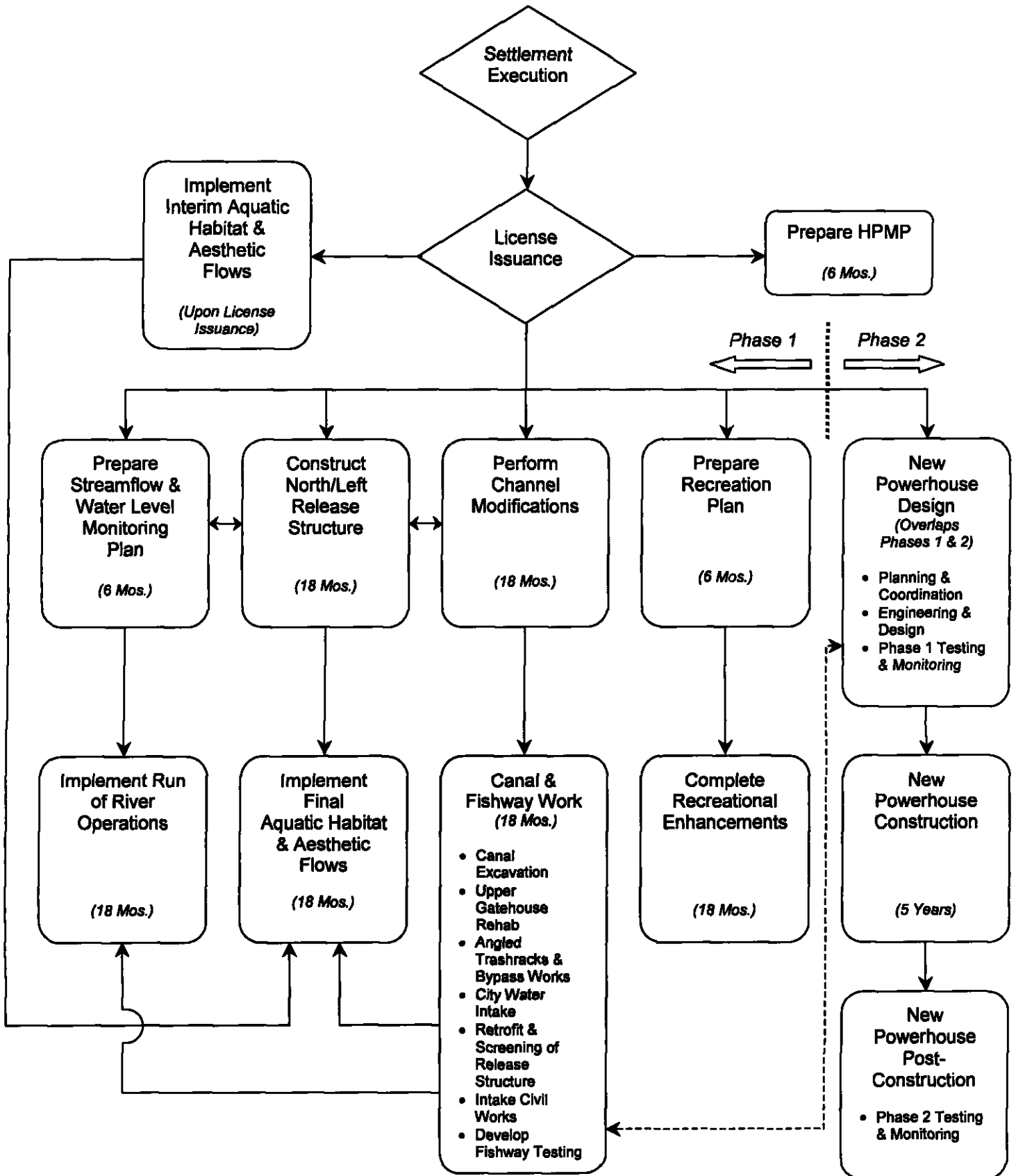
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ATTACHMENT C

Figure 1
School Street Hydroelectric Project - FERC No. 2539
Schematic Overview and Sequencing of Major Settlement Activities



ATTACHMENT D

Estimated Costs for Implementation of School Street Settlement

<u>Section</u>	<u>Settlement Provision</u>	<u>Cost</u>	
		<u>Capital (2005 \$)</u>	<u>MWh/yr</u>
3.1	Run-of-river operation (including unit automation)	\$ 300,000	
3.2	Aquatic flows in bypass	225,000	8,522
3.3	Aesthetic flows	110,000	1,025
3.4	Gages and monitoring equipment	50,000	
3.5	Downstream fish passage	2,450,000	576
3.6	Fish friendly turbine and powerhouse	16,000,000	*
3.7	Effectiveness studies	550,000	
3.8	HPMP	5,000	
3.9	Recreation enhancements	560,000	
N/A	Associated roads, bridges, canal excavation, site rehabilitation, City water supply relocation, and indirect costs	4,900,000	*
	TOTAL	\$25,150,000	10,123

* Note: The new fish friendly turbine, in combination with hydraulic improvements from canal excavation, will result in an increase in annual generation of approximately 24,000 MWh/yr.

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Erie Boulevard Hydropower, L.P.
Project No. 2539

SCHOOL STREET PROJECT
SETTLEMENT AGREEMENT

March 7, 2005

ORIGINAL

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Erie Boulevard Hydropower, L.P.
Project No. 2539**

**SCHOOL STREET PROJECT
SETTLEMENT AGREEMENT**

March 7, 2005

**SCHOOL STREET PROJECT
SETTLEMENT AGREEMENT**

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SECTION 1.0
INTRODUCTION

**SCHOOL STREET PROJECT
SETTLEMENT AGREEMENT**

1.0 INTRODUCTION

The Agreement and the Parties

This agreement (Settlement Agreement) dated as of March 7, 2005, is made and entered into by and among the following entities who shall, except as otherwise noted, be referred hereafter to as a Party and collectively as "Parties":

- Erie Boulevard Hydropower, L.P. (Erie or Licensee)
- New York Rivers United (NYRU)
- New York State Conservation Council (NYSCC)
- New York State Department of Environmental Conservation (NYDEC)
- Rensselaer County Conservation Alliance (RCCA)
- U.S. Department of the Interior (DOI): U.S. Fish and Wildlife Service (USFWS) and National Park Service (NPS)
- New York Power Authority

1.1 Effective Date and Term of the Settlement Agreement

This Settlement Agreement shall become effective when it has been executed by the above-referenced Parties and shall remain in effect, in accordance with its terms, throughout the term of the new license including any subsequent annual licenses.

1.2 Offer of Settlement

The Parties agree that within 30 days of the effective date of this Settlement Agreement, the Licensee shall file this Settlement Agreement with the Commission as an Offer of Settlement pursuant to 18 C.F.R. § 385.602.

1.3 Agreements to be Incorporated as License Conditions

The agreements in the Settlement Agreement are an integrated and indivisible set of measures intended to address non-power and power values relating to the licensing of the School Street Project. The Parties agree that each term of this Settlement Agreement is in consideration and support of every other term and that it is essential that the FERC incorporate as license conditions in the new license, the commitments that the Licensee has agreed to undertake in Section 3.0 of this Settlement Agreement. The term "license conditions" is intended to mean numbered articles of the license.

1.4 Purpose and Goal

The purpose and goal of the Settlement Agreement is to provide for the continued operation of the School Street Project with appropriate long-term environmental and recreational protection and mitigation measures that will meet diverse objectives for maintaining a balance of non-power and power values in the project area and vicinity.

The Parties, having given careful and equal consideration to non-power and power values, provide in the Settlement Agreement the terms and conditions for the resolution of operational, fisheries, wildlife, water quality, and recreational issues raised by and analyzed by the Parties as they are applicable to the issuance of a license and water-quality certification for the School Street Project.

1.5 Project Decommissioning

This Settlement Agreement does not include any provisions relating to decommissioning or dam removal of the School Street Project in whole or part, or to the issuance of a non-power license for the project. With or without amendment of this Settlement Agreement, any Party may seek such further relief from the FERC regarding such decommissioning as the FERC may order, recognizing that no Party to this Settlement Agreement has been or is currently, advocating decommissioning of any Project facilities at this time. If and when the subject Project is proposed for decommissioning or retirement during the term of any new license, the Parties will be entitled to take such positions on decommissioning issues at that time as they find appropriate.

1.6 Successors and Assigns

The Settlement Agreement shall be binding on the Parties and on their successors and assigns.

1.7 Parties to Support Regulatory Approvals

The Parties agree to support the issuance of a license and water quality certification that is consistent with the terms of this Settlement Agreement. This support shall include, within the budgetary and staff constraints of the Parties, reasonable efforts to expedite the National Environmental Policy Act (NEPA) process to be undertaken by the FERC, as well as any other regulatory approvals that may be needed to implement provisions of the Settlement Agreement. For those issues addressed herein, the Parties agree not to propose or otherwise communicate, or encourage others to propose or communicate, to the FERC or to any other federal or state resource agency with jurisdiction directly related to the relicensing process any comments, certification, or license conditions other than those consistent with the terms of this Settlement Agreement. For issues not addressed herein, the Parties remain free to advocate their positions in any forum, so long as such positions are consistent with the Settlement Agreement. Furthermore, this Settlement Agreement shall not be interpreted to restrict any Party's participation or comments in a future relicensing proceeding involving the School Street Project.

1.8 Agency Appropriations

Nothing in this Settlement Agreement shall be construed as obligating any federal, state, or local government to expend in any fiscal year any sum in excess of appropriations made by Congress, state or local legislatures or administratively allocated for the purpose of this Settlement Agreement for the fiscal year or to involve the DOI, FWS, or NPS in any contract or obligation for the future expenditure of money in excess of such appropriations or allocations.

1.9 Establishes No Precedents

The Parties have entered into the negotiations and discussions leading to this Settlement Agreement with the explicit understanding that all offers of settlement and the discussions relating thereto are privileged, shall not prejudice the position of any Party or entity that took part in such discussions and negotiations, and are not to be otherwise used in any manner in connection with these or any other proceedings. The Parties understand and agree that this Settlement Agreement establishes no principles or precedents with regard to any issue addressed herein or with regard to any Party's participation in future relicensing proceedings and that none of the Parties to this Settlement Agreement will cite this Agreement or its approval by the FERC or the DEC as establishing any principles or precedents except with respect to the matters to which the Parties have herein agreed.

1.10 Conventions and Definitions

The Parties agree that the following conventions and definitions should have the meanings so noted throughout this Settlement Agreement.

Bypass Flow: The amount of water, measured in cfs, to be released from the project dam into the reach of the Mohawk River bypassed by the project's power canal and powerhouse.

Impoundment Fluctuation: Defined within this agreement as a specific range of impoundment elevations associated with normal Project operation that is measured in the downward direction from a specific reference point such as permanent crest of dam.

Left/Right Bank: The left or right bank as seen looking downstream.

Licensee: Erie Boulevard Hydropower, L.P. (Erie), or its successor.

SECTION 2.0

GENERAL AGREEMENTS OF THE PARTIES

2.0 GENERAL AGREEMENTS OF THE PARTIES

2.1 Enforceability and Withdrawal Rights

The Parties agree that it is their intent, and this Settlement Agreement is based upon, and in consideration of their expectation that Sections 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, and 3.9 will be included in any license issued as numbered license articles and that the Commission will enforce these provisions. If, in making its licensing decision, the Commission determines that any of the sections identified herein are not within its jurisdiction to enforce, the Parties request that it expressly and clearly notify the Parties of this in the licensing order. If the Commission does not so expressly identify any of the provisions of the sections identified herein, then the Parties will, in reliance thereon, proceed as though each of the sections identified herein are enforceable by FERC.

If the FERC should, contrary to the integrated and indivisible nature of this Settlement Agreement described herein in Section 1.3, issue a new license that materially and significantly modifies any of the measures identified in Sections 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, and 3.9 and if the new license is not thereafter satisfactorily modified as a result of the filing of a request for rehearing as provided in Section 2.3, and if any Party thereafter determines that its interests will be materially and adversely affected by the change or the changes so made by the Commission, it may, after first providing written notice of its intention to do so to the other Parties together with a written explanation of its reasons for doing so, withdraw from this Settlement Agreement. Thereafter the Settlement Agreement shall have no force and effect and the Parties shall in any subsequent administrative and judicial proceedings take the position that the Settlement Agreement is not available to support the Commission's public interest determination, and that said determination is invalid to the extent it relies on the agreement of the parties.

2.2 Rehearings and Judicial Review

The Parties agree that none of them will file or support a request for rehearing of any new license unless: the license contains conditions that are materially inconsistent with the terms of

this Settlement Agreement; the license omits as license conditions terms of the Settlement Agreement that the Parties have agreed should be included as license conditions; the FERC determines that it will not enforce any of the provisions of the Settlement Agreement that the Parties have agreed should be included as conditions of the new license, as expressly identified in Section 2.1; or the request for rehearing concerns matters outside the scope of the Settlement Agreement. In the event that any Party decides to file a request for rehearing in accordance with the terms of this provision, it will provide written notice of its intention to do so to all the other Parties at the earliest practicable time and thereafter, if the request concerns matters within the scope of the Settlement Agreement, the other Parties will join in the rehearing request or file an appropriate and supportive rehearing request of their own. Thereafter, if any Party, following the issuance of a FERC Order on Rehearing, elects to file a petition for judicial review with respect to the matters covered by this provision, the other Parties will support such a petition to the extent reasonably possible. The Parties recognize that participation by the DOI in such judicial review is dependent on approval by the U.S. Department of Justice, and participation by State agencies is dependent on approval by the Attorney General of the State of New York.

2.3 Water Quality Certification – Withdrawal Rights

The Parties agree that they will support the issuance by the DEC of a Section 401 Water Quality Certification that is consistent with the provisions of this Settlement Agreement for the School Street Project. If the DEC should issue a Section 401 certification for the Project that is materially inconsistent with the provisions of this Settlement Agreement, any Party can withdraw from this Settlement Agreement by providing written notice of its intention to do so to the other Parties within 60 days from the date of the issuance of any such certification or, in the event any Party seeks judicial or agency review, 60 days from the date of the denial of such review. The DEC will distribute to the Parties copies of the Section 401 certification that is issued.

2.4 Reopeners

The Parties agree that, except as provided herein, this Settlement Agreement is not intended to limit or restrict the ability of any Party to petition the FERC pursuant to any reopener condition contained in the new license, including any exercise by the Secretary of the DOI

relating to the Secretary's fishway prescription authority under § 18 of the Federal Power Act. No such petition may be filed that would, if granted, be materially inconsistent with this Settlement Agreement, or cause other portions of the Settlement Agreement to be reopened, unless the Party that files the petition has substantial evidence that a material change in circumstances has occurred including any material change made by the Commission to the terms of this Settlement Agreement that provides good cause for the filing of the petition. Before any Party files such a petition with the FERC, it shall provide at least 60 days written notice of its intention to do so to all the other Parties and, promptly following the giving of notice, will consult with the other Parties regarding the need for and the purpose of the petition. In the event such a petition is filed, the filing Party shall include with its filing documentation of its consultation with the other Parties and a summary of their recommendations and of its response to those recommendations. The filing Party shall also serve a copy of its petition on all the other Parties, and will not oppose motions or notices of intervention filed by other Parties. Parties that refuse to support such a reopener petition shall explain their reasons in writing at the time they communicate their decision on the proposed reopener petition.

2.5 License Amendments

The Parties agree that, except as provided herein, nothing in this Settlement Agreement is intended to limit or restrict the ability of the Licensee to seek amendments of any new license. The Licensee may only seek a license amendment that would be materially inconsistent with the provisions of this Settlement Agreement if it has substantial evidence that a change in circumstances has occurred that provides good cause for the filing of the amendment and has provided the Parties at least 60 days written notice of its intention to do so and, promptly following the giving of notice, has consulted with the Parties regarding the need for and the purpose of the amendment. In no event, however, shall the Licensee seek such a license amendment prior to the tenth anniversary date of the new license unless it has first secured the consent of all the Parties that are federal or state resource agencies and the consent of a majority of the other Parties to the Settlement Agreement. Parties that refuse to support such a license amendment shall explain their reasons in writing at the time they communicate their decision on the proposed license amendment. For other license amendments that just relate to the license terms set forth in this Settlement Agreement, the Licensee shall provide all Parties at least 30

days notice of the proposed amendment and, if requested to do so by any Party, shall consult with the Parties regarding the amendment and defer the filing for another 30 days. In any application for an amendment that relates to any of the terms and conditions of this Settlement Agreement, the Licensee shall document its consultation, summarize the positions and recommendations of the Parties, and provide its responses to those positions and recommendations. The Licensee shall serve a copy of any application for amendment subject to this Section upon the Parties at the time of the filing. The Licensee will not oppose an intervention request filed in a timely manner by any Party in an amendment proceeding involving the license.

2.6 Settlement Agreement Amendments

The Parties agree that, except as provided herein, nothing in this Settlement Agreement is intended to limit or restrict the ability of any Party to seek an amendment to this Settlement Agreement during the effective period of the license with respect to matters not addressed in the license. Any Party proposing such an amendment to this Settlement Agreement shall provide all Parties with at least 60 days written notice of the proposed amendment. No amendment will be effective if any Party objects to the amendment. Any Party that abstains may not object to and will be bound by any amendment in which all other Parties concur. After such notice and consultation, if all Parties either concur with or do not object to the proposed amendment, the Party making the proposal shall secure signed agreements to the amendment from all Parties who concur with the proposal. The Licensee will file the amendment with the FERC for informational purposes, or the parties may file an application for license amendment or request for reopener if required to put the amendment to the Settlement Agreement into effect.

2.7 Filings Prior to Issuance of New License

Prior to the issuance of the new license pursuant to this Settlement Agreement neither the Licensee nor any Party shall make any filing with the FERC seeking a modification of Project works under license or of the operation of the Project unless such a modification involves an emergency or is not materially inconsistent with this Settlement Agreement and the Party who wishes to make the filing provides the other Parties at least 30 days notice of such a filing.

2.8 Compliance with the National Historic Preservation Act

The Licensee will develop a Historic Properties Management Plan (HPMP) in consultation with tribal interests and the New York State Office of Parks, Recreation, and Historic Preservation as also stipulated in Section 3.8.

2.9 Compliance with the Endangered Species Act

Consultation with the DEC and the FWS has established that, except for some transient individuals, there are no federally- or state-listed threatened or endangered species in the area of the School Street Project at this time. As of October, 2004, except for occasional transient individuals, no Federally listed or proposed endangered or threatened species under the FWS jurisdiction are known to exist in the project impact area. In addition, no habitat in the project impact area is currently designated or proposed "critical habitat" in accordance with provisions of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.). Therefore, no further Endangered Species Act coordination or consultation with the FWS is required. Should project plans change, or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered.

The above comments pertaining to endangered species under FWS jurisdiction are provided pursuant to the Endangered Species Act. This response does not preclude additional Service comments under other legislation.

2.10 Section 18 Procedure

Within 60 days of execution of the Settlement Agreement, the Department of the Interior will modify its Section 18 fishway prescription filed on February 20, 1997 by the issuance of a Notice of Modification of Section 18 Prescription of Fishways and compliance with the Mandatory Conditions Review Process, so that the modified prescription will be consistent with the terms of the Settlement Agreement, as specified in Sections 3.5, 3.6 and 3.7 and including its reservation of authority.

2.11 License Application Proposals Withdrawn

The parties agree that all license application proposals by Erie preceding this Settlement Offer are withdrawn and superceded by measures specified in this Settlement Agreement. Prior proposals which have been withdrawn and are not being replaced with measures intended to become part of a new license for the project include:

- Providing improvements to Overlook Park, including installing new signage and trash receptacles. This proposal is being withdrawn from the license measures but is being accomplished through non-license provisions.
- Providing an overlook picnic area/fishing access along the south shore of the impoundment.

SECTION 3.0

**MEASURES THAT THE LICENSEE WILL UNDERTAKE
WITH RESPECT TO LICENSE CONDITIONS**

3.0 MEASURES THAT THE LICENSEE WILL UNDERTAKE WITH RESPECT TO LICENSE CONDITIONS

The series of measures described in this Section are also shown in Table 3.0.A which shows the general timeframes for their implementation as Phase I (within 18 months of license issuance) and Phase II (within five years of license issuance) activities, subject to the variability of river flow. Figure 1 showing the sequence of activities to implement settlement measures can be found in Attachment A. Statements of Justification for the measures agreed to in this section are contained in Attachment B.

Table 3.0.A: Implementation Schedule for Settlement Measures

Section	Measure	Implementation Timeframe
Phase I Measures		
3.1	Run-of-river Operation	Within 18 months of license ¹
3.2	Interim Aquatic Habitat Flows Released to Bypassed Reach Permanent Aquatic Habitat Flows Released to Bypassed Reach Bypass Channel Modifications	Upon license issuance Within 18 months of license Within 18 months of license
3.3	Initiate Aesthetic Flows	Upon license issuance
3.4	Prepare Flow and Water Level Monitoring Plan Initiate Flow and Water Level Monitoring	Within six months of license Within 18 months of license
3.5	Phase I Downstream Fish Protection and Passage	Within 18 months of license
3.7	Initiate Fishway Effectiveness Testing	Within 18 months of license or upon operation of fishway
3.8	File Historic Properties Management Plan (HPMP)	Within 6 months of license
3.9	Prepare Project Recreation Plan Construct Recreation Enhancements	Within 6 months of license Within 18 months of license
Phase II Measures		
3.6	Phase II Installation of Fish Friendly turbine	Within 5 years of license

¹ The reference is to the date upon which a new license is issued.

3.1 Run-of-River Operations

Within 18 months of new license issuance, the Licensee shall operate the project in a run-of-river (ROR) mode whereby total inflow to the impoundment is equal to the sum of all flows passing into the bypassed portion of the Mohawk River, through the project powerhouse(s), through fish conveyance structures, and any consumptive water withdrawals.

For the purpose of this Settlement and for the term of the new license, the following shall serve as the criterion for, and evidence of, operating in this mode. The Licensee shall limit impoundment fluctuations as part of run-of-river operations to 0.5 feet below the permanent dam crest elevation of 156.1 feet USGS. For FERC compliance purposes, only events where the impoundment falls 1.0 feet below crest for a duration of 30 minutes or longer will be reported to FERC by the Licensee. However, the NYSDEC and USFWS will be notified whenever the 0.5 foot limit is exceeded for a duration of 30 minutes or longer and what factors were involved.

Impoundment fluctuation limitations may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, including security, and for short periods upon prior mutual agreement between the Licensee and the NYSDEC and USFWS. If an emergency situation or other condition exists where prior notification is not possible, the NYSDEC and USFWS will be notified as soon as possible thereafter. If the limitations are curtailed or suspended, the Licensee shall notify the FERC as soon as possible, but no later than ten (10) business days after each such incident.

Between license issuance and completion of Phase I construction activities at the project, the Licensee will make every reasonable effort to maintain run-of-river operation, within the constraints of river flow and the mechanical limitations on providing flows.

3.2 Aquatic Habitat Flows to be Released to Bypassed Reach

3.2.1 Interim Flows

Upon new license issuance an interim flow of 90 cfs shall be released into the bypassed reach from a canal gate near the upper gatehouse at south (right) end of dam. Interim flows may be interrupted and/or altered, or temporary flow release mechanism may be required during channel modification work in the bypassed reach. These measures shall be coordinated with NYSDEC and USFWS.

3.2.2 Permanent Flows

Within 18 months of new license issuance, the Licensee shall begin to release the aquatic habitat flow to the bypassed reach of the Mohawk River located immediately downstream of the project dam and ending at the tailrace as shown in Table 3.2.A

Table 3.2.A. Aquatic Habitat Flows to be Released to the Bypass Reach within Eighteen Months of License Issuance

Time Period	Release Location		Total (cfs)
	Release at North/Left End of Dam (cfs)	Release at South/Right End of Dam (cfs)	
December 1 to March 31	30	90	120
April 1 to April 14	45	90	135
April 15 To November 30	45	200	245

The flow capacities of the bypass flow release structures shall be calculated based on a headpond elevation of 0.5 ft below dam crest.

That portion of flows released to the bypass at the north (left) end of the project dam shall be discharged from a structure designed, operated and maintained to provide the flows defined in the table above.

That portion of flows released to the bypass at the south (right) end of the project dam shall be discharged from a canal gate near the upper gatehouse and through a structure designed, operated and maintained to provide flows defined in the table above.

Both interim and permanent aquatic habitat flows released to the bypass may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, including for security and public safety concerns, and for short periods upon prior mutual agreement between the Licensee, NYSDEC, and USFWS. If an emergency situation or other condition exists where prior notification is not possible, the NYSDEC and USFWS will notified as soon as possible thereafter. If the flows are so modified, the Licensee shall notify the FERC as soon as possible, but no later than ten (10) business days after each such incident.

3.2.3 Channel Modifications

Within 18 months of new license issuance, river conditions permitting, the Licensee shall undertake modifications to the river's bottom in the bypass reach in order to optimize the distribution of the permanent aquatic habitat flows into the existing channel downstream of the dam. Such modifications will be made in proximity to the dam. No streambed modifications are to be made at or near Cohoes Falls in order to maintain its visual integrity. The attached Figure 2 in Attachment A shows a conceptual location of proposed channel modifications.

3.3 Aesthetic Flows

Upon new license issuance, the Licensee shall release a total of at least 500 cfs into the bypass reach to provide aesthetic flows over Cohoes Falls during daylight hours on weekends and Federal holidays from May 15 to October 31. The schedule for aesthetic flows may be altered during the 18 months following license issuance while channel modifications are being constructed (see Section 3.2.1).

Aesthetic flows released to the bypass may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, including for security and public safety concerns, and for short periods upon prior mutual agreement between the Licensee, and NYSDEC. If an emergency or other condition exists where prior notification is not possible, the NYSDEC and USFWS will be notified as soon as possible thereafter. If the flows are so modified, the Licensee shall notify the FERC as soon as possible, but no later than ten (10) business days after each such incident.

3.4 Flow and Water Level Monitoring

Within six months of license issuance, the Licensee shall submit a Stream Flow and Water Level Monitoring Plan (plan) to FERC for approval. This plan shall be developed in consultation with the settlement signatories. All release structures, channel modifications, gages and ancillary equipment required by the plan shall be made operational and fully calibrated, as appropriate, within 18 months of license issuance. The plan shall include:

- A description of gages, equipment or calculations to monitor headpond elevations;
- Description of structures and mechanisms to provide all aquatic habitat and aesthetic flows;
- Description of gages, equipment or calculations to monitor or determine the quantity of flows passing into the bypassed portion of the Mohawk River, through the project powerhouse(s), through fish conveyance structures, and any consumptive water withdrawals;
- Provisions for an appropriate means of access to, and independent verification of, headpond level gages by the NYSDEC, USFWS, or their authorized representatives;
- Provisions for the installation of binary staff gages at appropriate locations visible to the general public to permit independent verification of headpond water levels; and

- Plan and schedule for designing, constructing, operating and maintaining all water release structures and streambed modifications to provide flow releases to the bypassed reach.

The Licensee shall keep accurate and sufficient records of the impoundment elevations and all Project flows to the satisfaction of the NYSDEC and shall provide such data in a format and at intervals as required by the NYSDEC. The NYSDEC will provide the Licensee with a contact person to receive such information. All such records will be made available for inspection at the Licensee's principal business office within New York State within five business days or will be provided in written form within 30 days of the Licensee's receipt of a written request for such records by the NYSDEC. Furthermore, the Licensee will provide to the NYSDEC and USFWS a seven-day-per-week contact person to provide immediate verification of monitored flows and responses to questions about abnormal or emergency conditions.

3.5 Phase I Fish Protection and Downstream Passage

Within 18 months of the issuance of a new license, the Licensee shall complete the downstream fish protection devices and institute the passage measures described below. The Licensee shall maintain and operate them thereafter during the term of the license. The attached Figure 3 in Attachment A shows the conceptual layout of fish protection and downstream passage measures discussed below and in Section 3.7.

(A) Screening of the bypass flow release mechanism in the project canal (right end of dam). The aquatic habitat and aesthetic flow release structure near the upper gatehouse will be screened to exclude fish. This screening structure may be removed from the water release structure from November 30 to April 15 in order to reduce potential ice damage. The north (left) release structure does not need to be screened or designed to prevent fish from entering the structure.

(B) Angled Bar Rack. In order to reduce turbine entrainment while guiding fish to a downstream bypass (see (C) below), new angled bar-racks will be installed upstream of the existing lower gatehouse as follows:

1. Racks shall have no more than four-inch clear spacing between bars.
2. Rack overlays with clear spacing of no greater than one inch shall be in place from April 15 to November 30 annually.
3. The rack structure shall be as close to 45 degrees from the upstream face of the existing lower gatehouse (and approaching flow) as practicable.
4. Approach velocities, as measured 1 foot upstream of, and normal to, the bar rack, shall not exceed two feet per second.
5. To provide for the passage of American eel, the lower portion of the rack shall be solid or have a solid overlay plate which is equal to 10 % of the rack's total depth below waterline or two feet, whichever is greater. This plate may be seasonally applied from August 1 through November 30. Alternatively, a permanent eel barrier, such as a step or footer on the bottom of the canal could serve in lieu of overlay plates.

(C) Fish Conveyance Structure. In order to safely convey fish from the forebay, around the existing powerhouse and turbines, and back into the Mohawk River downstream of the project, the licensee shall install fish passage pipe(s) and/or flumes near the right end of the new angled bar rack subject to the following conditions:

1. The fish passage device shall have two intake portals. The first shall be located as close to the downstream (right) end of the Phase I angled bar rack as practicable. The second shall be located to the right of the existing ice sluice, or otherwise as determined in the final plans approved by USFWS, NYSDEC and FERC.
2. The fish passage intake shall be a multi-level device with at least a top and bottom entrance.
3. Attraction flow to the fishway entrance(s) shall be two to five percent of the total plant hydraulic capacity of up to 8,200 cfs. The optimum attraction flow will be determined during pre-construction designs and post-construction monitoring of the effectiveness of the fishway.
4. The portion of the attraction flow that is not needed for fish conveyance may be cycled back into the project forebay or into a penstock.

5. The project turbines shall be sequentially operated in order to increase fish attraction to the downstream fish conveyance facility. Specifically, the available turbine nearest to the fish conveyance structure should be brought on line first, and the operator will proceed to bring adjacent available units on line (from right to left when looking downstream). Turbines shall be taken off line in reverse sequence.
6. If a pipe or other closed conduit is utilized as the fish conveyance structure, its downstream end shall discharge horizontally and not be submerged during high flow conditions.
7. If a pipe or other closed conduit is utilized as the fish conveyance structure, the pool at the discharge end of this conveyance should be a minimum of 20 feet deep. A series of several plunge pools of lesser depths may be considered as an acceptable alternative.
8. The licensee shall operate the fish passage conveyance and provide attraction flow from April 15 through November 30.

No later than one year after license issuance, the Licensee shall file with FERC a final fish passage plan and schedule, including functional design drawings, for implementing paragraphs (A) through (C) above. This plan may include the use of computational fluid dynamic models for the forebay, project intakes and fish passage facilities. This plan will be developed in consultation with settlement signatories. The fish passage plan and schedule must be approved by the USFWS and NOAA Fisheries. Final design drawings will be submitted to USFWS and NOAA Fisheries for approval prior to filing the contract drawings and specifications with FERC for approval.

3.6 Phase II "Fish Friendly" Turbine Installation

Within five years of the issuance of a new license, the Licensee may install and begin operation of a new sixth turbine/generator unit at the School Street Project. The proposed new unit would utilize a "next generation" "fish-friendly" turbine following the design concepts of Alden Research Laboratory, Inc. and Concepts NREC and be located in a new powerhouse or powerhouse addition adjacent to the south (downstream) end of the existing powerhouse. A new

intake and penstock would be constructed in the vicinity of the existing south ice chute. A new ice chute would be built at the south end of the forebay. See Figure 3 in Attachment A for a conceptual layout of the “fish friendly” turbine location.

The new unit’s intake shall be equipped for the installation of an angled bar-rack and overlay system, comparable to that specified in Section 3.5(B) above. This new unit shall not operate within the fish passage season (April 15 through November 30) until the initial testing of the Phase I fishway is completed (see Section 3.7). After the new unit is in operation, upon completion of the Phase I fishway testing, the new unit will be tested for fish passage effectiveness, as outlined in section 3.7 below. The new unit’s overall rate of fish attraction and survival will then be compared to that of the Phase I fishway. If passage effectiveness via the new unit, as determined by USFWS, NYSDEC in consultation with Licensee (see Section 3.7) proves to be equal to or greater than that of the Phase I fishway, the Licensee will be permitted to operate the new unit as its primary means of fish passage. If the new unit proves to be less effective at safely passing fish than the Phase I fishway, the Licensee shall install racks and seasonal overlays across the new unit’s intake and shall operate the Phase I fishway as the primary means of fish passage. Even if the new unit becomes the primary means of fish passage, the Phase I fishway shall be maintained, and operated for fish passage during any planned outages of the new unit during fish passage season.

3.7 Fishway Effectiveness Testing

No later than one year after license issuance, the Licensee shall submit to FERC a plan and schedule for evaluating the effectiveness of the Phase I downstream fish passage facilities described in Section 3.5, above. The plan for effectiveness study of these downstream fish passage facilities must be developed in consultation with all settlement signatories, and approved by the USFWS, NOAA Fisheries and the NYSDEC prior to filing with FERC.

Before submitting final construction plans and requesting permission from FERC to begin construction of the new Phase II unit, the licensee shall consult with USFWS and NYSDEC to develop a plan and schedule for monitoring and evaluating effectiveness of fish passage via the new Phase II turbine described in Section 3.6, above. The fish passage

effectiveness plan and schedule must be approved by the USFWS, NOAA Fisheries, and the NYSDEC and shall be filed with FERC with the final construction plans and request for permission to begin construction of the new unit.

These plans shall include:

- A method of evaluating the guidance and attraction of fish after they have entered the head of the canal during power plant operations.
- Specific measures, methods, and schedules to evaluate fish passage efficiency and fishway survival/mortalities for passage through both the fishway bypass and the fish friendly turbine as appropriate.
- Methods that will allow a rigorous statistical comparison of the results between the Phase I fish bypass structure and the Phase II new “fish friendly” turbine.

3.8 Cultural Resource Measures

On July 19, 1996, FERC, the Advisory Council for Historic Preservation (ACHP), and the New York State Historic Preservation Officer (SHPO) executed a comprehensive Programmatic Agreement (PA) for a number of hydroelectric projects, including School Street. The Licensee concurred in the PA. On April 11, 1997, the Licensee submitted a project-specific Appendix A for the School Street Project. Attachment C to this Settlement Agreement contains a proposed Revised Appendix A to replace the 1997 document with one that reflects changes in regulations and in the proposed plans for project enhancements. The License shall implement the revised Programmatic Agreement.

Within six months of license issuance, the Licensee shall develop a Historic Properties Management Plan (HPMP) in consultation with the National Park Service, the New York Office of Parks, Recreation and Historic Preservation and American Indian Nations.² The HPMP will consider the following matters:

² This includes the Mohawk Nations, namely the St. Regis Band of Mohawk Indians, the Mohawk Nation Council of Chiefs and the Mohawk Council of Ahkwesahsne, and the Stockbridge Munsee Mohicans, among others.

1. **Ensuring continued access to Licensee lands in the project vicinity by members of the Haudenosaunee (Iroquois) Confederacy for ceremonial purposes, including commemoration of the Peacemaker's journey and related events at Cohoes Falls.**
2. **Special consideration will be given to the placement of low-level diversion structures and minor channel modifications specified in Section 3.2.3 because Cohoes Falls is considered to be a sacred site by native peoples of the Haudenosaunee (Iroquois) Confederacy. These will only be used in the immediate vicinity of the dam, well upstream of Cohoes Falls, and beyond the view-shed of the lands used by members of the Confederacy for ceremonial purposes.**
3. **The preservation and rehabilitation of the Cohoes Company Dam, Upper Gatehouse, Canal, and Conboy Avenue iron bridge, which are listed as contributing elements to the Harmony Mills National Historic Landmark (NHL) District, and preservation of the National Register listed School Street powerhouse through continued use.**
4. **Protection of the two National Register eligible sites on the island between the power canal and river (Younglove Mill Site and I.D.F. Lansing House Site), which were identified during Phase I archaeological reconnaissance studies undertaken by the Licensee in 2003.**
5. **Any new project construction, including the rack structure and raking device, fish passage intake(s) and conduit(s), new powerhouse, and related penstock and intake structure, should be designed to be unobtrusive within the Harmony Mills NHL District.**
6. **Procedures and protocols for consultation, monitoring, and treatment of any previously unidentified historic properties discovered during Project operation and construction.**

3.9 Recreational Enhancement Measures

- (A) Within six months of license issuance, the Licensee shall submit a Recreation Plan to FERC for approval. The plan will be developed in consultation with settlement signatories and shall include provisions for the following recreational enhancements.
- (B) Within 18 months of license issuance, the licensee shall develop recreational access and facilities at the project as listed below and shown in the attached Figure 4 in Attachment A. These will be “carry-in/carry-out” facilities and trash receptacles will not be provided.
1. Construct a new pedestrian footbridge across the power canal upstream of the powerhouse. The new bridge will be designed to minimize visual intrusion into the Harmony Mills NHL District. Final configuration and location are dependent on completion of additional engineering studies.
 2. Construct an ADA compliant vehicular drop off area along North Mohawk Street near the new bridge.
 3. Install a public, ADA compliant Cohoes Falls viewing area on the island formed between the power canal and the river, near the terminus of the new footbridge to the island. This viewing area (as well as the new pedestrian footbridge) will be closed during winter months.
 4. Construct a footpath to the base of the falls, and a second viewing area and fishing access near the base of the falls.
 5. Provide a separate footpath to fishing access near the project tailrace.
 6. Develop a trail system on the island, beginning at the terminus of the new footbridge, to facilitate daytime recreational use such as bird watching,

sightseeing, and fishing above the falls. The design of the trail system will take into account public safety, site security concerns, and protection of archaeological properties. This trail system, which connects items 4, 5 and 6, will be open to the public during daylight hours from May 1 through November 1 annually.

(C) Based on consultation with the City of Cohoes, Hudson-Mohawk State Heritage Area (RiverSpark), and Erie Canalway National Heritage Corridor, the Licensee shall fabricate, install, and maintain signs and exhibits on project lands and in the vicinity that deal with:

1. The geology of Cohoes Falls
2. Their role as a scenic attraction
3. Navigation around the falls
4. Waterpower and industrial development by the Cohoes Company and Harmony Mills
5. Hydroelectricity

SECTION 4.0

ADDITIONAL MEASURES NOT TO BE INCLUDED IN LICENSE

4.0 ADDITIONAL MEASURES NOT TO BE INCLUDED IN LICENSE

The signatories to this Settlement Agreement have agreed to the following measures. However, these are not intended to be included in the FERC license for the School Street Project.

- 4.1 Within six months of license issuance, the Licensee will provide a single lump sum amount of \$35,000 to the City of Cohoes to be used in conjunction with any enhancements to Overlook Park, or for other projects to develop other recreational enhancements in areas along the Lower Mohawk River near the School Street Project.
- 4.2 Within five years of license issuance, the Licensee will convey its real property interest in Overlook Park to the City of Cohoes.
- 4.3 Within five years of license issuance, the Licensee will make enhancements to provide public parking along the section of School Street adjacent to the Licensee's lands adjacent to its Project penstock intake structure. The Licensee will remove the existing metal storage shed adjacent to the powerhouse on School Street and landscape the parking lot. Upon completion of these enhancements, the Licensee will convey its land utilized for the additional parking to the City of Cohoes. The City of Cohoes will thereafter own and maintain this added parking facility and will be responsible for enforcing any appropriate parking rules.
- 4.4 NYRU and other NGO signatories to the agreement will be included as consulted parties in the review of implementation of the settlement agreement. For this purpose, Erie will provide NYRU and other NGO signatories with copies of the same draft documents provided to agencies for review and comment before Erie finalizes the documents for filing with the FERC. In such filings with FERC, Erie will explain how it has addressed the comment of all reviewers of the draft documents. Erie will also grant permission to NGO signatories, upon execution of a confidentiality agreement by those signatories, to review any documents to be filed with FERC that may thereafter be protected as Critical Energy Infrastructure Information (CEII). Erie makes no representations that NGOs' comments will be accommodated. Any review and comment opportunity provided by

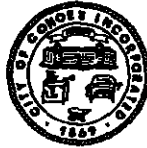
Erie to NGOs under this provision is not to be confused with or in conflict with the consultation required of Erie with USFWS or NYSDEC under the Federal Power Act.

- 4.5 Within 60 days of license issuance, Erie will provide an initial funding of \$10,000 to NYRU for purposes of facilitating NYRU and other NGO signatories' participation in the review of documents as identified above in Section 4.4. This funding does not discharge any regulatory obligation by Erie to any regulatory agency. NYRU will be solely responsible for administering the fund and including other NGO signatories in a fair process for reviewing the documents. NYRU will provide Erie with annual reports, upon the anniversary of the fund being established, to account for the distribution of funds during the previous year. If and when the initial \$10,000 fund has been exhausted, NYRU may apply to Erie for up to an additional \$10,000 in funding. The total amount of funds from Erie will not exceed \$20,000. Any additional funding by Erie will be based on (A) demonstrated need for the purposes stated above and (B) proper accounting for prior expenditure of such funds. NYRU will repay Erie any unutilized funds so provided within one year of the completion of all facilities and measures specified in Section 4.4.

SECTION 5.0

SIGNATURE PAGES

CITY OF COHOES



OFFICE OF THE MAYOR

JOHN T. McDONALD III
MAYOR

Ph.: 518-233-2119
Fax: 518-233-2159

January 24, 2005

97 Mohawk Street
Cohoes, New York 12047

Mr. Jerry Sabattis
Brascan Power New York
225 Greenfield Parkway, Suite 201
Liverpool, NY 13088

RE: School Street Hydroelectric Project, FERC No. 2539
Settlement Agreement Support Letter

Dear Mr. Sabattis:

Thank you for the opportunity to execute the Settlement Agreement for the re-licensure of the School Street Project on behalf of the City of Cohoes. As you know, I have participated in recent meetings representing the interests of the City and have worked with other participants in settlement negotiations to develop a comprehensive set of measures. Upon re-licensure of the project, there will be many benefits provided to the City of Cohoes and the region due to enhanced tourism opportunities as well as recreational enhancements. All provisions are culturally sensitive and in my eyes truly showcase the importance of this area in the history of our region.

Specifically, I believe that the settlement agreement provides the City of Cohoes and the surrounding region with important opportunities to enhance the access to the project area for recreation and a renewed appreciation of Cohoes Falls, while maintaining the hydroelectric generating capacity of this historic facility. This area, which is part of the Harmony Mills National Landmark District, is rich in resources and I am pleased to see these enhancements, which have also been warmly received by other participants of the settlement agreement, are being brought forward during this important re-licensure effort.

As you also know, formal approval of the Settlement Agreement on behalf of the City of Cohoes rests with a decision of the City's Common Council. I have met with the council and have asked for their consideration of this important proposal, which as mentioned above contains key elements that I support. The council is currently reviewing the proposal and I am working to assist for a speedy and expedient approval from the council for authorization to sign this agreement.

Sincerely,


John T. McDonald III
Mayor

**SCHOOL STREET PROJECT
SETTLEMENT AGREEMENT**

Organization: Erie Boulevard Hydropower, L.P.

By: David J. Youlen
Mr. David J. Youlen


Title: Vice President New York Operations

Date: 1/14/05

**SCHOOL STREET PROJECT
SETTLEMENT AGREEMENT**

Organization: New York Rivers United

By:



Mr. Bruce R. Carpenter

Title: Executive Director

Date:

2/23/05

**SCHOOL STREET PROJECT
SETTLEMENT AGREEMENT**

Organization: New York State Conservation Council

By: Howard Cushing Jr.
Mr. Howard O. Cushing, Jr.

Title: President

Date: 1/15/05

**SCHOOL STREET PROJECT
SETTLEMENT AGREEMENT**

Organization: New York State Department of Environmental Conservation

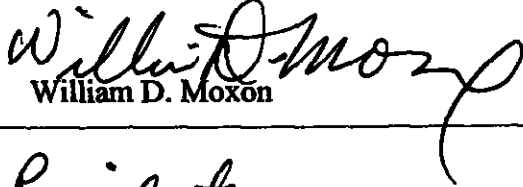
By: *Lynette Stark*
Ms. Lynette Stark

Title: Deputy Commissioner

Date: 3/3/05

**SCHOOL STREET PROJECT
SETTLEMENT AGREEMENT**

Organization: Rensselaer County Conservation Alliance

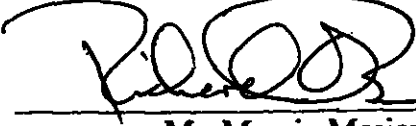
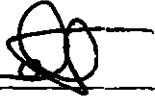
By: 
William D. Moxon

Title: *President*

Date: *01-11-05*

**SCHOOL STREET PROJECT
SETTLEMENT AGREEMENT**

Organization: U.S. Department of the Interior
U.S. Fish and Wildlife Service and National Park Service

By:  **ACTING** 

Mr. Marvin Moriarty

Title: Regional Director

Date: 2-8-05

**SCHOOL STREET PROJECT
SETTLEMENT AGREEMENT**

Organization: U.S. Department of the Interior
National Park Service

By:



for Marie Rust

Title: Director, Northeast Region

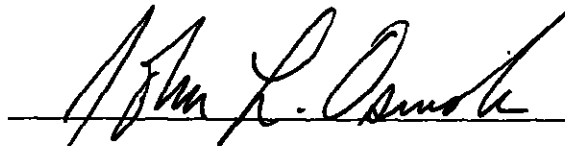
Date:

1/14/2005

**SCHOOL STREET PROJECT
SETTLEMENT AGREEMENT**

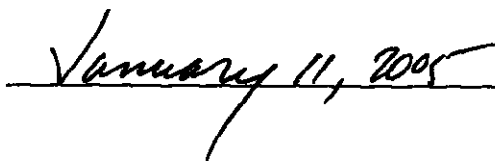
Organization: New York Power Authority

By:



Title: Executive Director, Regulatory Affairs

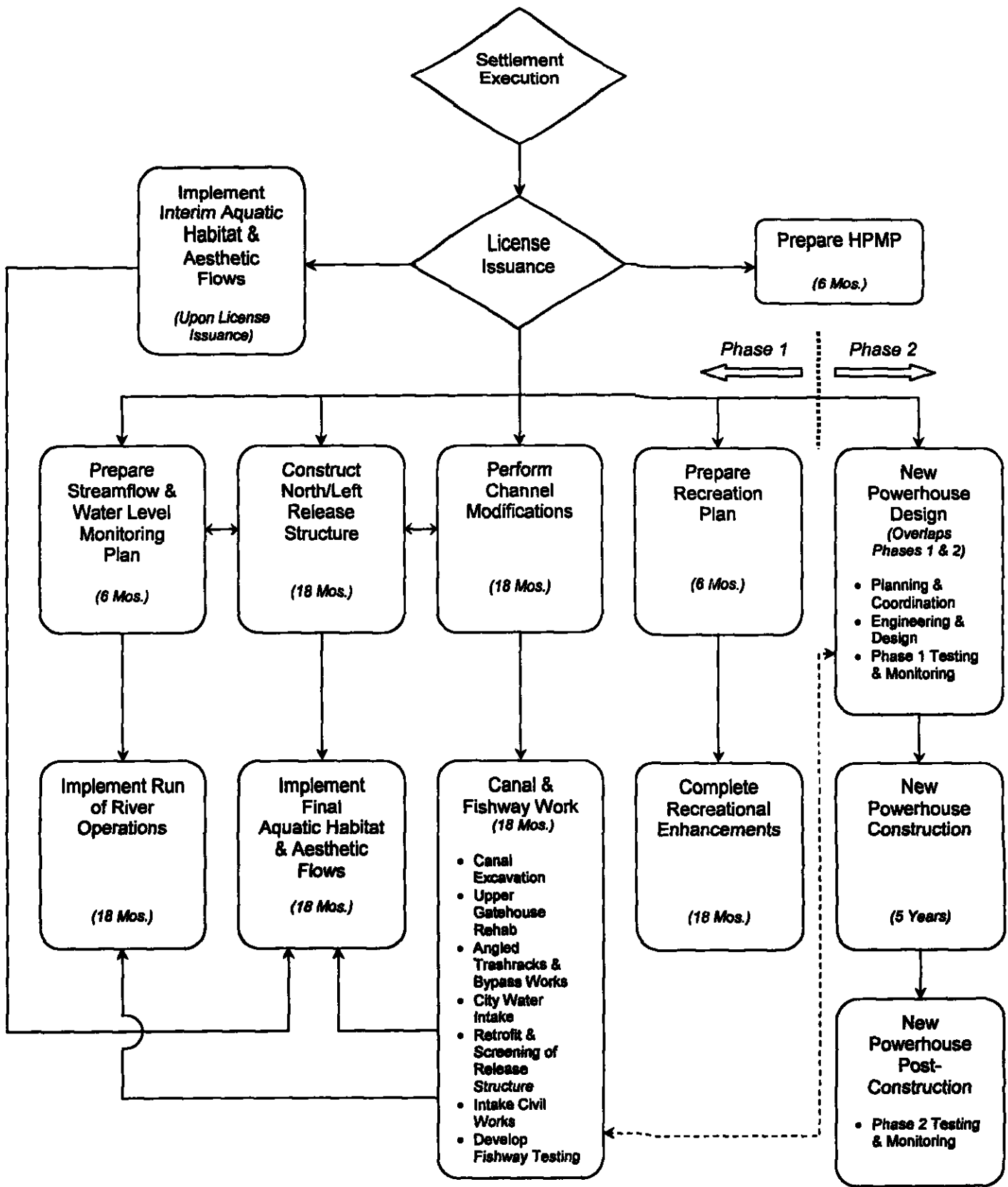
Date:



ATTACHMENT A

FIGURES 1-4

Figure 1
School Street Hydroelectric Project - FERC No. 2539
Schematic Overview and Sequencing of Major Settlement Activities



Low-profile control structure (berm) and channel modification (cut), as needed to distribute aquatic habitat flow releases between channels to increase wetted area for enhancement of fish and wildlife habitat and aquatic and aesthetic resources.

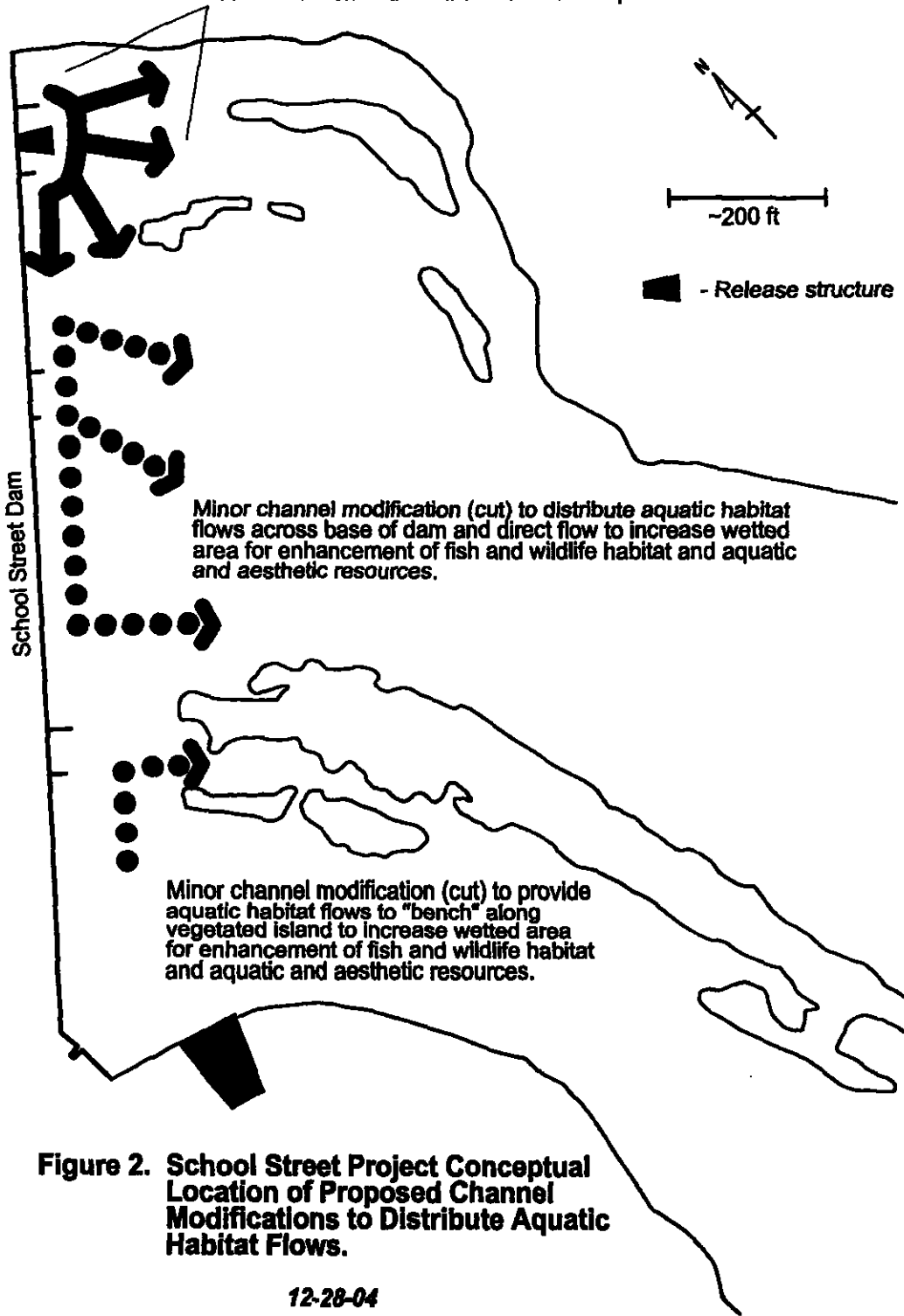


Figure 2. School Street Project Conceptual Location of Proposed Channel Modifications to Distribute Aquatic Habitat Flows.

12-28-04

LARGE-FORMAT IMAGES

One or more large-format images (over 8½" X 11") go here. These images are available in E-Library at:

For Large-Format(s):

Accession No.: 20050314-0151

Security/Availability:

- PUBLIC
- NIP
- CEII
- NON-PUBLIC/PRIVILEGED

File Date: 3-09-05 Docket No.: P-2539

Parent Accession No.: 20050314-0150

Set No.: 1 of 1

Number of page(s) in set: 2

ATTACHMENT B
JUSTIFICATION STATEMENTS

ATTACHMENT B

Justification Statements for Settlement Articles

Because a number of the measures agreed to in this Settlement Agreement are designed to protect or enhance environmental resources based on the judgment and consensus of the settlement signatories, with due regard for the public record developed to date and alternatives identified in FERC's Final Environmental Assessment (FEA, dated September 28, 2001), a brief Justification Statement has been prepared to explain the choice of the settlement terms wherever applicable. Measures included in this settlement are consistent with or improve upon the staff recommendations of the FEA. The numbering and titles used below correspond to the respective sections of the Settlement Agreement.

3.1 Run-of-River Operations

The Parties' agreement to operate the School Street Project in a run-of-river mode reduces the normal daily impoundment fluctuation associated with normal project operation. Review of historical USGS stream flow data indicates that Mohawk River flow periodically exceeds the proposed total hydraulic capacity of the project's turbines, fishway attraction and passage flow, aquatic habitat and aesthetic flows in the bypass reach, and consumptive water uses in the vicinity of the project. As such, normal daily impoundment fluctuations due to hydropower operations are limited to those periods when river flow is less than the hydraulic capacity (including fishway, aquatic habitat, and aesthetic flows and consumptive water use).

The normal daily impoundment fluctuation coalesced with the run-of-river operation agreed upon for the School Street Project allows for a subtle buffer needed to approximate outflow in response to the dynamics of river inflow. This is intended to create a smoothing effect to the flow regime while at the same time decreasing the area negatively impacted by the impoundment fluctuations. Thus this operating regime will enhance the existing shallow water littoral zone and adjacent wetland and riparian habitat by decreasing the amount of impacted area. The run-of-river operation will reduce the size of the fluctuation zone, potentially resulting in improved primary productivity in the impounded area. This improvement in primary

productivity should result in improved benthic invertebrate production and improvements to fish diet, growth, and reproduction.

Signatories recognize that factors external to the School Street Project and its operation can cause rapid variations of inflow, which could make it challenging to precisely maintain the 0.5 foot allowable fluctuation. In most instances such occurrences are expected to be short-lived, but could potentially result in minor deviations to the -0.5 feet limit. In an effort to differentiate such short minor deviations from larger deviations, signatories agreed to a tiered reporting and compliance approach whereby the NYSDEC and USFWS are notified of minor fluctuations between 0.5 and 1.0 feet and lasting for at least 30 minutes. However, signatories concurred that fluctuations greater than 1.0 foot would be indicative of a larger external factor or a compliance issue related to the School Street Project, and that such occurrences would rise to a level of importance where FERC notification would then be appropriate. Therefore signatories agreed that FERC, the NYSDEC and USFWS should be notified when impoundment fluctuations are greater than 1.0 foot for more than 30 minutes.

3.2 Aquatic Habitat Flows to be Released to Bypassed Reach

The Parties have agreed upon the environmental flows to be released to the bypassed reach at the School Street Project as described in Table 3.2A with the understanding that these flows will satisfactorily support agency resource management goals when coupled with the additions of low-level diversion structures and minor channel modifications in the immediate vicinity of the dam

The Parties have carefully reviewed alternative flows to the bypass reach of the Mohawk River at the School Street Project. This review has included analysis of previous studies, detailed topographic mapping of the bypass reach, drawings, and aerial photography. This analysis also included direct field observations of a wide range of flows during flow demonstrations collaboratively conducted by the Licensee, NYSDEC and USFWS. Collectively, these additional study efforts resulted in agreement on the seasonal aquatic habitat flows indicated in Table 3.2A and that the habitat gains from these flows could be further optimized with the channel modifications proposed in this settlement agreement. It was agreed that these

flows would support resource agency management goals for the affected riverine stretch of the Mohawk River.

The quantity and schedule of aquatic habitat flows agreed upon by the Parties increases the wetted area in the bypass reach, provides for fish, wildlife and wetland resources and their dependent habitats within this portion of the Mohawk River. These flows will improve water quality and meet or exceed applicable state water quality standards by providing more stable water temperature and increased dissolved oxygen in the reach. The flows and associated channel modifications will provide aquatic habitat for many species and life stages of forage fish, panfish, game fish and benthic invertebrates which are an important source of forage for many aquatic species. These flows will benefit wildlife (such as, raccoon, mink, waterfowl, and wading birds) and associated riparian vegetation.

In addition to the biological enhancements discussed above the environmental flow releases will enhance recreational opportunities including, angling, bird watching, and aesthetics, throughout the bypass reach. In particular, this benefit includes a year round enhancement to the aesthetic resources in the vicinity of Cohoes Falls.

Habitat flows released near the south (right) end of the project dam are expected to be released from a location within the project canal near the upper gatehouse. Since waters released from this location could attract downstream moving fish, the release structure needs to be screened to preclude fish from being discharged into the bypassed river reach and over Cohoes Falls. In consideration of winter icing conditions, this screening/guidance structure may be removed from the water release structure from November 30 to April 15.

Due to the lower volume of flow released at the north (left) end of the dam (when compared to the volume of flow passing through the project's intake canal) and its distance from the dominant flow field, the north (left) release structure/mechanism does not need to be screened to prevent fish from entering this minimum flow release.

3.3 Aesthetic Flows

Regular scheduled releases of at least 500 CFS over Cohoes Falls will provide numerous predictable and pleasurable opportunities for residents and visitors to view the falls. FERC staff analysis in the FEA indicated that 500 CFS provided “a noticeable increase in wetted area of the rock face of the falls, increased whitewater spray, and increased contrast, form, line, and texture adding to the overall visual complexity of the falls viewing area.” Because of the high scenic value of Cohoes Falls, FERC’s FEA carefully analyzed the potential benefits of the timing of aesthetic flows over the falls, concluding that “viewing Cohoes Falls is a seasonal and sporadic pursuit by visitors and any required flow schedule should be flexible and should target the times when people are viewing the falls” (FEA at p. 57). After considering public comments, FERC’s FEA recommended a schedule for aesthetic flow releases. The terms of this settlement match the schedule recommended in the FEA, except that the settlement extends the aesthetic flows through the end of October (rather than until October 15) . In addition, the project’s proposed hydraulic capacity will allow ample occurrences of, and opportunities to view, spectacular natural spillage events in addition to the scheduled releases.

3.4 Flow and Water Level Monitoring

Flow and water level monitoring is necessary to ensure effective implementation and compliance with run-of-river measures (Section 3.1), aquatic habitat flows (Section 3.2) and aesthetic flows (Section 3.3).

3.5 Phase I Fish Protection and Downstream Passage

The Phase I fish protection and passage measures described in Section 3.5 will provide riverine and migratory species with a safer and more effective route to move downstream than currently available. These protection measures will both physically deter larger fish and behaviorally deter smaller fish from entering the turbine intakes while simultaneously enhancing downstream fish friendly movement by providing an escape route adjacent to the turbine intakes.

Both the FEA and the two modified Section 18 prescriptions issued by NOAA Fisheries and USFWS support the need for downstream fish passage at the Project. The detailed analyses

contained in the FEA and the Administrative Records filed with FERC by NOAA Fisheries and USFWS provide substantial technical evidence in this regard. Signatories to this settlement agree that the downstream fish passage provisions of the settlement are consistent with the fish passage goals identified by FERC, NOAA Fisheries and USFWS.

3.6 Phase II “Fish Friendly” Turbine Installation

Preliminary laboratory test results of the “fish friendly” turbine have shown relatively high survival rates for the species of interest at the project site. Because “fish friendly” turbines represent a “next generation” technology, full scale units have not been thoroughly evaluated and tested. Once constructed, further testing and evaluation of the Phase II unit will be required in order for the prescribing agencies to determine whether the proposed unit adequately provides safe and effective fish passage. The goal is that the overall system effectiveness (attraction and survival) be equal to or better than that of the Phase I fishway described in Section 3.5. If attraction and survival through the new Phase II turbine prove equal to or better than through the Phase I fishway, then the licensee may utilize the new turbine as the principal means of downstream fish conveyance. The prescribing agencies will provide written approval for this fish passage modification before it becomes the primary route of fish passage. Regardless of whether this alternate route of passage becomes finalized, the Phase I fish passage facilities shall be maintained so that they can be used when the new turbine is out of operation or in conjunction with the turbine during periods of high fish migration.

The plans for constructing the intake for the new Phase II turbine generating unit will incorporate measures for modifying the civil works in a manner which would allow the major fish passage route to revert to the Phase I facilities if effectiveness testing of the new unit indicates the need. Such measures may include provisions for extending the bar racks and their infrastructure in front of the new unit's intake or other modifications to the new unit's intake in order to optimize the use of the fish conveyance structure.

3.7 Fishway Effectiveness Testing

The need for fishway effectiveness testing was included in the modified Section 18 prescriptions by NOAA Fisheries and USFWS and supported by FERC in the FEA.

3.8 Cultural Resource Measures

The School Street Project licensing proceeding is currently subject to the terms of a 1996 Programmatic Agreement (PA) that addressed compliance with Section 106 of the National Historic Preservation Act (NHPA) for 14 hydroelectric projects. Appendix A to that PA provided a description of the Project and its operating regime, the proposed Project modifications, and known historic properties. Little has changed since 1996 with regard to the description of the Project; however, the proposed Project modifications, the number of historic properties identified within the Project, and regulations of the Advisory Council on Historic Preservation (AHCP) regarding Section 106 compliance have changed substantially.

A revised Appendix A to the 1996 PA is seen as the most effective means to assist FERC and the Licensee in the fulfillment of their Section 106 responsibilities by reflecting the final proposed changes to the Project's facilities and operating regime. A revised Appendix A has been developed by Erie and is attached as Attachment 3 to this settlement to facilitate FERC's review and circulation for approval to the appropriate parties. The new Appendix A calls for the development and implementation of a Historic Properties Management Plan (HPMP) that reflects FERC's recent guidelines which are informed by new Section 106 procedures regarding public and Tribal consultation.

3.9 Recreational Enhancement Measures

The recreational enhancements described above will provide increased and improved seasonal access to the project grounds and take into consideration the balanced needs of multiple user groups, with central focus on enjoyment and viewing of Cohoes Falls and the surrounding area's significant natural and historical aspects. The enhancement measures are designed to increase public access, including fishing, while maximizing both Project and public safety and site security, to provide ADA compliant access, and to educate the public on a variety of local

natural and historical issues. These measures are generally consistent with the Final Environmental Assessment prepared by FERC staff.

ATTACHMENT C
REVISED APPENDIX A TO THE
PROGRAMMATIC AGREEMENT

APPENDIX A.V

to

Programmatic Agreement

**Project Nos. 2047, 2060, 2084, 2318, 2320, 2330, 2474,
2482, 2538, 2539, 2554, 2569, 2616, 2645**

SCHOOL STREET PROJECT – PROJECT NO. 2539

On December 23, 1991, Niagara Mohawk Power Company (NMPC) applied to the Commission for a new license for the School Street Project, proposing to continue operating and maintaining the existing facility according to an established operating regime, to increase the total installed capacity, provide environmental enhancements, and to improve recreational facilities. Erie Boulevard Hydropower (Erie) is the successor to NMPC and is the current applicant for the new license.

The School Street Project area is located within the City of Cohoes and the Towns of Colonie and Waterford, in Albany and Saratoga Counties, New York. The School Street Project consists of one hydroelectric development located on the Mohawk River at Cohoes Falls, approximately 2.5 river miles (RM) from the confluence of the Mohawk River with the Hudson River.

1.0 PROJECT FACILITIES

The School Street Project consists of:

- 1) A masonry gravity dam - 1,280-foot-long, 16-foot-high, with a crest elevation of 156.1 feet, constructed in 1866.
- 2) A reservoir, which at the normal maximum surface elevation of 156.1 feet (USGS), has a surface area of 100 acres and a gross storage capacity of 788 acre-feet.
- 3) A concrete ice fender and skimmer located adjacent to the western abutment of the dam -- 375-foot-long, 18-foot-high, consisting of a series of 4-foot-wide, 14-foot-long concrete piers spaced approximately 29 feet apart.
- 4) A masonry and brick upper gate house consisting of a 124-foot-long, 13.5-foot-wide, 30-foot-high section, constructed in 1886 with 9 timber slide gates and an 82-foot-long, 25-foot-wide, 40-foot-high section, built in 1922 with three steel Taintor gates,
- 5) A power canal -- 4,440-foot-long, 150-foot-wide, 14-foot-deep, with earth and rock cut sections and masonry and concrete walls. The power canal was enlarged several times during the 19th and early 20th centuries but follows the alignment of the first Cohoes Company power canal, built in 1831.
- 6) A brick and concrete lower gatehouse constructed in 1915 -- 152-foot-long, 48.5-foot-wide, 57.5-foot-high containing trashracks and five steel headgates.
- 7) Five steel penstocks -- four 190-foot-long, 11-foot-diameter and one 190-foot-long, 13-foot-diameter.
- 8) A brick and Reinforced concrete powerhouse constructed in 1915 -- 170-foot-long, 78-foot-wide, 87-foot-high, containing five vertical Francis turbines connected to direct-drive synchronous generators with rated capacities of 7,200 kW (units 1-4) and 10,000 kW (unit 5). Units 1, 2, and 3 were installed in 1915, Unit 4 in 1922, Unit 5 in 1924. Total installed capacity is 38,800 kW.

2.0 OPERATING REGIME

The School Street Project is downstream of the Crescent Project (FERC Project No. 4678) located at RM 4.0 and upstream of the New York State Dam Project (FERC No. 7481) located at RM 1.0. Although it once operated as a storage and release facility, School Street will operate in a *run-of-river (ROR) mode*.

3.0 AREA OF POTENTIAL EFFECT

For the purposes of Section 106 compliance, the Area of Potential Effect (APE) of the School Street license is the FERC project boundary as shown in Exhibit "G" of the license application.

4.0 HISTORIC PROPERTIES

Cohoes Falls is in traditional Mohawk tribal territory and figures prominently in the story of the Peacemaker and the creation of the Iroquois Confederacy of six nations who collectively refer to themselves as Haudenosaunee (people of the longhouse). Therefore, Cohoes Falls is an historic property of traditional religious and cultural importance to the Mohawk Nations, namely the St. Regis Band of Mohawk Indians, the Mohawk Nation Council of Chiefs and the Mohawk Council of Akwesasne, which includes descendents of people who occupied the area around the Falls, as well other members of the Iroquois Confederacy including the Oneida, Onondaga, Cayuga, Seneca, and Tuscarora Nations and the Tonawanda Band of Senecas. There are indications that the Mohican Indians (currently the Mohican Nation Stockbridge Muncie Band located in Wisconsin) also inhabited the region where the School Street Project is located.

The Project area is entirely within the Harmony Mills National Historic Landmark (NHL) District; the Dam, Upper Gatehouse, Power Canal, and Iron Bridge over the Power Canal at Conboy Avenue are specifically identified as contributing elements to that District, along with the Harmony Mills themselves and associated company built workers' housing. Portions of the project fall within the previously designated Harmony Mills National Register (NR) District, and the Town of Colonie Multiple Resource Area (MRA).¹ Two National Register Eligible (NRE) archeological sites are within the project boundary. The Enlarged Erie Canal NR District parallels and is immediately adjacent to the School Street Power Canal and includes the individually NR listed Lock 18.

The Project area is overlain with multiple layers of historical significance, many of which are related to the region's significance in American engineering and industrial history. The Erie Canal, which was completed through Cohoes in 1823 and from Buffalo to Albany in 1825, provided waterborne travel around the Falls and opened America's Midwest to large scale-settlement and commercial agriculture. When the alignment of the Erie Canal Cohoes was

¹ Unlike the NHL District, the Harmony Mills NR District is limited to properties within the City of Cohoes. For the purposes of the School St. Project, it includes the lower section of the Power Canal, Lower Gatehouse, and Powerhouse. The Town of Colonie MRA includes the Cohoes Company Dam, Upper Gatehouse, and upper portion of the Power Canal. The NHL nomination includes the entire waterpower system in both municipalities, but lists the Lower Gatehouse and School Street Powerhouse as non-contributing elements because they fall outside Harmony Mills' period of national significance.

shifted a few yards south during the enlargement program of the 1830s, the Cohoes Company acquired title to the old canal bed and used it as the upper level of what, by the 1870s, would become a six-level system of power canals that supplied water to drive textile mills and a host of other manufacturers. The School Street hydroelectric plant, constructed in 1915, utilizes the 1866 Dam and Headgate House and an enlarged version of 19th Century Erie Canal/Power Canal. These layers of historical significance have each been recognized by Federal designation over the past two decades, making nearly every component of the Project a contributing element to one or more historic districts. The several historic districts which are included, in whole or in part, in the Project APE are presented in Table 1.

Hartgen Archaeological Associates (2003) conducted a Phase Ia (literature review) and Phase Ib (reconnaissance survey) to identify other historic and archeological properties within the APE. The Phase Ia literature review identified 16 previously known archaeological sites within one mile of the Project, but none within the APE. The Phase Ib reconnaissance identified five archaeological sites within the APE. The Phase Ia literature review identified thirteen buildings or structures and three historic districts that are eligible for or listed on the NRHP, or have National Historic Landmark (NHL) status that are within one mile of the Project. Three of the thirteen listings are historic districts that overlay portions of the APE. The following table presents the known historic properties located within the Project APE.

Known Historic Properties Within the Project APE			
Site Name/Number	Status	Period of Significance	Description/Contributing Elements
Harmony Mills Historic District	NHL (1999)	1850-1894	<ul style="list-style-type: none"> ● Power Canal ● Power Canal (Conboy Avenue) Bridge ● Cohoes Company Dam ● Upper Gatehouse
Harmony Mills Historic District	NRHP Listed (1978)	1860s-1880s	<ul style="list-style-type: none"> ● Lower Gatehouse ● Powerhouse ● Portions of the Power Canal
Town of Colonie Multiple Resource Area	NRHP Listed (1985)		<ul style="list-style-type: none"> ● Cohoes Company Dam ● Upper Gatehouse ● Power Canal
Younglove Mill Site	NRHP Eligible (2003)	1850-1900	<ul style="list-style-type: none"> ● Tailrace ● Stone culverts (2) ● Stone and brick wheelhouse ● Unknown building
I.D.F. Lansing House Site	NRHP Eligible (2003)	1850-1900	<ul style="list-style-type: none"> ● Cellar/foundation remains ● Well ● Incomplete foundations (2)

5.0 PROPOSED PROJECT MODIFICATIONS AND RECREATIONAL DEVELOPMENTS

The following operational modifications and environmental measures are proposed in the January 2005 Settlement Agreement (SA) among agencies and organizations who had intervened in the School Street license proceeding. Proposed actions and agency recommendations include:

- 1) Operate in Run of River (ROR) mode
- 2) Develop a stream flow and monitoring plan and install devices and recording equipment to monitor flows and levels in the impoundment, turbines, and bypassed reach.
- 3) Release minimum flows to the bypassed reach of the Mohawk River between the dam and powerhouse tailrace to improve aquatic habitat.
- 4) Maintain a schedule of higher flow releases over Cohoes Falls for scenic and aesthetic purposes.
- 5) Modify the river bottom immediately below the dam to optimize the distribution of flow and improve aquatic habitats
- 6) Construct fish passage and protection measures that include:
 - a) A screen on the bypass flow release mechanism near the upper end of the canal
 - b) New angled bar-racks in the power canal upstream of the lower gatehouse,
 - c) Fish passage pipe and/or flume near the right end of the new angled bar rack
- 7) Install a sixth generating unit equipped with a "fish-friendly" turbine, located in a new powerhouse or powerhouse addition adjacent to the south (downstream) end of the existing powerhouse.
- 8) Deepen and modify the cross-section of the power canal to increase its hydraulic capacity.
- 9) Install new gates in the upper gatehouse.
- 10) Construct recreational amenities including:
 - a) A new pedestrian footbridge across the power canal upstream of the powerhouse

- b) A parking/passenger drop-off area along North Mohawk Street near the new bridge, including handicapped parking access for one at least one vehicle.
- c) A public, ADA compliant Cohoes Falls viewing area on the island formed between the power canal and the river near the terminus of the new footbridge.
- d) A footpath to the base of the falls, and a second viewing area near the base of the falls
- e) A trail system on the island to provide for daytime use, trails for bird watching and sightseeing, and access to the lower falls viewing area and fishing areas above the falls, below the falls, and at the project tailrace
- f) Interpretive signs and exhibits on project lands and in the vicinity.
- g) Improvements to the existing Overlook Park

6.0 ANTICIPATED EFFECTS

Most of the changes that are proposed are related to improving the fish passage at the Project and to augment the recreational facilities at the Project. Many will have limited effects on historic properties.

Operational changes such as run-of-river operation, the flow monitoring plan, and increased aquatic habitat flows to the bypassed reach are expected to have no effect on historic properties.

Other proposed actions may affect historic properties, but not in ways that would impair their significance or integrity. The following proposals are likely to have no adverse effect on historic properties:

- Scheduled releases for aesthetic flows over Cohoes Falls, during the daylight hours on the weekends and legal holidays from May 15 to October 31 of each year. Cohoes Falls is a site of traditional cultural importance to members the Iroquois Confederacy. Increased flows will have a beneficial effect on this property. The licensee will continue to consult with tribal representatives to ensure and preserve their access to Project lands in the vicinity of the Falls for ceremonial purposes.
- Installation of interpretive signs and exhibits on Project lands and in the vicinity will require minimal ground disturbance and do not have the potential to affect historic properties. The Project is within both the physical and interpretive areas of the Erie Canalway National Heritage Corridor, Hudson River Valley National Heritage Area, Hudson-Mohawk State Heritage Area (RiverSpark), and the Mohawk Valley State Heritage Area. Interpretive installations at the Project will be developed in consultation with these entities.
- Continued operation and maintenance of the 1915 School Street Powerhouse will have a beneficial effect on the integrity of that NR listed resource.

The Settlement Agreement includes proposals for new features to be built on, in, or in close proximity to historic properties, but the exact configuration and design of some of those new elements will be subject to plans and engineering studies that will be conducted post-license issuance. Without specific designs, it is difficult to assess how some of these elements will affect historic properties, but Erie proposes to design and implement all of them with as little effect, or adverse effect, as possible. Construction elements that will require further consultation during design development between the licensee and the NY SHPO and the National Historic Landmarks program of the National Park Service include:

- Fish passage and protection structures such as the bypass flow screen at the head of the canal, angled bar rack at the lower gatehouse, fish passage intake structure, and pipes(s) or flume(s). Although several of these elements will be below the water surface during normal operations, their superstructures have the potential to affect integrity of setting of the Canal, and Lower Gatehouse.
- Power Canal channel modifications. Erie proposes to deepen the power canal to increase its hydraulic capacity. Little or no change will be visible above the water level after the project is completed.
- Installation of new gates and gate operating mechanisms in the Upper Gatehouse.
- Removal, relocation, or rehabilitation of the iron bridge over the Power Canal at Conboy Avenue.
- Plans for pedestrian bridge across canal, Falls overlook, and trails need to include measures to protect archeological resources on the island.

7.0 HISTORIC PROPERTIES MANAGEMENT PLAN

Within six months of the issuance of a new license, Erie will file with the Commission a Historic Properties Management Plan (HPMP). Erie will develop the HPMP based on consultation with the NY SHPO, St. Regis Mohawk Tribe, other tribal representatives, the City of Cohoes and Town of Waterford, and the National Park Service, in accordance with the *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects*, issued jointly by the Chairman of the Commission and the Chairman of the Advisory Council in May 2002. This document will assist Erie in fulfilling the Commission's requirements under Section 106 of the National Historic Preservation Act of 1966, as amended, and as defined in 36 CFR Part 800. Revisions to 36 CFR 800, issued in 2000, call for enhanced public notification in the identification of historic properties and the resolution of any potential adverse effects, and for enhanced consultation with Federally-recognized Indian tribes. The HPMP for the School Street Project will be produced in light of most recent edition of 36 CFR 800 (August 5, 2004), and will incorporate their provisions for the future management of historic properties at the Project.