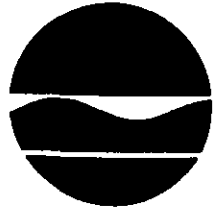


ORIGINAL

New York State Department of Environmental Conservation  
50 Wolf Road, Albany, New York, 12233



MICHAEL D. ZAGATA  
COMMISSIONER

December 13, 1996

Bruce Peacock  
Manager of Production Engineering  
Central Vermont Public Service Corp.  
77 Grove Street  
Rutland, Vermont 05701

FILED  
SECRETARY OF THE  
COMMISSION  
2008 OCT 29 P 2:35  
FEDERAL ENERGY  
REGULATORY COMMISSION

Re: Carver Falls Hydro Power Project, FERC No. 11475  
Modification of Water Quality Certificate

Dear Mr. Peacock:

The New York State Department of Environmental Conservation hereby modifies the April 21, 1995 certification issued pursuant to Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. 1341. The Department hereby modifies the certificate to incorporate the terms and conditions of the attached Settlement Agreement signed by the Department, Central Vermont Public Service Corporation and New York Rivers United. The schedule for implementation of these provisions will be established by the Federal Energy Regulatory Commission in its Order Issuing License for this facility.

The Department reserves the right to reconsider the entire Certification if there is a significant change in the scope of the proposal or the project license, or in the event the referenced application or Settlement Agreement are further amended.

Sincerely,

Lenore Kuwik  
Deputy Chief Permit Administrator

**Central Vermont Public Service Corporation  
Carver Falls Hydropower Project  
FERC Project. No. 11475**

**SETTLEMENT OFFER**

Commencing in November of 1995, the New York State Department of Environmental Conservation (NYSDEC) initiated comprehensive settlement negotiations concerning the relicensing of the Carver Falls Hydropower Project (Project), located on the Poultney River in Washington County. The Poultney River forms the boundary between the States of New York and Vermont; as such, a portion of the Project is located in Vermont. The project is licensed to, owned, operated and maintained by the Central Vermont Public Service Corporation (CVPSC), an active participant in the settlement negotiations. Other participants included the Vermont Natural Resource Council (VNRC), New York Rivers United (NYRU), the Poultney River Committee (PRC), National Wildlife Federation, Vermont Chapter (NWF) and the Vermont Agency of Natural Resources (VANR).

As a result of these negotiations, the following agreements were reached by the undersigned.

**Water Quality Certificate:**

Except as specifically modified by this settlement offer, the water quality certificate issued by NYSDEC on April 21, 1995 remains in full force and effect. NYSDEC shall modify the water quality certificate as appropriate to make it consistent with the provisions of this settlement offer.

NYRU and VNRC withdraw their request for a public hearing on the water quality certificate which was filed with NYSDEC by letter dated August 11, 1995.

**Walleye Spawning**

CVPSC shall provide a continuous flow to the bypassed reach of 50 cfs (or inflow, if less) from April 1 through May 15 of each year. This flow is provided to protect Walleye spawning in the bypass reach.

**Penstock Removal:** There are currently two abandoned above ground penstocks located at the Carver Falls facility. CVPSC agrees to remove the penstocks and concrete cradles from the site. The stone cradles will remain.

**Site Access:** CVPSC agrees to provide improved parking and viewing access opportunities for the general public at the Falls.

**Aesthetic Releases:** CVPSC agrees to release a flow over the southern spillway of two and one half (2½) inches (or inflow, if less) for aesthetic purposes on Memorial Day, July Fourth, Labor Day, Columbus Day and every Sunday during the months of July and August. Said aesthetic flows shall be released during daylight hours, commencing at 9 AM.

**Carver Falls Advisory Council:** In order to keep abreast of changing conditions that may affect the Carver Falls site, an Advisory Council to be representative of the various interests in Carver Falls will be formed. The NYSDEC will chair the Advisory Council. At a minimum, the signatories to the Settlement will be invited to serve on the Advisory Council. The Advisory Council will make recommendations for consideration by the NYSDEC and CVPSC regarding management of the Carver Falls site and hydropower project operations. Each member will have one vote, with Advisory Council decisions to be based on majority vote. The Advisory Council will meet at least once a year. CVPSC will defray the costs of the Carver Falls Advisory Council meetings, including travel expenses. CVPSC's obligation is subject to an overall \$200.00 annual cap, regardless of the number of meetings held.

### **General Provisions**

1. CVPSC agrees to implement the various obligations and requirements set forth herein. NYSDEC and other signatories agree to support a new 30 year license for the Carver Falls Project incorporating and implementing the provisions contained herein. This support shall include reasonable efforts to expedite the National Environmental Policy Act (NEPA) process.
2. The signatories agree that the project as described in the FERC license application and any Additional Information Request (AIR) responses filed with FERC, in conjunction with this Settlement Offer and the water quality certificate fairly and appropriately consider the environmental, recreational, fishery, energy and other uses and interests. The signatories further agree that this agreement is specific to the Carver Falls Project. No signatory shall be deemed, by virtue of execution of this Settlement Offer, to have established precedent, or admitted or consented to any approach, methodology, or principle except as expressly provided for herein. In the event that this Settlement Offer is approved by the NYSDEC and/or FERC, such approval shall not be deemed precedential or controlling regarding any particular issue or contention in any other proceeding.
3. The signatories have entered into the negotiations and discussions leading to this Settlement Offer with the explicit understanding that all offers of settlement and the discussions relating thereto are privileged, shall not prejudice the position of any signatory participant taking part in such discussions and negotiations, and are not to be otherwise used in any manner in connection with these or any other proceedings.
4. The Settlement Offer shall apply to, and be binding on, the signatories and their successors and assigns, but only with regard to the above-captioned proceeding and then

only if the Settlement Offer is made effective as provided herein. Each signatory to the Settlement Offer certifies that he or she is authorized to execute the Settlement and legally bind the party he or she represents.

### Compliance With The Law

Nothing in this Settlement Offer shall preclude FERC, any resource agency or the licensees from complying with their obligations or exercising their responsibilities under the National Environmental Policy Act, the Clean Water Act, the Endangered Species Act, the Federal Power Act as amended by the Electric Consumers Protection Act, the Fish and Wildlife Coordination Act or any other applicable state or federal laws. However, by entering into this Settlement Offer, each signatory represents that it believes its statutory obligations or responsibilities are, or can be, met consistent with this Settlement Offer.

### Notice

Whenever notice is to be given under this Settlement Agreement, it shall be considered properly given if communicated in writing to the following if such entity is a signatory to this agreement:

New York State Department of  
Environmental Conservation  
Director, Division of Compliance Services  
50 Wolf Road  
Albany, New York 12233

Central Vermont Public Service Corporation  
Manager of Production Engineering  
77 Grove Street  
Rutland, Vermont 05701

New York Rivers United, Inc,  
Executive Director  
199 Liberty Plaza  
Rome, New York 13440

Vermont Agency of Natural Resources  
Department of Environmental Conservation  
Water Quality Division  
103 South Main Street  
Building 10 North  
Waterbury, Vermont 05671

**U.S. Fish and Wildlife Service  
400 Ralph Hill Marketplace  
22 Bridge Street  
Concord, New Hampshire 03301-4901**

**The Nature Conservancy  
So. Champlain Valley Office  
RR #1 Box 266  
Castleton, Vermont 05735**

**Vermont Natural Resource Council  
9 Bailey Avenue  
Montpelier, Vermont 05602**

**Poultney River Committee  
c/o Joanne Calvi  
20 Washington Street  
Fairhaven, Vermont 05743**

**National Wildlife Federation, Vermont Chapter  
50 State Street  
Montpelier, Vermont 05602**

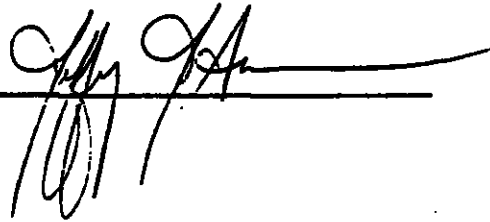
**kgs/hydro/carver.so  
12/11/96**

**Central Vermont Public Service Corporation  
Carver Falls Hydropower Project  
FERC Project. No. 11475  
SETTLEMENT OFFER**

**New York State Department of  
Environmental Conservation**

**Dated: December 5, 1996**

**By:**



**New York State Department of  
Environmental Conservation  
Director, Division of Compliance Services  
50 Wolf Road  
Albany, New York 12233**

**Central Vermont Public Service Corporation  
Carver Falls Hydropower Project  
FERC Project. No. 11475  
SETTLEMENT OFFER**

**Central Vermont Public Service  
Corporation**

**Dated: December 5, 1996**

**By: **

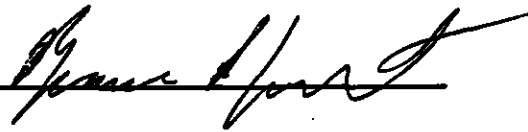
**Central Vermont Public Service Corporation  
Manager of Production Engineering  
77 Grove Street  
Rutland, Vermont 05701**

**Central Vermont Public Service Corporation  
Carver Falls Hydropower Project  
FERC Project. No. 11475  
SETTLEMENT OFFER**

**New York Rivers United, Inc.**

**Dated: December 03, 1996**

**By:**

A handwritten signature in black ink, appearing to read "James J. Hart", written over a horizontal line.

**New York Rivers United, Inc,  
Executive Director  
199 Liberty Plaza  
Rome, New York 13440**