34 FERC ¶ 62,437

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

City of Batesville, Arkansas — Project No. 4204-002

ORDER ISSUING UNCONSTRUCTED LICENSE (MAJOR)

(Issued February 28, 1986)

The City of Batesville, Arkansas (Applicant or Licensee) filed an application for license under Part I of the Federal Power Act (Act) to construct, operate, and maintain the White River Lock and Dam No. 1 Hydroelectric Project No. 4204. The project is located on the White River, a navigable waterway of the United States in Independence County, Arkansas. White River Lock and Dam No. 1 was built by the U.S. Army Corps of Engineers (Corps) between 1900 and 1904 for navigational purposes. On June 30, 1952, the Corps navigational project received an inactive status and all government personnel were removed from Lock and Dam No. 1. On July 1, 1952, the White River Lock and Dam No. 1 was sold to the City of Batesville, Arkansas, the present owner.

Notice of the application has been published and comments have been received from interested Federal and State agencies. No protests or motions to intevene were received, and none of the agencies object to issuance of the license. The significant concerns of the commenting agencies are discussed below.

The Proposed Project

The proposed project would consist of: (1) the existing White River Lock and Dam No. 1, approximately 660 feet long and 27.6 feet high; (2) a reservoir with a surface area of approximately 773 acres and storage capacity of approximately 12,500 acre-feet; (3) a new powerhouse containing three generating units with a total capacity of 6,825 kW; (4) a concrete, open-flume tailrace structure approximately 280 feet long; (5) a new 13.8-kV transmission line approximately 10,000 feet long; and (6) appurtenant facilities. A more detailed project description is contained in ordering paragraph (B).

Safety and Adequacy

Based on a prelicense inspection made by Commission Regional Office personnel, the hazard potential of the project was classified as low. The inspection did not reveal any significant problems or deficiences. The project safely passed a flood of 310,000 cfs with the tailwater approximately equal to headwater. During floods the dam has essentially no effect on the hydraulic regime of the river

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and its failure would not create an additional hazard to downstream life and property. The proposed project structures have a low hazard potential and will be safe and adequate if constructed in accordance with sound engineering practices, and the requirements of this license.

Environmental Considerations

The proposed project will have no substantive direct or indirect effects on vegetation, wildlife, and visual resources.

A. Erosion and Sediment Control

Minor erosion and sedimentation will result from soil and riverbed disturbing activities and disposal of excavated spoil during construction of the intake, powerhouse, tailrace, transmission line, and recreational facilities. Suitable design and construction techniques are available which, if utilized in conjunction with the Applicant's proposed bank stabilization and temporary cofferdam, will minimize project related erosion and sedimentation. Article 35 requires the Licensee to consult with the Corps and appropriate resource agencies in preparing and implementing a detailed project erosion and sediment control plan.

B. Project Operation

The proposed multi-level intake structure will permit the withdrawal of water from depths ranging from 4 to 22.5 feet below the surface of the 28-foot-deep impoundment. The U.S. Fish and Wildlife Service (FWS) states that the reach of the White River on which the project will be located is a transition zone between the coldwater fishery of the upper White River and the warmwater fishery of the lower White River. Although a diverse warmwater fishery exists in this river segment, FWS notes that coldwater discharges from the deep impoundments located upstream at the Bull Shoals and Norfolk projects reduce downstream water temperatures to levels which are not optimal for supporting a warmwater fishery. FWS is concerned that the withdrawal of cool water from the reservoir at Lock and Dam No. 1 during operation of the proposed hydroelectric project would further reduce the existing temperatures downstream of the project. FWS, therefore, recommends that the Applicant provide water temperature data to FWS and the Arkansas Game and Fish Commission to ensure that project operation does not substantially modify existing thermal conditions.

The Applicant disagrees with the FWS's contention that project operation will substantially modify the existing thermal conditions in the White River downstream of the project. The Applicant states that the proposed run-of-river mode of operation and multi-level intake will prevent substantial modification of downstream water temperatures. The Applicant further states that operation of the Bull Shoals and Norfolk projects causes greater impact on tempertures in the White River than would the operation of the proposed hydroelectric project. The Applicant recognizes that the White River is a transition zone and does not plan to substantially alter existing temperature regimes.

Maintenance of existing water temperatures and dissolved oxygen (DO) levels downstream of the project is necessary to preserve the transition zone characteristics of the White River. The transition zone provides habitat in which gradual adjustment to varying water temperatures protects fish resources from thermal shock that would occur when fish acclimatized to the warmer water move into reaches of the White River that receive cold discharges from the large upstream impoundments at Bull Shoals and Norfolk. Similarly, fish inhabiting the White River in the vicinity of these impoundments would be acclimatized to colder temperatures and would gradually adjust physiologically to warmer temperatures as they swim downstream.

Maintenance of existing water quality conditions is essential for protecting and enhancing fish resources in the project vicinity The proposed run-of-river operation, in conjunction with the mixing of thermally-stratified layers, should maintain the existing thermal characteristics of the White River downstream of the powerhouse. Article 36 requires the Licensee to operate the proposed project in a run-of-river mode. To monitor the impacts of the proposed operational mode and to assess any changes in water temperature or DO levels due to the diversion of water through the turbines, the Applicant should install water quality monitoring equipment downstream of the powerhouse. Article 37 requires the Licensee to monitor water temperture and DO to ensure maintanance of state water quality standards.

C. Raptor Protection

The proposed transmission line has the potential to electrocute large raptors. The Applicant has agreed to design the transmission line in accordance with accepted raptor protection guidelines. Article 38 requires the filing of a transmission line design plan to ensure protection of raptors.

D. Recreational Resources

The Arkansas Department of Parks and Tourism states that the existing recreational development at the proposed project site is sufficient for the Applicant's needs. The Corps states that it should review any future plans which pertain to recreational development at the proposed site. The Applicant has agreed to install additional boat portage and recreational facilities at the site if the need arises.

The existing facilities provide for the recreational needs at the project. Article 17 provides for future development of recreational facilities at the project, if a need is demonstrated.

E. Cultural Resources

Lock and Dam No. 1, the first of ten fixed concrete dams commissioned by Congress to facilitate travel on 89 river miles of the White River in Arkansas, is eligible for the National Register of Historic Places. The Arkansas State Archeologist (SA) and the Arkansas State Historic Preservation Officer (SHPO) stated that the project area has been adequately surveyed to determine the presence of cultural resources. The SHPO has determined that the removal of the lock gates, the landside lock wall, and guide wall would constitute an adverse impact on the eligible property.

Mitigative measures to minimize the effects of the proposed construction have been recommended by the SHPO and include: (a) recording the structural components to be removed according to the standards of the Historic American Engineering Record; and (b) constructing a scale model of Lock and Dam No. 1 for educational purposes.

Article 39 requires that the Licensee, prior to any future construction at the project site, consult with the SHPO to determine: (a) the scope and method of recording any structures to be demolished, (b) the contents of the scale model and film to be developed for educational purposes; (c) the method to be utilized for on-site monitoring; and (d) the emergency procedures to be employed in the event of discovery of any previously unrecorded cultural resources. The Advisory Council on Historic Preservation has commented on the project and agrees to the above stipulations.

F. Other Environmental Criteria

Water quality certification, as required by Section 401 of the Clean Water Act, was issued by the State of Arkansas, Department of Pollution Control and Ecology, on May 3, 1985.

No Federally listed threatened or endangered species or critical habitat will be affected by the project.

FINDING OF NO SIGNIFICANT IMPACT

Minor short-term impacts related to project construction will include increased erosion, river sedimentation and turbidity, noise, vehicular exhaust emission, and disturbances to aquatic resources. Recreational use of the immediate project area would also be temporarily disturbed by construction activities. Removal of the lock gates, lock wall, and guide wall will constitute a minor long-term adverse impact to the historic qualities of the existing lock and dam. Minor long-term adverse effects on fish populations inhabiting the project impoundment will result from impingement and entrainment of various life stages of fish during long-term decreased DO levels and water temperature modifications in the White River downstream of the project.

The mitigative measures proposed and the provisions of the license articles included herein will protect the water quality, fishery, wildlife, cultural, and soils resources at the project.

In accordance with the National Environmental Policy Act of 1969, an Environmental Assessment was prepared for the White River Lock and Dam No. 1 Project (FERC No. 4204). 1/ On the basis of the record, and Staff's independent environmental analysis, the issuance of a license for the project, as conditioned herein, will not constitute a major Federal action significantly affecting the quality of the human environment.

Other Aspects of Comprehensive Development

The proposed run-of-river project would have an installed capacity of 6825 kW operating under a head of 10.5 feet. The hydraulic operating range of the plant would be from 561 cfs to 7908 cfs. The estimated average annual generation is 32,300,000 kWh at a plant factor of 54 percent. 2/ Based on the sale of project power at avoided cost and adjusted for inflation, the project is economically feasible.

1/ Environmental Assessment, White River Lock and Dam No. 1 Project, FERC No. 4204--Arkansas, Division of Environmental Analysis, Office of Hydropower Licensing, Federal Energy Regulatory Commission, August 14, 1985. This document is available in the Division of Public Information and in the Commission's public file associated with this proceeding.

2/ The project would utilize a renewable resource that would save the equivalent of approximately 53,000 barrels of oil or 15,000 tons of coal per year.

The flow of the White River is equal to or less than the hydraulic capacity of the project approximately 45 percent of the time. The project is a low head development and would be subject to a wide variation of heads and discharges. Installation of additional capacity would not be economically feasible because of construction problems and due to loss of head during high flows.

The project will make good use of the flow and fall of the White River, is not in conflict with any planned or authorized development, and will be best adapted to the comprehensive development of the basin for beneficial purposes upon compliance with the terms and conditions of the license.

Term of License

The proposed development of this project using an existing dam is similar to the relicensing of an existing licensed project at which a moderate amount of new development is proposed; therefore, consistent with Commission policy, a 40-year license term is reasonable in this instance. 3/

The Director orders:

(A) This license is issued to the City of Batesville, Arkansas (Licensee), under Part I of the Federal Power Act (Act), for a period of 40 years, effective the first day of the month in which this order is issued, for the construction, operation, and maintenance of the White River Lock and Dam No. 1 Hydroelectric Project No. 4204, located on the White River, a navigable waterway of the United States. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The White River Lock and Dam No. 1 Hydroelectric Project No. 4204 consists of:

(1) All lands, to the extent of the Licensee's interest in those lands, constituting the project area and enclosed by the project boundary. The project area and boundary are shown and described by a certain exhibit that forms part of the application for license and that is designated and described as:

Exhibit G	FERC No. 4204-	Showing
G-1	1	Location Map and Transmission Corridor
G-2	2	Project Boundary Map
G-2B	3	Project Boundary Map

3/ Village of Lyndonville, 7 FERC ¶ 61,324 (1979).

(2) Project works consisting of: (1) the existing White River Lock and Dam No. 1, approximately 660 feet long and 27.6 feet high; (2) a reservoir with a surface area of approximately 773 acres and storage capacity of approximately 12,500 acre-feet; (3) a powerhouse containing three generators rated at 2,275 kW each for a total installed capacity of 6,825 kW; (4) a concrete, open-flume tailrace structure approximately 280 feet long; (5) a 13.8-kV transmission line approximately 10,000 feet long; and (6) appurtenant facilities.

The location, nature, and character of these project works are generally shown and described by the exhibit cited above and more specifically shown and described by certain other exhibits that also form a part of the application for license and that are designated and described as:

Exhibit F	FERC No. 4204-	Showing
F-1	4	One Line Diagram
F-2	5	Site Plan
F-3	6	Powerhouse Plan
F-4	7	Powerhouse Profile
F-5	8	Elevation at Intake
F-6	9	Dam Sections

(3) All of the structures, fixture, equipment, or facilities used or useful in the operation or maintenance of the project and located within the project boundary, all portable property that may be employed in connection with the project, located within or outside the project boundary, as approved by the Commission, and all riparian or other rights that are necessary or appropriate in the operation of maintenance of the project.

(C) Exhibit A, Paragraph (b)(3) titled "Proposed Turbine/ Generators" filed August 31, 1983, is approved and made a part of the license.

(D) This license is also subject to Articles 1 through 28 except the first sentence of Article 20, set forth in Form L-4 (revised October 1975), entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters of the United States" attached to and made a part of this license. The license is also subject to the following additional articles:

Article 29. The Licensee shall pay the United States the following annual charge, effective the first day of the month in which this license is issued:

For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 9,100 horsepower.

Article 30. The Licensee shall commence construction of project works within two years from the issuance date of the license and shall complete construction of the project within four years from the issuance date of the license.

Article 31. The Licensee shall provide to the Commission's Regional Director (one copy) and the Director, Division of Inspections (two copies) of the final contract drawings and specifications for pertinent features of the project, such as water retention structures, powerhouse, and water conveyance structures, at least 60 days prior to start of construction. The Director, Division of Inspections, may require changes in the plans and specifications to assure a safe and adequate project.

Article 32. The Licensee shall file revised Exhibit F drawings showing the final design of project structures for approval of the Director, Office Hydropower Licensing. The revised Exhibit F drawings shall be accompanied by a supporting design report and the Licensee shall not commence construction of any project structure until the corresponding revised Exhibit F drawings have been approved.

Article 33. The Licensee shall review and approve the design of contractor-designed cofferdams and deep excavations other than those approved according to Article 31 prior to the start of construction and shall ensure that construction of cofferdams and deep excavations are consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the Licensee shall provide to the Director, Division of Inspections, the Commission's Regional Director, and the Corps of Engineers one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

Article 34. The Licensee shall within 90 days of completion of construction file for Commission approval revised Exhibits A, F, and G to describe and show the project as-built, including the project transmission line.

Article 35. The Licensee shall, after consultation with U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Soil Conservation Service, and Arkansas Game and Fish Commission, prepare and file with the Commission, within 1 year from the date of issuance of this license, a plan to control erosion and dust, and to minimize the quantity of sediment or other potential water pollutants resulting from construction and operation of the project, including the transmission line and spoil disposal areas. The plan shall also include: functional design drawings and map locations of control measures; implementation schedule; monitoring and maintenance programs for project construction and operation; and provisions for periodic review of the plan and for making any necessary revisions to the plan. Documentation of agency consultation on the plan and copies of any agency comments or recommendations shall be included in the filing.

In the event that the Licensee does not concur with any agency recommendations, Licensee shall provide a discussion of the reasons for not concurring based on actual site geological, soil, and groundwater conditions. The Commission reserves the right to require changes to the plan. Unless the Director, Office of Hydropower Licensing, directs otherwise, the License may commence ground disturbing activities at the project 90 days after filing the above plan.

Article 36. Licensee shall operate the Lock and Dam No. 1 Project in an instantaneous run-of-river mode for the protection of fish and wildlife resources in the White River. Licensee, in operating the project in an instantaneous run-of-river mode, shall at all times act to minimize the fluctuation of the reservoir surface elevation, i.e., maintain discharge from the project so that flow in the White River, as measured immediately downstream from the project tailrace, approximates the instantaneous sum of inflow to the project reservoir. Instantaneous run-of-river operations may be temporarily modified if required by operating emergencies beyond the control of Licensee, and for short periods upon mutual agreement between the Licensee and the Arkansas Game and Fish Commission and the U.S. Fish and Wildlife Service.

Article 37. Licensee shall, within 6 months of the issuance of this license, and after consultation with the Arkansas Department of Pollution Control and Ecology (ADPCE), the Arkansas Game and Fish Commission (AGFC), and the U.S. Fish and Wildlife Service (FWS), install continuous dissolved oxygen (DO) and temperature monitoring equipment in the White River immediately downstream of the tailrace discharge. Licensee shall monitor DO concentrations and water temperatures and maintain records of the monitoring data for a 5-year period, and shall file with the ADPCE, AGFC, FWS, and the Commission, and annual data summary, filed annually on the anniversary date of the license, that shall include observed daily minimum, maximum, and average DO concentrations and water temperatures.

Further, if the results contained in any annual report indicate that changes in project structures or operations are necessary to maintain the state standard for DO and temperature in the White River downstream from the project tailrace and do not substantially modify existing thermal conditions, the Licensee shall, within 2 months from the date of the annual report submission, file with the Commission for approval, with copies to the agencies consulted, a schedule for implementing the specific changes in project structures or operations that are needed. Documentation of agency consultation on the schedule and specific changes shall be included in the filing.

Article 38. Licensee shall design and construct the transmission line in accordance with guidelines set forth in "Suggested Practices for Raptor Protection on Power Lines--the State of the Art in 1981," Raptor Research Foundation, Inc., 1981. Further, Licensee, after consultation with the U.S. Fish and Wildlife Service and the Arkansas Game and Fish Commission, and within 1 year from the date of issuance of the license, shall file a transmission line design plan that will consider adequate separation of energized conductors, groundwires, and other metal hardware, adequate insulation, and any other measures necessary to protect raptors from electrocution hazards. Agency comments on the adequacy of the design plan shall be included in the filing. Unless the Director, Office of Hydropower Licensing, within 90 days following the filing instructs otherwise, Licensee may commence transmission line construction at the end of the 90-day period.

Article 39. Licensee shall, prior to any construction or development at the project site, consult with the Arkansas State Historic Preservation Officer (SHPO) to: (1) determine what documentation shall be necessary to record all or part of Lock and Dam No. 1 according to the standards of the Historic American Engineering Record (HAER); (2) construct a scale model of Lock and Dam No. 1, as it was originally constructed, for use in educational instruction for visitors to the project area; (3) produce a film on

display for the visiting public which provides a visual interpretation of the historical operation of the lock and dam; and (4) determine the scope and method of project monitoring by a qualified historian or architectural historian to ensure that all components targeted for removal or alteration have been fully documented according to HAER standards. Reports documenting recording activities and their acceptance by HAER and their approval by the SHPO shall be filed with the Commission at least 60 days prior to starting any activities of a land-disturbing nature relative to the construction of the proposed project features or facilities. Licensee shall make available funds in a reasonable amount for any such work as required. If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or other facilities at the project, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Licensee shall consult with the SHPO to develop a mitigation plan for the protection of significant archeological or historical resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historical work related to the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any such work found necessary.

Article 40. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and to ensure compliance with the covenants of the instrument of conveyance for any interests that it has conveyed under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the Licensee may grant permission without prior

Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The Licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable State and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the Licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the Licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the Licensee's costs of administering the permit program. The Commission reserves the right to require the Licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The Licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges and roads for which all necessary State and Federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the Licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The Licensee may convey fee titles to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary State and Federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters for which all necessary Federal and State water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary for which all necessary Federal and State approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the Licensee must file a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any Federal or State agency official consulted, and any Federal or State approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the Licensee to file an application for prior approval, the Licensee may convey the intended interest at the end of that period.

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

(1) Before conveying the interest, the Licensee shall consult with Federal and State fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the Licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

(4) The Commission reserves the right to require the Licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(F) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

(G) This order is issued under authority delegated to the Director and is final unless appealed to the Commission under Rule 1902 within 30 days from the date of this order. Failure to file a petition appealing this order to the Commission shall constitute acceptance of this order. In acknowledgment of acceptance of this order and its terms and conditions, it shall be signed by the Licensee and returned to the Commission within 60 days from the date this order is issued.

Don Gaber

Kenneth M. Pusateri
Acting Director, Office
of Hydropower Licensing

Project No. 4204-002

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, the City of Batesville, Arkansas, this _____ day of _____, 19___, has caused its corporate name to be signed hereto by _____, its President, and its corporate seal to be affixed hereto and attested by _____, its Secretary, pursuant to a resolution of its Board of Directors duly adopted on the _____ day of _____, 19___, a certified copy of the record of which is attached hereto.

By _____
President

Attest:

_____
Secretary

(Executed in quadruplicate)

Document Content(s)