

189 FERC ¶ 62,077
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Tallassee Shoals, LLC

Project No. 6951-018

ORDER ISSUING NEW LICENSE

(November 20, 2024)

INTRODUCTION

1. On September 15, 2021, Tallassee Shoals, LLC (Tallassee Shoals) filed, pursuant to sections 4(e) and 15 of the Federal Power Act (FPA),¹ an application for a new license to continue to operate and maintain the Tallassee Shoals Hydroelectric Project No. 6951 (Tallassee Shoals Project or project). The 2.3-megawatt (MW) project is located on the Middle Oconee River, which is a tributary of the Oconee River, in Athens-Clarke and Jackson Counties, Georgia.² The project does not occupy federal land.
2. As discussed below, this order issues a new license for the project.

BACKGROUND

3. The Commission issued an original license for the project on October 24, 1983, with an effective date of October 1, 1983, which expired on September 30, 2023.³ Since then, Tallassee Shoals has operated the project under an annual license pending the

¹ 16 U.S.C. §§ 797(e) and 808.

² Because the project is located on a stream over which Congress has jurisdiction under the Commerce Clause, affects interstate commerce through its connection to an interstate power grid, and has undergone construction after 1935, it is required to be licensed pursuant to section 23(b)(1) of the FPA. 16 U.S.C. § 817(1).

³ The license for the Tallassee Shoals Project was first issued to Oglethorpe Power Corporation. *Oglethorpe Power Corp.*, 25 FERC ¶ 62,081 (1983). On October 7, 2003, the Commission approved the transfer of license to Fall Line Hydro Company, Inc. *Oglethorpe Power Corp.*, 105 FERC ¶ 62,016 (2003). On August 18, 2008, the Commission approved the transfer of license to Tallassee Shoals, LLC. *Fall Line Hydro Co., Inc.*, 124 FERC ¶ 62,133 (2008).

disposition of its new license application.⁴

4. On July 7, 2022, the Commission issued a public notice that was published in the *Federal Register* accepting the application for filing, indicating that the application was ready for environmental analysis, and setting September 5, 2022, as the deadline for filing motions to intervene, protests, comments, recommendations, terms and conditions, and prescriptions. The U.S. Department of the Interior (Interior) filed a timely notice of intervention, on behalf of the U.S. Fish and Wildlife Service (FWS) and Bureau of Indian Affairs.⁵ On September 2, 2022, Interior and the Georgia Department of Natural Resources (Georgia DNR) filed comments and recommendations regarding recreational use and access, and fish and wildlife resources.

5. On January 19, 2024, Commission staff issued an environmental assessment (EA), analyzing the effects of the proposed project and alternatives to it, and setting a 30-day deadline of February 19, 2024, for comments.⁶ No comments were filed on the EA.

6. The intervention, comments, and recommendations have been fully considered in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

A. Project Area

7. The Tallassee Shoals Project is located 17.5 miles downstream from the headwaters of the Middle Oconee River, in the Middle Oconee River basin of the greater Altamaha River basin. The Middle Oconee and North Oconee Rivers originate in the Piedmont physiographic province and run for over 50 miles before joining at the southern border of Athens-Clark County, Georgia to form the main stem of the Oconee River. The Oconee River flows 220 miles to its confluence with the Ocmulgee River to form the Altamaha River. The Altamaha River flows 137 miles southeast to the Atlantic Ocean.

8. The Tallassee Shoals Project is the only dam on the Middle Oconee River. There are three dams located downstream from the project on the main stem of the Oconee

⁴ See 16 U.S.C. § 808(a)(1); see also November 17, 2023, Notice of Authorization for Continued Project Operation.

⁵ Under Rule 214(a)(2) of the Commission's Rules of Practice and Procedure, Interior became a party to the proceeding upon the timely filing of its notice of intervention. 18 C.F.R. § 385.214(a)(2) (2024).

⁶ 89 Fed. Reg. 4941 (Jan. 25, 2024). Because February 18, 2024, fell on a Sunday, the filing deadline was extended until the close of business on Monday, February 19, 2024. 18 C.F.R. § 385.2007(a)(2) (2024).

River. The two large dams on the main stem of the Oconee River include the Wallace Dam (Project No. 2413)⁷ and the Sinclair Dam (Project No. 1951),⁸ which together impound about 70 miles of the mainstem Oconee River. In addition to the Wallace and Sinclair Dams, the Barnett Shoals Dam is located almost 22 river miles downstream of the Tallassee Shoals Project on the mainstem of the Oconee River.

B. Project Facilities

9. The Tallassee Shoals Project includes a 365-foot-long, 25-foot-high concrete dam. The dam impounds a 23-acre lake with a gross storage capacity of 230 acre-feet, at 646 feet elevation National Geodetic Vertical Datum of 1929 (NGVD29).⁹ A fixed Kaplan generating unit, with a capacity of 0.1 MW (Unit 1), is located on the east of the dam, adjacent to the headrace intake, with trash racks of 4-inch bar spacing, and an adjacent 48-inch-diameter sluiceway. Unit 1 discharges into the bypassed reach, below the dam. A 1,400-foot-long, 60-foot-wide headrace canal conveys water into an 80-foot-long, 11-foot-diameter penstock, with trash racks of 8-inch bar spacing. The penstock conveys water to the powerhouse which contains a single, adjustable Kaplan generating unit with a capacity of 2.2 MW (Unit 2). A 750-foot-long tailrace returns flow to the river. Project power is transmitted to the grid via an approximately 100-foot-long, 42-kilovolt transmission line to the point of interconnection. The project's total capacity is 2.3 MW.

10. The licensee currently maintains a parking area and trail to the river that provides access for fishing and hiking.

C. Project Boundary

11. The current project boundary encloses the project dam, headrace canal, penstock, powerhouse, the transmission line, tailrace, the impoundment, and the parking area. Around the entire 23-acre impoundment, the project boundary follows the contour elevation of 646 feet.

12. Tallassee Shoals proposes no change to the project boundary.

D. Current Project Operation

13. Tallassee Shoals operates the project in a run-of-river mode, such that outflow approximates inflow at any given point in time. Operation is automated and controlled

⁷ *Georgia Power Co.*, 171 FERC ¶ 62,141 (2020).

⁸ *Georgia Power Co.*, 74 FERC ¶ 62,146 (1996).

⁹ Unless otherwise noted, all elevation data is provided in NGVD29.

remotely. Although the project has two turbine units, Tallassee Shoals operates the project using only the 2.2-MW, Unit 2, most of the time.¹⁰ Unit 2, located in the powerhouse, has a minimum hydraulic capacity of 180 cubic feet per second (cfs) and a maximum hydraulic capacity of 850 cfs. The rarely used 100-kW Unit 1 is a submerged unit located at the dam with a minimum hydraulic capacity of 50 cfs, and a maximum hydraulic capacity of 90 cfs.

14. Article 29 of the current license requires Tallassee Shoals to release a continuous minimum flow of 70 cfs, or inflow to the project reservoir, whichever is less, to protect aquatic resources in the 2,100-foot-long bypassed reach. In addition, Tallassee Shoals is required to release a seasonal minimum flow of 138 cfs, or inflow to the reservoir, whichever is less, during the month of May to protect aquatic resources in the Middle Oconee River.

15. Tallassee Shoals ceases project operation: (1) when river flows reach 10,000 cfs; (2) as necessary to meet the minimum flow requirements; or (3) when there is a significant volume of debris in the river.

E. Proposed Operational and Environmental Measures

16. Tallassee Shoals proposes to continue run-of-river operation, such that outflow approximates inflow at any given point in time, which is automated and remotely controlled, to maintain the impoundment water surface level at 646 feet.

17. To protect aquatic resources in the project's bypassed reach, Tallassee Shoals proposes to release a minimum flow of 70 cfs, or inflow if less, to the bypassed reach year-round, instead of releasing 138 cfs in May and 70 cfs for the remainder of the year, and to monitor the flow release by the use of: (a) a staff gage and electronic transducer upstream of the dam; and (b) a staff gage located in the bypassed reach.

18. To enhance recreational opportunities at the project, Tallassee Shoals proposes to construct a canoe portage with put-in and take-out amenities on the west bank of the river adjacent to the dam. Additionally, Tallassee Shoals proposes to expand the recreation parking area from 3 spaces to 6 spaces.

SUMMARY OF LICENSE REQUIREMENTS

19. This license, which authorizes 2.3 MW of renewable energy generation capacity, requires the proposed measures listed above, and the staff-recommended measures

¹⁰ Tallassee Shoals' January 7, 2022, Filing at 6 (clarifying that Unit 1 operates with a 1 5/8-inch trash rack that is difficult to clean, and therefore, Tallassee Shoals limits operation of Unit 1 to a few days per year).

described below. Combined, these measures will protect or enhance terrestrial resources, threatened species, recreation, and cultural resources at the project.

20. To verify compliance with the project's operational requirements, this license requires an operation compliance monitoring plan.
21. To ensure the protection of birds and to monitor project effects on birds and other wildlife, the license requires that Tallassee Shoals develop an avian protection plan in coordination with FWS and the Georgia DNR – Wildlife Resources Division (Georgia WRD).
22. To protect the tricolored bat, the license requires that Tallassee Shoals avoid tree removal during the tri-colored bat's non-volant (or flightless) pup season (May 1 - July 15) and during its winter torpor (or hibernation) season (December 15 - February 15).
23. To protect environmental resources during recreation facility upgrades and provide for ongoing maintenance of project recreation facilities, the license requires that Tallassee Shoals develop a recreation management plan that includes: (1) a map or drawing depicting the canoe portage trail, including (a) the location of any steps that must be built, (b) trail realignment to improve accessibility, (c) directional and safety signs, (d) expansion of the parking area from 3 to 6 spaces; (2) best management practices (BMPs) to protect any wetlands, riparian, and littoral habitat during the construction of the recreation facility improvements; (3) a schedule for implementing the proposed recreation enhancements within two years of plan approval; and (4) provisions for continued maintenance of the project recreation facilities.
24. To protect cultural resources, the license requires that Tallassee Shoals cease all land-clearing and land-disturbing activities and consult with the Georgia State Historic Preservation Officer (SHPO), Alabama-Coushatta Tribe of Texas, Kialegee Tribal Town, Alabama-Quassarte Tribal Town, Muscogee (Creek) Nation, Cherokee Nation, Poarch Band of Creek Indians, Coushatta Tribe of Louisiana, Thlopthlocco Tribal Town, Eastern Band of Cherokee Indians, and United Keetoowah Band of Cherokee Indians in Oklahoma if a previously unidentified cultural resource is discovered during project operation, maintenance, or other project-related activities. The license also requires that the licensee consult with the Georgia SHPO, Alabama-Coushatta Tribe of Texas, Kialegee Tribal Town, Alabama-Quassarte Tribal Town, Muscogee (Creek) Nation, Cherokee Nation, Poarch Band of Creek Indians, Coushatta Tribe of Louisiana, Thlopthlocco Tribal Town, Eastern Band of Cherokee Indians, and United Keetoowah Band of Cherokee Indians in Oklahoma prior to implementing any activities or project modifications not specifically authorized by this license to determine the effects of the activities on historic properties and the need for cultural resource studies or measures, if any.

WATER QUALITY CERTIFICATION

25. Under section 401(a)(1) of the Clean Water Act (CWA),¹¹ the Commission may not issue a license authorizing the construction or operation of a hydroelectric project unless the state water quality certifying agency either has issued water quality certification (certification) for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA provides that the certification shall become a condition of any federal license that authorizes construction or operation of the project.¹²

26. On August 12, 2022, Tallassee Shoals applied to the Georgia DNR – Environmental Protection Division (Georgia EPD) for section 401 certification for the Tallassee Shoals Project. Georgia EPD acknowledged receipt of the application request on August 19, 2022.¹³ On September 2, 2022, Commission staff issued a notice informing Georgia EPD that if it did not act on the certification request by August 19, 2023, it waived its certifying authority pursuant to section 401(a)(1) of the CWA. The record indicates that Georgia EPD did not act on the certification request; thus, Commission staff issued a notice of waiver of certification on August 31, 2023.

COASTAL ZONE MANAGEMENT ACT

27. Under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA),¹⁴ the Commission cannot issue a license for a project within or affecting a state's coastal zone unless the state's coastal zone management agency concurs with the license applicant's certification of consistency with the state's CZMA program, or the agency's concurrence is conclusively presumed by its failure to act within 6 months of its receipt of the applicant's certification.

28. On January 7, 2022, Tallassee Shoals filed Georgia DNR – Coastal Resources Division's response to its inquiry on CZMA consistency. Georgia DNR's Coastal Resource Division stated that relicensing the Tallassee Shoals Project would not result in reasonably foreseeable impacts to coastal uses and resources.¹⁵ Therefore, a CZMA consistency certification is not required.

¹¹ 33 U.S.C. § 1341(a)(1).

¹² *Id.* § 1341(d).

¹³ Tallassee Shoals' August 22, 2022, Filing at 2.

¹⁴ 16 U.S.C. § 1456(c)(3)(A).

¹⁵ *See* Tallassee Shoals' January 7, 2022 Deficiency Response at attachment A
(continued ...)

SECTION 18 FISHWAY PRESCRIPTIONS

29. Section 18 of the FPA¹⁶ provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate.

30. On September 2, 2022, Interior filed a request that the Commission include a reservation of authority to prescribe fishways. Consistent with Commission policy, Article 403 of this license reserves the Commission's authority to require fishways that may be prescribed by the Secretary of the Interior for the Tallassee Shoals Project.

THREATENED AND ENDANGERED SPECIES

31. Section 7(a)(2) of the Endangered Species Act of 1973 (ESA)¹⁷ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species or result in the destruction or adverse modification of their designated critical habitat.

32. Based on FWS's Information for Planning and Consultation (IPaC) website, the federally listed endangered gray bat (*Myotis grisescens*), the federally proposed endangered tricolored bat (*Perimyotis subflavus*), and the candidate for listing monarch butterfly (*Danaus plexippus*)¹⁸ may occur in the project area.¹⁹ No designated critical habitat is within the project boundary for any federally listed threatened and endangered species, or for any proposed species.

33. The federally listed endangered gray bat is a migratory species that roosts, breeds, rears young, and hibernates in caves. Gray bats occur in southern Illinois and Indiana, south to north-western Florida, and from the Appalachians to eastern Oklahoma. In

(correspondence dated November 23, 2021).

¹⁶ 16 U.S.C. § 811.

¹⁷ *Id.* § 1536(a).

¹⁸ For species proposed for listing, a federal agency must confer with FWS only when the agency determines that its action would likely jeopardize the continued existence of the proposed species or destroy or adversely modify proposed critical habitat. 16 U.S.C. § 1536(a)(4).

¹⁹ See Interior's updated official list of threatened and endangered species, accessed by Commission staff using the IPaC database (<http://ecos.fws.gov/ipac/>) on September 26, 2024, and placed in the public record for this proceeding on September 26, 2024.

Georgia, gray bats regularly occupy three caves during the summer in Chattooga, Walker, and Catoosa Counties; however, it is likely that additional roost caves in the northwest part of the state have yet to be discovered.

34. Tricolored bats are known to occur in 39 states and the District of Columbia, including all of Georgia. Tricolored bats are active from spring to fall, using a combination of summer and winter habitats from mid-March to mid-April and August through October and summer habitats from mid-April through July.

35. While there are no known caves in the proposed project boundary, the gray bat typically forages in riparian and stream corridors and could potentially use the project area for foraging and traveling to and from cave roosts. Additionally, the riparian zone of the Middle Oconee River within the project boundary and surrounding areas provides suitable roosting habitat for the tricolored bat. Any loss of trees, or tree trimming, at the project could remove potential habitat for roosting, travelling, or foraging bats.²⁰

36. Tallassee Shoals proposes to construct a canoe portage and put-in and take-out that would require minimal disturbance of vegetation and expand recreation parking.²¹ The canoe portage would be constructed on an existing trail, requiring the selective removal of some understory vegetation (e.g., ferns and buckeye). The proposed expanded recreation parking would require the removal of two mature hardwood trees. Additionally, proposed vegetative management would include limb trimming and removal of woody growth extending onto the portage trail.

37. In the EA,²² Commission staff found that the removal of mature trees for the expansion of recreation parking, vegetation management at recreation facilities on the east side of the river following canoe portage improvements, and continued vegetation management (e.g., tree trimming) at project facilities on the west side of the river would have minimal disturbance to suitable travel or foraging corridors for the gray bat. Therefore, given that there are no known caves in the proposed project boundary and the proposed vegetation disturbance at the project is limited, staff determined that relicensing the project as proposed, is not likely to adversely affect the gray bat. On January 19, 2024, Commission staff requested FWS's concurrence with its determination, and, on February 13, 2024, FWS provided its concurrence.

²⁰ EA at F-5, H-2.

²¹ *Id.* at 29-32, H-2.

²² *Id.* at F-5, H-2.

38. In the EA,²³ Commission staff determined that tree removal and ongoing vegetation management could affect habitat for the tricolored bat by disturbing suitable roost trees. However, implementation of the time-of-year restrictions would adequately protect the species at the project and it would be unlikely that the proposed project would adversely affect the species. Article 405 requires that Tallassee Shoals avoid tree removal or trimming during the tricolored bat's non-volant pup season (May 1 – July 15) and during its winter torpor season (December 15 – February 15) to protect the species. Staff determined that relicensing the project with the staff-recommended measure for tree removal would adequately protect the tricolored bat, such that the project would not jeopardize the continued existence of the species. Therefore, no further action related to the relicensing of the project is required under the ESA for this species.

39. Commission staff also concluded that relicensing the project would not jeopardize the continued existence of the monarch butterfly. Although vegetation management could affect plants upon which the monarchs depend for survival, staff determined that due to the small area of routine mowing, and the ongoing nature of these management practices, and the limited vegetation disturbance required to construct and maintain the proposed recreation facilities, the impact would be insignificant.²⁴ Therefore, no further action related to the relicensing of the project is required under the ESA for this species.

HISTORIC AND CULTURAL RESOURCES

A. National Historic Preservation Act

40. Under section 106 of the National Historic Preservation Act (NHPA)²⁵ and its implementing regulations,²⁶ federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register of Historic Places (National Register), defined as historic properties, and afford the Advisory Council on Historic Preservation (Advisory Council) a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the SHPO to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

41. In a letter filed on September 15, 2021, the Georgia SHPO determined that no historic sites that are listed or eligible for listing on the National Register would be

²³ *Id.*

²⁴ *Id.* at F-5 to F-6.

²⁵ 54 U.S.C. § 306108.

²⁶ 36 C.F.R. pt. 800 (2024).

affected by relicensing the Tallassee Shoals Project.²⁷ In the EA,²⁸ staff determined that relicensing the project as proposed would not affect historic properties.

42. Pursuant to the regulations implementing section 106 of the NHPA,²⁹ when an agency makes a finding of no adverse effect, the agency has fulfilled its responsibilities under section 106 and no further action is required. However, it is possible that unknown archaeological or cultural resources could be discovered during project-related construction, operation, maintenance, or other project-related work involving land-disturbing activities. Therefore, to ensure the proper treatment of any potential archaeological or cultural resources that may be encountered during the term of the license, Article 407 requires the licensee to consult with the Georgia SHPO and Tribes prior to conducting any maintenance activities, land-clearing or land-disturbing activities, or changes to project operation or facilities not specifically authorized by this license that may affect cultural resources. Additionally, Article 408 requires the licensee to stop work and consult with the Georgia SHPO and Tribes if previously unidentified archaeological or cultural artifacts are discovered during project operation or maintenance.

B. Tribal Consultation

43. On November 2, 2017, Commission staff invited consultation with the Alabama-Coushatta Tribe of Texas, Kialegee Tribal Town, Alabama-Quassarte Tribal Town, Muscogee (Creek) Nation, Cherokee Nation, Poarch Band of Creek Indians, Coushatta Tribe of Louisiana, Thlopthlocco Tribal Town, Eastern Band of Cherokee Indians, and United Keetoowah Band of Cherokee Indians in Oklahoma.

44. On November 27, 2017, the Cherokee Nation filed comments requesting to be a consulting party on the project and mentioned that a cultural resources survey should be conducted. On March 23, 2021, Tallassee Shoals provided cultural resources survey reports to the Cherokee Nation. On December 22, 2017, the Muscogee (Creek) Nation filed a response to Commission staff's request for participation in the relicensing process, stating their desire to consult and participate in the relicensing process. No Tribe reported any known traditional cultural properties within the project's area of potential effects (APE).

²⁷ See Final License Application, at appendix A (letter dated April 27, 2021).

²⁸ EA at 38.

²⁹ 36 C.F.R. § 800.5(b), (d) (2024).

45. On September 28, 2018, Tallassee Shoals provided the notice of intent (NOI) and pre-application document (PAD) for the project’s relicensing to the federally-recognized Tribes for review and comment.³⁰ On September 15, 2021, Tallassee Shoals provided the final license application to the Cherokee Nation, Eastern Band of Cherokee Indians, Muscogee (Creek) Nation, United Keetoowah Band of Cherokee Indians, Kialegee Tribal Town, Poarch Band of Creek Indians, and the Seminole Nation of Oklahoma.

ENVIRONMENTAL JUSTICE

46. In conducting National Environmental Policy Act (NEPA) reviews of proposed hydropower projects, the Commission follows the instruction of Executive Orders 12898 and 14096, which direct federal agencies to identify, analyze, and address disproportionate and adverse human health or environmental effects of their actions on environmental justice communities.³¹ Executive Order 14008 also directs agencies to develop programs, policies, and activities to address the disproportionate and adverse “human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”³² Environmental justice is “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”³³

³⁰ Tallassee Shoals provided the NOI and PAD to the Cherokee Nation, Eastern Band of Cherokee Indians, Kialegee Tribal Town, Muscogee (Creek) Nation, Poarch Band of Creek Indians, Seminole Nation of Oklahoma, Seminole Tribe of Florida, Thlopthlocco Tribal Town, and United Keetoowah Band of Cherokee.

³¹ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994); Exec. Order No. 14,096, 88 Fed. Reg. 25251 (Apr. 21, 2023).

³² Exec. Order No. 14,008, 86 Fed. Reg. 7619, at 7629 (Jan. 27, 2021). The term “environmental justice community” includes communities that have been historically marginalized and overburdened by pollution. *Id.* The term also includes, but may not be limited to, minority populations, low-income populations, or indigenous peoples. *See* EPA, *EJ 2020 Glossary* (Feb. 2024), <https://www.epa.gov/system/files/documents/2024-02/ej-2020-glossary.pdf>

³³ *See* EPA, *EJ 2020 Glossary* (Feb 2024) <https://www.epa.gov/system/files/documents/2024-02/ej-2020-glossary.pdf>. Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. *Id.* Meaningful involvement of potentially affected
(continued ...)

47. Consistent with the Council on Environmental Quality's (CEQ)³⁴ and U.S. Environmental Protection Agency's (EPA)³⁵ guidance and recommendations, Commission staff considers: (1) whether environmental justice communities (e.g., minority or low-income populations)³⁶ exist in the project area; (2) whether impacts on environmental justice communities are disproportionate and adverse; and (3) possible mitigation measures. As recommended in *Promising Practices*, the Commission uses the 50% and the meaningfully greater analysis methods to identify minority populations.³⁷ Specifically, a minority population is present where either: (1) the aggregate minority population of the block groups in the affected area exceeds 50%; or (2) the aggregate minority population in the block group affected is 10% higher than the aggregate minority population percentage in the county.³⁸

48. CEQ's *Environmental Justice Guidance* also directs low-income populations to be identified based on the annual statistical poverty thresholds from the U.S. Census Bureau.³⁹ Using *Promising Practices*' low-income threshold criteria method, low-

environmental justice community residents means: (1) people have an appropriate opportunity to participate in decisions about a proposed activity that may affect their environment and/or health; (2) the public's contributions can influence the regulatory agency's decision; (3) community concerns will be considered in the decision-making process; and (4) decision makers will seek out and facilitate the involvement of those potentially affected. *Id.*

³⁴ CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act* (Dec. 1997) (CEQ's *Environmental Justice Guidance*), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/justice.pdf>.

³⁵ See generally EPA, *Promising Practices for EJ Methodologies in NEPA Reviews* (Mar. 2016) (*Promising Practices*), https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.

³⁶ See generally Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994). Minority populations are those groups that include: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic.

³⁷ See *Promising Practices* at 21-25.

³⁸ Here, Commission staff selected Clarke County, Georgia as the comparable reference community to ensure that affected environmental justice communities are properly identified. EA at 41.

³⁹ CEQ's *Environmental Justice Guidance* at 26.

income populations are identified as block groups where the percent of low-income populations in the identified block group is equal to or greater than that of the county.⁴⁰

49. To identify potential environmental justice communities during preparation of the EA, Commission staff used 2021 U.S. Census Bureau's American Community Survey data⁴¹ for the race, ethnicity, and poverty data at the block group level.⁴² Additionally, in accordance with *Promising Practices*, staff used EJScreen, EPA's environmental justice mapping and screening tool, as an initial step to gather information regarding minority and low-income populations; potential environmental quality issues; environmental and demographic indicators; and other important factors.⁴³

50. Once Commission staff collected the block group level data, as discussed in further detail below, staff conducted an impacts analysis for the identified environmental justice communities and evaluate relevant health or environmental hazards; the natural physical environment; and, associated social, economic, and cultural factors to determine whether impacts were disproportionate and adverse on environmental justice communities and whether those impacts were significant.⁴⁴ Commission staff assessed whether impacts on an environmental justice community were disproportionate and

⁴⁰ See *Promising Practices* at 25.

⁴¹ U.S. Census Bureau, American Community Survey 2021 ACS 5-Year Estimates Detailed Tables, File# B17017, Poverty Status in the Past 12 Months by Household Type by Age of Householder, <https://data.census.gov/cedsci/table?q=B17017>; File #B03002 Hispanic or Latino Origin By Race, <https://data.census.gov/cedsci/table?q=b03002>.

⁴² For this project, Commission staff chose a 1-mile radius around the project boundary as the area of study. Commission staff found that a 1-mile radius is the appropriate unit of geographic analysis given the limited scope of the project proposal and concentration of project-related effects near the project boundaries. EA at Table D-7 and Figure E-6.

⁴³ EPA, *Purposes and Uses of EJScreen* (Jan. 9, 2024) <https://www.epa.gov/ejscreen/purposes-and-uses-ejscreen> (“Screening tools should be used for a ‘screening-level’ look. Screening is a useful first step in understanding or highlighting locations that may be candidates for further review.”).

⁴⁴ An agency may determine that impacts are disproportionate and adverse, but not significant within the meaning of NEPA and in other circumstances an agency may determine that an impact is *both* disproportionate and adverse and significant within the meaning of NEPA. See *Promising Practices* at 33.

adverse based on whether those impacts were predominately borne by that community, consistent with EPA's recommendations in *Promising Practices*.⁴⁵

51. In the EA, Commission staff identified a total of five census block groups within a 1-mile radius of the project boundary, two of which were identified as environmental justice communities based on the minority threshold. Commission staff evaluated the impacts of continued project operation and the noise, visual, and traffic impacts from the construction of the canoe portage trail on environmental justice communities.⁴⁶

52. In the EA, Commission staff concluded that the maintenance of stable impoundment levels would continue to allow for any subsistence fishing at the project, thus, the continued operation of the project in a run-of-river mode would have a less than significant impact on identified environmental justice communities. Commission staff also found that construction activities associated with the canoe portage trail could cause noise, dust, and traffic impacts, but that these impacts would be temporary in nature and minor in scope. The nearest residences within an identified environmental justice community are located 0.26 miles from the proposed portage area and 0.10 miles from the parking lot expansion area. The EA found that noise levels would be highest in the immediate vicinity of construction and would be lower in areas farther away from the construction area. Construction would occur during months when recreation is low and would be expected to occur during daylight hours. Although there would be additional public access to recreate at the Tallassee Shoals Project, the site is remote and unlikely to attract long-term and sustained increases in traffic or usage that would adversely affect the identified communities. Commission staff found that there would be minimal impacts to aesthetic resources from the proposed recreation enhancements because they would occur along an existing footpath, require little soil disturbance, and be obscured by adjacent forested areas. The EA concluded that the noise and other aesthetic impacts from project construction on nearby residences in the identified environmental justice communities would be less than significant due to the short duration of the construction activities and limited use of loud construction machinery.

53. Based on the foregoing analysis, impacts associated with the project's operation and limited construction activities would not be disproportionate and adverse as they

⁴⁵ There are various approaches to determining whether an action will cause a disproportionate and adverse impact, and one recommended approach is to consider whether an impact would be "predominantly borne by minority populations or low-income populations." See *id.* at 44-46.

⁴⁶ EA at 43-44.

would not be predominantly borne by the environmental justice communities present within the project area.⁴⁷

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES PURSUANT TO SECTION 10(j) OF THE FPA

54. Section 10(j)(1) of the FPA⁴⁸ requires the Commission, when issuing a license, to include conditions based on recommendations submitted by federal and state fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act,⁴⁹ to “adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)” affected by the project.

55. In response to the July 22, 2022, public notice that the project was ready for environmental analysis, Interior filed two recommendations under section 10(j).⁵⁰ In the EA, Commission staff found that Interior’s recommendations are outside the scope of section 10(j) because they are related to uncertain future actions and are considered under the broad public interest standard of section 10(a)(1) of the FPA in the next section.⁵¹

⁴⁷ *Id.*

⁴⁸ 16 U.S.C. § 803(j)(1).

⁴⁹ *Id.* §§ 661 *et seq.*

⁵⁰ Interior September 2, 2022, Comments.

⁵¹ Interior’s recommendations for a habitat enhancement plan and a migratory fish management plan were found by Commission staff to be outside of the scope of 10(j). *See* EA at I-1 and I-2.

SECTION 10(a)(1) OF THE FPA

56. Section 10(a)(1) of the FPA⁵² requires that any project for which the Commission issues a license be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and utilization of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.

A. Project Operation

57. Tallassee Shoals proposes to continue to operate the project in run-of-river mode such that outflow approximates inflow at any given point in time. Run-of-river mode would be maintained using an automated system. Although the project has two turbine units, Tallassee Shoals operates the project using the 2.2-MW Unit 2 as the primary unit.⁵³

58. In the EA,⁵⁴ Commission staff recommended Tallassee Shoals continue to operate the project in run-of-river mode as proposed. Staff found that this mode of operation would limit the fluctuation of water levels in the reservoir, which influence the reproductive success of fish, such as bluegills that spawn in near-shore areas of the impoundment. Additionally, the relatively quick flow through time under run-of-river operation would enable the reservoir to likely remain well-mixed, reduce the chance of the impoundment becoming temperature stratified, and continue to maintain good water quality. The EA noted that there would be no annual costs associated with continuing to operate the project in run-of-river mode such that outflow approximates inflow at any given point in time, and therefore, recommended the measure as a license requirement. Article 401 requires this mode of operation, and that the licensee notify the resource agencies within 5 business days after any operating emergency.

B. Project Operation Compliance Monitoring

59. Tallassee Shoals proposes to continue to release 70 cfs to the bypassed reach and to monitor the flows released using a staff gage and a transducer. The 70-cfs minimum flow is based on inflows as reported by the U.S. Geological Survey (USGS) gages

⁵² 16 U.S.C. § 803(a)(1).

⁵³ *Supra* note 9.

⁵⁴ EA at 18.

located upstream and downstream from the project.⁵⁵ Additionally, Tallassee Shoals proposes to maintain the impoundment elevation between 2.2 and 2.4 inches above the spillway crest, which corresponds to 70 cfs of flow over the spillway. Interior recommends that Tallassee Shoals: (1) curtail or suspend project operations for short periods of time as determined by Interior and Georgia DNR (collectively, the resource agencies); (2) curtail or suspend license requirements for a period necessary to rectify operating emergencies beyond Tallassee Shoals' control; and (3) notify the resource agencies within 5 business days and the Commission within 10 days after any operating emergency. However, neither Tallassee Shoals' proposal nor Interior's recommendation formalizes a mechanism for reporting operational data and deviations from run-of-river operation.

60. In the EA,⁵⁶ staff recommended that Tallassee Shoals develop an operation compliance monitoring plan that specifies the methods used to monitor and document project operation and minimum flow releases to the bypassed reach and Oconee River. The plan would document compliance with the operational provisions of the license, provide a mechanism for reporting deviations, such as curtail or suspend project operations, help the Commission facilitate administration of the license, and assist with the protection of resources that are sensitive to deviations from normal operating conditions. Staff estimated that developing the plan would have a levelized annual cost of \$5,440, which the EA concluded would be justified by the aforementioned benefits. Article 402 requires staff's recommended operation compliance monitoring plan.

C. Migratory Fish Management Plan

61. Tallassee Shoals is the only dam on the Middle Oconee River. There are three hydropower dams located downstream from the Tallassee Shoals Project on the main stem Oconee River, including Barnett Shoals Dam, located 22 miles downstream from Tallassee Shoals Dam; Wallace Dam, located about 70 miles downstream from Tallassee Shoals Dam; and Sinclair Dam, located about 100 miles downstream from Tallassee Shoals Dam. Due to the lack of dedicated fish passage facilities, all three dams are impediments to fish movement into the Middle Oconee River.⁵⁷

⁵⁵ USGS gage no. 02217475, Middle Oconee River near Arcade, Georgia, is located about 8 miles upstream of the project. Additionally, USGS gage no. 02217500, Middle Oconee River near Athens, Georgia, is located about 9 miles downstream of the project.

⁵⁶ EA at 19, 46, and H-1.

⁵⁷ *Id.* at H-2 and H-3.

62. To address fish passage needs at the Tallassee Shoals Project, Interior recommended pursuant to section 10(j) of the FPA, that within 2 years of the establishment of fish passage at Sinclair, Wallace, and Barnett Shoals dams, Tallassee Shoals develop a migratory fish management plan with provisions for periodic migratory fish monitoring at Tallassee Shoals Dam and in the reaches between Tallassee Shoals Dam and Barnett Shoals Dam, and between the Barnett Shoals and Wallace Dams to identify which migratory species are present and which species are attempting to migrate upstream of Tallassee Shoals Dam. Staff determined that the measure does not fall within the scope of section 10(j) because the measure is conditional in that its implementation is dependent upon a future uncertain event.⁵⁸ Therefore, staff instead analyzed it pursuant to section 10(a) of the FPA.

63. As discussed in the EA,⁵⁹ the benefits associated with Interior's recommended measure are contingent on fish passing Barnett Shoals, Wallace, and Sinclair Dams. Although Interior states that it is possible that fish passage at the downstream Barnett Shoals Dam will occur at some point during the Tallassee Shoals Project license term, there are currently no plans or schedules to install fish passage at Barnett Shoals, Wallace, or Sinclair Dams.⁶⁰ Upstream passage of fish at the Wallace, Sinclair, and Barnett Shoals Dams is an uncertain future action, and there is no certainty that migratory fish would have unimpeded access to the Tallassee Shoals Project.⁶¹ Therefore, in the absence of fish passage at the downstream dams, the measure has no project-related benefits. Thus, Commission staff did not recommend the measure, and it is not included as a license requirement.

D. Habitat Enhancement Plan

64. Robust redhorse have been found within the 70-mile reach between Sinclair Dam and Dublin, Georgia. In the Oconee River, robust redhorse are excluded from the Middle Oconee River watershed by the Sinclair Dam and spawn only on unstable gravel bars in the lower Oconee River that are downstream of the Sinclair Project.⁶² The closest robust redhorse spawning activity documented in the Oconee River is more than 75 river miles downstream from the Tallassee Shoals Project at the lower end of a short meander section of the Oconee River downstream from state highway 95. Additional spawning sites on

⁵⁸ EA at I-1 and I-2.

⁵⁹ EA at H-3.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 22, H-3.

the Oconee River are between Toombsboro and Milledgeville, Georgia and downstream from the mouth of Commissioner Creek.

65. To address habitat for the robust redhorse, Interior recommended pursuant to section 10(j) that Tallassee Shoals, within 5 years of the establishment of fish passage at the downstream Sinclair, Wallace, and Barnett Shoals dams, develop a tailrace habitat enhancement plan, in consultation with Interior, the National Marine Fisheries Service, and Georgia DNR. Staff determined that the measure does not fall within the scope of section 10(j) because the measure is conditional in that its implementation is dependent upon a future uncertain event.⁶³ Therefore, staff instead analyzed it pursuant to section 10(a) of the FPA.

66. As discussed in the EA,⁶⁴ the downstream Sinclair Dam impedes the upstream passage of all migratory fishes. Given that the presence of robust redhorse has not been documented at the Tallassee Shoals Project and, as noted above, there are three dams downstream that impede upstream passage to the Tallassee Shoals Project, the recommended measure would not benefit robust redhorse.⁶⁵ Moreover, staff noted that there is no evidence in the project record demonstrating that spawning habitat for any migratory species exists in the Oconee River between the Tallassee Shoals and Sinclair Dams. Based on this information, the EA concluded that there would be no benefit from, or a project-related basis for, a habitat enhancement plan for the Tallassee Shoals Project.⁶⁶ Therefore, this license does not require the recommended habitat enhancement plan.

E. Avian Protection Plan

67. Exposed energized components at hydropower facilities can electrocute birds and other wildlife during project operation. The EA noted that the project's substation is not equipped with avian protection devices, and the effects of these project facilities on birds or other wildlife are not currently monitored.⁶⁷ Moreover, the EA determined that there would be a substantial risk of birds being electrocuted at the project's substation in the

⁶³ EA at I-1.

⁶⁴ EA at 21-22, H-3 and H-4.

⁶⁵ *Id.* at H-4.

⁶⁶ *Id.*

⁶⁷ *Id.* at 30, H-2.

absence of avian protection devices.⁶⁸ Therefore, to help minimize potential project effects on birds the EA recommended that Tallassee Shoals develop an avian protection plan, in coordination with FWS and Georgia WRD, that provides for implementing avian protection measures at the project. The plan should include: (1) periodically checking the project facilities for nests or signs of adverse avian interactions; (2) reporting any adverse interactions; (3) consulting with agencies regarding installation of avian protection devices on project facilities if avian interactions are detected; and (4) an implementation schedule. The EA determined that the levelized annual cost of the measure would be \$480 and would be justified by the aforementioned benefits. Article 404 of the license requires the plan.

F. Recreation Management Plan

68. In the EA,⁶⁹ staff determined that constructing the portage trail and increasing the number of parking spaces would improve recreation access and recommended the inclusion of these measures in a recreation management plan. Staff also recommended that construction of the recreation amenities be carried out during daylight hours and when recreation use is low, such as late fall or early spring. The EA determined that the plan would have a levelized annual cost of \$2,840, which would be justified by the aforementioned benefits.

69. Article 406 requires the licensee to develop a recreation management plan, which includes: (1) construction of the canoe portage; (2) expansion of the recreation parking area from 3 spaces to 6 spaces; (3) a detailed description of the location and type of the directional and safety signs for the canoe portage; and (4) provisions for the maintenance of the project recreation facilities.

PROJECT BOUNDARY

70. Project boundaries enclose the project works that are to be licensed and are to include “only those lands necessary for operation and maintenance of the project and for other project purposes, such as recreation, shoreline control, or protection of environmental resources.”⁷⁰

71. The Exhibit G drawings filed on April 18, 2022, depict a project boundary that encloses the existing project dam, headrace canal, penstock, powerhouse, transmission line, tailrace, 23-acre impoundment, and a parking area located near the dam. Article 406

⁶⁸ *Id.*

⁶⁹ *Id.* at 35, H-1.

⁷⁰ 18 C.F.R. § 4.41(h)(2) (2024).

of this license requires the construction, operation, and maintenance of a canoe portage at the project dam. Because the canoe portage will be a project work, the canoe portage must also be included in the project boundary. Therefore, Article 204 requires the filing of revised Exhibit G drawings showing the canoe portage within the project boundary.

ADMINISTRATIVE PROVISIONS

A. Annual Charges

72. The Commission collects annual charges from licensees for administration of the FPA and to compensate for the use and occupancy of federal lands. Article 201 provides for the collection of funds for administration of the FPA.

B. Reservation of Authority to Require Financial Assurance Measures

73. To confirm the importance of licensees maintaining sufficient financial reserves, Article 202 reserves the Commission's authority to require future measures to ensure that the licensee maintains sufficient financial reserves to carry out the terms of the license and Commission orders pertaining thereto.

C. Exhibit F Drawings

74. The Commission requires licensees to file sets of approved project drawings in electronic file format. The Exhibit F drawings filed on September 15, 2021, are approved, and made a part of the license (Ordering Paragraph C). Article 203 requires the drawings to be filed in electronic file format.

D. Amortization Reserve

75. The Commission requires that for new major licenses, non-municipal licensees set up and maintain an amortization reserve account upon license issuance. Article 205 requires the establishment of the account.

E. Headwater Benefits

76. Some projects directly benefit from headwater improvements that were constructed by other licensees, the United States, or permittees. Article 206 requires the licensee to reimburse such entities for these benefits if they were not previously assessed and reimbursed.

F. Review of Final Plans and Specifications

77. Article 301 requires the licensee to file final design documents with the Commission's D2SI-Atlanta Regional Engineer and have them approved before beginning construction.

78. Article 302 requires the licensee to coordinate with the Commission's D2SI-Atlanta Regional Engineer on any project modifications resulting from environmental requirements that would affect project works, dam safety, or project operation.

G. Use and Occupancy of Project Lands and Waters

79. Requiring a licensee to obtain prior Commission approval for every use or occupancy of project land would be unduly burdensome. Therefore, Article 409 allows the licensee to grant permission, without prior Commission approval, for the use and occupancy of project lands for certain minor activities such as landscape planting. Such uses must be consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project.

STATE AND FEDERAL COMPREHENSIVE PLANS

80. Section 10(a)(2)(A) of the FPA⁷¹ requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.⁷² Under section 10(a)(2)(A), staff identified and reviewed 23 comprehensive plans that are relevant to this project.⁷³ No conflicts were found.

⁷¹ 16 U.S.C. § 803(a)(2)(A).

⁷² Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (2024).

⁷³ The list of applicable plans can be found in section 5.4, *Consistency with Comprehensive Plans*, of the EA.

APPLICANT'S PLANS AND CAPABILITIES

81. In accordance with sections 10(a)(2)(C) and 15(a) of the FPA,⁷⁴ Commission staff evaluated Tallassee Shoals' record as a licensee for these areas: (A) conservation efforts; (B) compliance history and ability to comply with the new license; (C) safe management, operation, and maintenance of the project; (D) ability to provide efficient and reliable electric service; (E) need for power; (F) transmission services; (G) cost effectiveness of plans; and (H) actions affecting the public. This order adopts staff's findings in each of the following areas.

A. Conservation Efforts

82. Section 10(a)(2)(C) of the FPA⁷⁵ requires the Commission to consider the applicant's electricity consumption improvement program, including its plans, performance, and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of state regulatory authorities. Section 16.10 of the Commission's regulations requires an applicant for a new license to include in its application a discussion of its record in encouraging energy conservation.⁷⁶ Tallassee Shoals sells the project's power into the power grid via local utilities. The local utilities are responsible for promoting conservation of electricity use by their customers. Given the limits on Tallassee Shoals' ability to influence users of the electricity generated by the project, the project will be operated in a manner consistent with section 10(a)(2)(C) of the FPA.

B. Compliance History and Ability to Comply with the New License

83. Based on a review of Tallassee Shoals' compliance with the terms and conditions of the current license, Commission staff finds that Tallassee Shoals' overall record of making timely filings and compliance with its license is satisfactory. Therefore, staff believes that Tallassee Shoals can satisfy the conditions of a new license.

C. Safe Management, Operation, and Maintenance of the Project

84. Commission staff reviewed Tallassee Shoals' management, operation, and maintenance of the Tallassee Shoals Project pursuant to the requirements of 18 C.F.R. Part 12 and the Commission's Engineering Guidelines and periodic Independent Consultant's Safety Inspection Reports. Staff concludes that the project works are in

⁷⁴ 16 U.S.C. §§ 803(a)(2)(C), 808(a).

⁷⁵ *Id.* § 803(a)(2)(C).

⁷⁶ *See* 18 C.F.R. § 16.10 (2024).

good condition, and that there is no reason to believe that Tallassee Shoals cannot continue to safely manage, operate, and maintain these facilities under a new license.

D. Ability to Provide Efficient and Reliable Electric Service

85. Commission staff reviewed Tallassee Shoals' plans and its ability to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. Tallassee Shoals has operated the project reliably and efficiently under the current license and staff expects Tallassee Shoals to continue to do so under this new license. Therefore, staff concludes that Tallassee Shoals is capable of operating the project to provide efficient and reliable electric service in the future.

E. Need for Power

86. The Tallassee Shoals Project has an installed capacity of 2.3 MW and generates, on average, 6,100 MW-hours (MWh) per year.

87. To assess the need for power, Commission staff looked at the needs in the operating region in which the project is located. The Tallassee Shoals Project is in the Southeast region of the SERC Reliability Corporation (SERC-Southeast) of the North American Electric Reliability Corporation (NERC).

88. NERC annually forecasts electrical supply and demand nationally and regionally for a 10-year period. According to NERC's 2022 Long-Term Reliability Assessment, the total internal demand for this region is projected to decrease by 0.11 percent from 2023 to 2032. The anticipated reserve margin is forecasted to range from 39.2 percent in 2023 to 49.8 percent in 2032. SERC-Southeast's reference margin is 15.0 percent. Therefore, the forecasted anticipated reserve margin is expected to exceed the reference margin.⁷⁷

89. Although demand is projected to decrease somewhat in the region, staff concludes that power from the project would continue to help meet the regional need for power by providing a portion of the power needed that would otherwise have to come from alternative power sources in the Southeast region. In addition, the project provides power that can displace non-renewable sources. Displacing the operation of non-renewable facilities may avoid some power plant emissions, thus creating an environmental benefit.

⁷⁷ The reserve margin is the percentage of a region's electrical supply that exceeds the region's peak demand. It indicates what amount of extra supply is available to meet unexpected additional demand above a region's peak demand. The reference margin is a threshold with which to compare the reserve margin. If the reserve margin exceeds the reference margin, then a region likely has an adequate supply buffer to meet unexpected demand.

F. Transmission Services

90. The project includes an approximately 100-foot-long, 42-kilovolt transmission line that interconnects with the regional electric grid. Tallassee Shoals is not proposing any changes that would affect its own or other transmission services in the region. The project's generating facilities and transmission line are important elements in providing affordable renewable hydroelectric generation to meet a portion of local power requirements, resource diversity, and capacity needs in the region.

G. Cost Effectiveness of Plans

91. Tallassee Shoals proposes no changes to project operation or project facilities other than recreation facilities. Based on its record as an existing licensee, Commission staff concludes that Tallassee Shoals will continue to propose cost-effective project improvements under a new license, and these plans and enhancements are likely to be carried out in a cost-effective manner.

H. Actions Affecting the Public

92. Tallassee Shoals provided opportunities for public involvement in the development of its application for a new license for the project. Tallassee Shoals uses the project to help meet local power needs. In addition, the project provides employment opportunities, and, during the previous license period, Tallassee Shoals operated the project in a manner that provided recreational opportunities to the surrounding community and visitors to the area.

PROJECT ECONOMICS

93. In determining whether to issue a new license for an existing hydroelectric project, the Commission considers a number of public interest factors, including the economic benefits of project power. Under the Commission's approach to evaluating the economics of hydropower projects as articulated in *Mead Corporation*,⁷⁸ the Commission uses current costs to compare the costs of the project with the costs of the likely alternative source of power with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and of reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

94. In applying this analysis to the Tallassee Shoals Project, Commission staff considered three options: a no-action alternative, Tallassee Shoals' proposal, and the project as licensed herein.⁷⁹

95. Under the no action alternative, the project would continue to operate as it does now. The project has an installed capacity of 2.3 MW, a capacity benefit of 0.51 MW,⁸⁰ and generates an average of 6,100 MWh of electricity annually. The alternative source of power's annual cost to produce the same amount of energy and provide the same capacity

⁷⁸ 72 FERC ¶ 61,027 (1995).

⁷⁹ Details of Commission staff's economic analysis for the three alternatives are included in section 4.0 and Appendix G of the EA.

⁸⁰ The term "capacity benefit" is used to describe the benefit a project receives for providing capacity to the grid, which may be in the form of a dependable capacity credit or credit for monthly capacity provided.

benefit is \$412,792.⁸¹ The total annual project cost is \$271,110.⁸² To determine whether the proposed project is currently economically beneficial, the project's total annual cost is subtracted from the alternative source of power's cost. Therefore, the project would cost \$141,682 less than the alternative source of power's cost.

96. As proposed, the project would have an installed capacity of 2.3 MW, generate an average of 6,100 MWh of energy annually, and have a capacity benefit of 0.51 MW. The alternative source of power's annual cost to produce the same amount of energy and provide the same capacity benefit is \$412,792. The total annual project cost is about \$273,949. Subtracting the project's total annual cost from the alternative source of power's cost, the project would cost \$138,843 less than the alternative source of power's cost.

97. As licensed herein, the project would have an installed capacity of 2.3 MW, generate an average of 6,100 MWh of energy annually, and have a capacity benefit of 0.51 MW. The alternative source of power's cost to produce the same amount of energy and provide the same capacity benefit is \$412,792. The total annual project cost is about \$279,869. Subtracting the project's total annual cost from the alternative source of power's cost, the project would cost \$132,923 less than the alternative source of power's cost.

98. In considering public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary service benefits). These benefits include the ability to help maintain the stability of a power system, such as by quickly adjusting power output to respond to rapid changes in system load; and to respond rapidly to a major utility system or regional blackout by providing a source of power to help restart combustion based generating stations and put them back online.

⁸¹ The alternative source of power's cost is based on the current cost of providing the same amount of generation and capacity benefit from a natural gas-fired combined cycle plant, as reported by the most recent publication of The U.S. Energy Information Administration (EIA), Annual Energy Outlook. This analysis is based on The U.S. Energy Information Administration (EIA), Annual Energy Outlook 2023, for the Division 5, South Atlantic Region. As reported in Section 4 and Appendix G of the EA, the alternative source of power's cost is a combination of the cost of energy, \$52.71/MWh, and a capacity benefit which staff estimates to be about \$179.08/kilowatt-year.

⁸² All costs, as reported in Section 4 and Appendix G of the EA, were updated to 2023 dollars.

99. Although the analysis does not explicitly account for the effects inflation may have on the future cost of electricity, the fact that hydropower generation is relatively insensitive to inflation compared to fossil fueled generators is an important economic consideration for power producers and the consumers they serve. This is one reason project economics is only one of the many public interest factors the Commission considers in determining whether or not, and under what conditions, to issue a license.

COMPREHENSIVE DEVELOPMENT

100. Sections 4(e) and 10(a)(1) of the FPA⁸³ require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation; the protection, mitigation of damage to, and enhancement of fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality. Any license issued must be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

101. The EA for the project contains background information, analysis of effects, and support for related license articles. Based on the record of this proceeding, including the EA, licensing the Tallassee Shoals Project, as described in this order, would not constitute a major federal action significantly affecting the quality of the human environment. The project will be safe if operated and maintained in accordance with the requirements of this license.

102. Based on staff's independent review and evaluation of the Tallassee Shoals Project, recommendations from the resource agencies and other stakeholders, and the no-action alternative, as documented in the EA, the project as licensed herein, is best adapted to a comprehensive plan for improving or developing the Middle Oconee River. This alternative is selected because: (1) issuance of a new license will serve to maintain a beneficial and dependable source of electric energy; (2) the required environmental measures will protect or enhance water quality, fish and wildlife resources, federally listed species, recreational resources, and cultural resources; and (3) the 2.3 MW of electric capacity comes from a renewable resource that does not contribute to atmospheric pollution.

⁸³ 16 U.S.C. §§ 797(e), 803(a)(1).

LICENSE TERM

103. Section 15(e) of the FPA⁸⁴ provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years.

104. On October 19, 2017, the Commission established a 40-year default license term policy for licenses, effective as of October 26, 2017.⁸⁵ The Policy Statement provides for exceptions to the 40-year default license term under certain circumstances:

(1) establishing a shorter or longer license term if necessary to coordinate license terms for projects located on the same river basin; (2) deferring to a shorter or longer license term explicitly agreed to in a generally-supported comprehensive settlement agreement; and (3) establishing a longer license term upon a showing by the license applicant that substantial voluntary measures were either previously implemented during the prior license term, or substantial new measures are expected to be implemented under the new license. Because none of the above exceptions apply in this case, a 40-year license for the Tallassee Shoals Project is appropriate.

The Director orders:

(A) This license is issued to Tallassee Shoals, LLC (licensee), for a period of 40 years, effective November 1, 2024, to operate and maintain the Tallassee Shoals Hydroelectric Project No. 6951. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in these lands, described in the project description and the project boundary discussion of this order.

(2) Project works consisting of: (1) a 365-foot-long, 25-foot-high concrete dam; (2) a 23-acre impoundment with a gross storage capacity of 230 acre-feet, at 646 feet elevation NGVD29; (3) a 0.1-MW fixed Kaplan unit integral with the east end of the dam with trash racks of 4-inch bar spacing and an adjacent 48-inch-diameter sluiceway; (4) a 1,400-foot-long headrace canal from the dam to the penstock intake, with trash racks of 8-inch bar spacing; (5) an 80-foot-long, 11-foot-diameter penstock; (6) a powerhouse

⁸⁴ *Id.* § 808(e).

⁸⁵ *Policy Statement on Establishing License Terms for Hydroelectric Projects*, 161 FERC ¶ 61,078 (2017) (Policy Statement).

containing a single 2.2-MW adjustable Kaplan unit; (7) a 750-foot-long tailrace; (8) an approximately 100-foot-long, 42-kilovolt transmission line; and (9) appurtenant facilities.

The project works generally described above are more specifically shown and described by Exhibits A and F shown below:

Exhibit A: Exhibit A filed on September 15, 2021.

Exhibit F: The following Exhibit F drawings filed on September 15, 2021:

<u>Exhibit No.</u>	<u>FERC Drawing No. 6951-</u>	<u>Drawing Title</u>	<u>Filename Title⁸⁶</u>
F-1	1001	Overall Site Plan	Overall Site Plan
F-2	1002	Dam Plan, Profile and Sections	Dam Plan, Profile and Sections
F-3	1003	Left Abutment Plans and Section	Left Abutment Plans and Sections
F-4	1004	Intake Plan, Elevation and Section	Intake Plan, Elevation and Section
F-5	1005	Headrace Canal Plan, Profile and Typical Sections	Headrace Canal Plan, Profile and Sections
F-6	1006	Transition Structure Plan and Section	Transition Structure Plan and Section
F-7	1007	Powerhouse Plan and Section	Powerhouse Plan and Section

⁸⁶ These exact drawing titles must be used in the filename when filing the electronic file format drawings required in Article 203. Commission staff shortened the drawing titles due to filename character limits. There is no need to modify the titles as they appear on the drawings.

(3) All of the structures, fixtures, equipment, or facilities used to operate or maintain the project, all portable property that may be employed in connection with the project, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) Exhibits A and F described above are approved and made part of this license. Exhibit G is not approved, and Article 204 requires the filing of revised Exhibit G drawings.

(D) This license is also subject to the articles set forth in Form L-10 (October 1975), entitled “Terms and Conditions of License for Constructed major project affecting the interests of interstate or foreign commerce,” (*see* 54 F.P.C. 1792 *et seq.*), as reproduced at the end of this order, and the following additional articles:

Article 201. *Administrative Annual Charges.* The licensee must pay the United States annual charges, effective as of the first day of the month in which the license is issued, and as determined in accordance with the provisions of the Commission’s regulations in effect from time to time, for the purposes of reimbursing the United States for the cost of administration of Part I of the Federal Power Act. The authorized installed capacity for that purpose is 2.3 megawatts.

Article 202. *Reservation of Authority to Require Financial Assurance Measures.* The Commission reserves the right to require future measures to ensure that the licensees maintain sufficient financial reserves to carry out the terms of the license and Commission orders pertaining thereto.

Article 203. *Exhibit F Drawings.* Within 45 days of the date of issuance of this license, as directed below, the licensee must file the approved exhibit drawings in electronic file format.

The licensee must prepare digital images of the approved exhibit drawings in electronic format. Prior to preparing each digital image, the licensee must add the FERC Project-Drawing Number (i.e., P-6951-1001 through P-6951-1007) in the margin below the title block of the approved drawing. The licensee must label and file the Exhibit F drawings as **Critical Energy Infrastructure Information (CEII) material under 18 C.F.R. § 388.113**. The submission should consist of: (1) a public portion consisting of a cover letter; and (2) a CEII portion containing only the Exhibit F drawings. Each drawing must be a separate electronic file, and the file name must include: FERC Project-Drawing Number, FERC Exhibit, Filename Drawing Title, date of the license, and file extension in the following format [*e.g.*, P-6951-1001, F-1, Overall Site Plan, MM-DD-YYYY.TIFF]. All digital images of the exhibit drawings must meet the following format specification:

IMAGERY – black & white raster file
FILE TYPE – Tagged Image File Format (TIFF) CCITT Group 4
(also known as T.6 coding scheme)
RESOLUTION – 300 dots per inch (dpi) desired, (200 dpi minimum)
DRAWING SIZE FORMAT – 22” x 34” (minimum), 24” x 36” (maximum)
FILE SIZE – less than 1 megabyte desired

Article 204. Exhibit G Drawing. Within 90 days of the issuance date of this license, the licensee must file, for Commission approval, revised Exhibit G drawings that show the location, within the project boundary, of the project’s canoe portage. In addition to the other components of Exhibit G, the licensee must provide the project boundary data in a geo-referenced electronic format that complies with sections 4.39 and 4.41(h) of the Commission’s regulations.

Article 205. Amortization Reserve. Pursuant to section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project must be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensee must set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensee must deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensee must set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensee must maintain the amounts established in the project amortization reserve account until further order of the Commission.

The specified reasonable rate of return used in computing amortization reserves must be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly included in the licensee's long-term debt and proprietary capital accounts as listed in the Commission’s Uniform System of Accounts. The cost rate for such ratios must be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity must be the interest rate on 10-year government bonds (reported as the Treasury Department’s 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 206. Headwater Benefits. If the licensee’s project was directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the prior license (including extensions of that term by annual licenses), and if those headwater benefits

were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee must reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license. The benefits will be assessed in accordance with Part 11, Subpart B, of the Commission's regulations.

Article 301. Final Design Documents. At least 60 days prior to the start of any construction, the licensee must file final design documents with the Commission by eFiling to the Atlanta Regional Office. The design documents must include: final plans and specifications, supporting design report, Quality Control and Inspection Program, Temporary Construction Emergency Action Plan, and Soil Erosion and Sediment Control Plan. The licensee may not begin construction until the Division of Dam Safety and Inspections – Atlanta Regional Engineer has reviewed and commented on the documents, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

Article 302. Project Modification Resulting from Environmental Requirements. If environmental requirements under this license require modifications that may affect the project works or operations, the licensee must consult with the Commission's Division of Dam Safety and Inspections – Atlanta Regional Engineer. Consultation must allow sufficient review time for the Commission to ensure that the proposed work does not adversely affect the project works, dam safety, or project operation.

Article 401. Project Operation. The licensee must operate the Tallassee Shoals Project in a run-of-river mode, such that at any given point in time, the sum of all outflows from the project approximates the sum of all inflows to the project. The licensee must also operate the Tallassee Shoals Project to at all times, release a continuous minimum flow of 70 cubic feet per second (cfs), or inflow, whichever is less, into the bypassed reach of the Middle Oconee River for the protection and enhancement of fish and wildlife resources and other downstream uses.

Project operation, including the above requirements, may be temporarily modified if required by operating emergencies beyond the control of the licensee, or for short periods as follows:

(a) Planned, Temporary Modifications to License Requirement(s)

The licensee may deviate from the requirements of this license for short periods of time, of up to 3 weeks, after mutual agreement among the licensee, the Georgia Department of Natural Resources, and the U.S. Department of Interior (collectively, resource agencies), without prior Commission approval. After concurrence with the resource agencies, the licensee must file a report with the Secretary of the Commission as soon as possible, but no later than 14 calendar days after the onset of the deviation. Each

report must include: (1) the reasons for the deviation and whether operations were modified; (2) the duration and magnitude of the deviation; (3) any environmental effects; and (4) documentation of consultation with the resource agencies. For deviations exceeding 3 weeks, the licensee must file an application and receive Commission approval prior to implementation.

(b) Unplanned Deviations from the Project License Requirement(s) Lasting More than 3 hours or Resulting in Environmental Effects

If there is any unplanned deviation from the requirements of this license that lasts longer than 3 hours *or* results in visible environmental effects such as a fish kill, the licensee must: (1) notify the resource agencies as soon as possible, but no later than 5 business days after the incident; and (2) file a report with the Secretary of the Commission as soon as possible, but no later than 14 calendar days after the incident. Each report must describe the incident, including: (a) the cause; (b) the duration and magnitude; (c) any pertinent operational and/or monitoring data; (d) a timeline of the incident and the licensee's response; (e) any environmental effects; (f) documentation that the resource agencies were notified and any comments received, or, affirmation that no comments were received; and (g) any measures to be implemented to prevent similar incidents in the future.

(c) Unplanned Deviations from the Project License Requirement(s) Lasting 3 Hours or Less with No Environmental Effects

For unplanned deviations lasting 3 hours or less that do not result in environmental effects, the licensee must file an annual report with the Secretary of the Commission by January 31, describing each incident up to 1 month prior to the reporting date, including: (1) the cause of the event; (2) the duration and magnitude of the deviation; (3) any pertinent operational and/or monitoring data; (4) a timeline of the incident and the licensee's response; (5) any comments or correspondence received from the resource agencies, or confirmation that no comments were received from the resource agencies; and (6) a description of measures implemented to prevent similar deviations in the future. Any deviations that occur within the month prior to the reporting date should be included in the following year's report.

Article 402. Operation Compliance Monitoring. Within 180 days of the effective date of the license, the licensee must file, for Commission approval, an operations compliance monitoring plan that must include the following:

(1) a description of how the licensee will monitor and document compliance with the operational and minimum flow requirements of the license;

(2) a description of all equipment that will be used to monitor compliance with the

operational and minimum flow requirements of the license, including a schedule for installing any new equipment;

(3) a description of the procedures for operating, maintaining, and calibrating all monitoring equipment;

(4) the protocols or methods to be used for reporting the monitoring data and deviations from operational requirements to the Commission; and

(5) maintaining a log of project operation for inspection.

The licensee must prepare the plan after consultation with the Georgia Department of Natural Resources and the U.S. Department of the Interior (the agencies). The licensee must include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how agency comments are accommodated by the plan. The licensee must allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan must not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee must implement the plan, including any changes required by the Commission.

Article 403. Reservation of Authority. Authority is reserved to the Commission to require the licensee to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of such fishways as may be prescribed by the Secretary of the Interior pursuant to section 18 of the Federal Power Act.

Article 404. Avian Protection Plan. Within 1 year of license issuance, the licensee must file, for Commission approval, an avian protection plan, in consultation with the U.S. Fish and Wildlife Service and the Georgia Department of Natural Resources – Wildlife Resources Division (the agencies), that provides for the implementation of avian protection measures at the project. The plan must include an implementation schedule and, at a minimum, the following provisions:

(1) periodically checking the project facilities for nests or signs of adverse avian interactions;

(2) reporting any adverse interactions; and

(3) consulting with the agencies regarding installation of avian protection devices on project facilities if avian interactions are detected.

The licensee must include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agency comments are accommodated by the plan. The licensee must allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan must not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee must implement the plan, including any changes required by the Commission.

Article 405. Seasonal Restriction on Tree Removal. To protect the tricolored bat at the Tallasse Shoals Project, the licensee must limit the removal of trees to the period of July 16 through December 14 and February 16 through April 30 on project land, to minimize disturbing suitable roost trees during the tricolored bat's non-volant pup season (May 1 – July 15) and during its winter torpor season (December 15 – February 15). Tree removal is defined herein as cutting down, harvesting, destroying, trimming, or manipulating in any other way, the non-hazardous trees, saplings, snags, or any other form of woody vegetation potentially used by bats.

Article 406. Recreation Management Plan. Within 6 months of the effective date of the license, the licensee must file, for Commission approval, a recreation management plan that includes the following:

- (1) construct a canoe portage around Tallasse Shoals Dam
- (2) add three parking spaces to the recreation parking area;
- (3) a map or drawing depicting the canoe portage trail, including the location of any steps that must be built to improve accessibility of the trail;
- (4) a detailed description of directional and safety signs proposed for the canoe portage, including a map depicting the placement of signs and a conceptual drawing or photograph of the proposed signs;
- (5) a schedule to construct the canoe portage and parking spaces during daylight hours and when recreation use is low, such as late fall or early spring; and

(6) provisions for the maintenance of the canoe portage and the recreational parking area over the term of a license.

The plan must be developed after consultation with the Georgia Department of Natural Resources. The licensee must include with the plan, documentation of agency consultation and copies of comments and recommendations on the plan after it has been prepared and provided to the agency, and specific description of how the agency comments are accommodated by the plan. The licensee must allow a minimum of 30 days for the agency to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the recreation management plan. Land-disturbing activities must not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee must implement the plan, including any changes required by the Commission.

Article 407. Protection of Cultural Resources. Prior to implementing any project modifications not specifically authorized by the license, including but not limited to maintenance activities, land-clearing or land-disturbing activities, or changes to project operation or facilities, the licensee must consult with the Georgia State Historic Preservation Officer (Georgia SHPO), Alabama-Coushatta Tribe of Texas, Kialegee Tribal Town, Alabama-Quassarte Tribal Town, Muscogee (Creek) Nation, Cherokee Nation, Poarch Band of Creek Indians, Coushatta Tribe of Louisiana, Thlopthlocco Tribal Town, Eastern Band of Cherokee Indians, and United Keetoowah Band of Cherokee Indians in Oklahoma, to determine the effects of the activities and the need for any cultural resource studies or measures. If no studies or measures are needed, the licensee must file with the Commission documentation of its consultation with the Georgia SHPO, Alabama-Coushatta Tribe of Texas, Kialegee Tribal Town, Alabama-Quassarte Tribal Town, Muscogee (Creek) Nation, Cherokee Nation, Poarch Band of Creek Indians, Coushatta Tribe of Louisiana, Thlopthlocco Tribal Town, Eastern Band of Cherokee Indians, and United Keetoowah Band of Cherokee Indians in Oklahoma.

If a project modification is determined to affect a historic property, the licensee must file, for Commission approval, a historic properties management plan (HPMP) prepared by a qualified cultural resource specialist after consultation with the Georgia SHPO and the listed Tribes. In developing the HPMP, the licensee must use the Advisory Council on Historic Preservation and the Commission's *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects*, dated May 20, 2002. The HPMP must include the following items:

- (1) a description of each historic property;

- (2) a description of the potential effect on each historic property;
- (3) proposed measures for avoiding or mitigating adverse effects;
- (4) documentation of the nature and extent of consultation; and
- (5) a schedule for implementing mitigation and conducting additional studies.

The Commission reserves the right to require changes to the HPMP. The licensee must not implement any project modifications, other than those specifically authorized in this license, until informed by the Commission that the requirements of this article have been fulfilled.

Article 408. *Protection of Previously Undiscovered Cultural Resources.* If the licensee discovers any unidentified cultural resources during the course of constructing, maintaining, or operating project works or other facilities at the project, the licensee must stop all land-clearing and land-disturbing activities in the vicinity of the resource and consult with the Georgia State Historic Preservation Officer (Georgia SHPO), Alabama-Coushatta Tribe of Texas, Kialegee Tribal Town, Alabama-Quassarte Tribal Town, Muscogee (Creek) Nation, Cherokee Nation, Poarch Band of Creek Indians, Coushatta Tribe of Louisiana, Thlopthlocco Tribal Town, Eastern Band of Cherokee Indians, and United Keetoowah Band of Cherokee Indians in Oklahoma to determine the need for any cultural resource studies or measures. If no studies or measures are needed, the licensee must file with the Commission documentation of its consultation with the Alabama-Coushatta Tribe of Texas, Kialegee Tribal Town, Alabama-Quassarte Tribal Town, Muscogee (Creek) Nation, Cherokee Nation, Poarch Band of Creek Indians, Coushatta Tribe of Louisiana, Thlopthlocco Tribal Town, Eastern Band of Cherokee Indians, and United Keetoowah Band of Cherokee Indians in Oklahoma.

If a discovered cultural resource is determined to be eligible for the National Register of Historic Places (National Register), the licensee must file, for Commission approval, a historic properties management plan (HPMP) prepared by a qualified cultural resource specialist after consultation with the Georgia SHPO and the listed Tribes. In developing the HPMP, the licensee must use the Advisory Council on Historic Preservation and the Commission's *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects*, dated May 20, 2002. The HPMP must include the following items:

- (1) a description of each discovered property that is eligible to be listed in the National Register;
- (2) a description of the potential effect on each discovered property;

- (3) proposed measures for avoiding or mitigating adverse effects;
- (4) documentation of the nature and extent of consultation; and
- (5) a schedule for implementing mitigation and conducting additional studies.

The Commission reserves the right to require changes to the HPMP. The licensee must not resume land-clearing or land-disturbing activities in the vicinity of a cultural resource discovered during construction, until informed by the Commission that the requirements of this article have been fulfilled.

Article 409. Use and Occupancy. (a) In accordance with the provisions of this article, the licensee must 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 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 must also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and 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 must take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling 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 water craft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee must require multiple use and occupancy of facilities for access to project lands or waters. The licensee must also ensure, to the satisfaction of the Commission's authorized representative, that the use 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 must: (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 impoundment 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 or roads where 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 impoundment. No later than January 31 of each year, the licensee must file with the Commission 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. No report filing is required if no conveyances were made under paragraph (c) during the previous calendar year.

(d) The licensee may convey fee title 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 certification 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 water craft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an 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 project waters at normal 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 60 days before

conveying any interest in project lands under this paragraph (d), the licensee must file a letter with the Commission, 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 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 Commission's authorized representative, 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 paragraph (c) or (d) of this article:

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

(3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed must not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee must 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; and (iii) the grantee must not unduly restrict public access to project lands or waters.

(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 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 must be consolidated for consideration when revised Exhibit G drawings would be filed for approval for other purposes.

(g) The authority granted to the licensee under this article must not apply to any part of the public lands and reservations of the United States included within the project boundary.

(E) The licensee must serve copies of any Commission filing required by this order on any entity specified in the order to be consulted on matters relating to that filing. Proof of service on these entities must accompany the filing with the Commission.

(F) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 825*l*, and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713. The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order. The licensee's failure to file a request for rehearing must constitute acceptance of this order.

for
Terry L. Turpin
Director
Office of Energy Projects

Form L-10

(October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION**TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED
MAJOR PROJECT AFFECTING THE INTERESTS OF
INTERSTATE OR FOREIGN COMMERCE**

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Article 4. The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Energy Regulatory Commission, in the

region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and any such alterations thereto, and shall notify him of the date upon which work with respect to any alteration will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights or occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a nonpower licensee under the provisions of Section 15 of said Act, the Licensee, its successors and assigns shall be responsible for, and shall

make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the

interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders

which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. . So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 22. . The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 23. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.