

189 FERC ¶ 62,140
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Green Mountain Power Corporation

Project No. 2445-028

ORDER ISSUING SUBSEQUENT LICENSE

(Issued December 26, 2024)

INTRODUCTION

1. On December 23, 2021, Green Mountain Power Corporation (GMP) filed, pursuant to Part I of the Federal Power Act (FPA),¹ an application for a subsequent license to continue operating and maintaining the 275-kilowatt (kW) Center Rutland Hydroelectric Project No. 2445 (Center Rutland Project or project). The project is located on Otter Creek in Rutland County, Vermont.² The project does not occupy federal land.

2. As discussed below, this order issues a subsequent license for the Center Rutland Project.

BACKGROUND

3. The Commission issued the original license for the project on August 19, 1965, with an effective date of April 1, 1962, and an expiration date of December 31, 1993.³ The Commission issued a subsequent license for the project on March 31, 1993, with an effective date of January 1, 1994, and an expiration date of December 31, 2023.⁴ Since

¹ 16 U.S.C. §§ 791a-825r.

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 was constructed after 1935, it is required to be licensed pursuant to section 23(b)(1) of the FPA. *Id.* § 817(1).

³ *See Vermont Marble Co.*, 34 F.P.C. 540 (1965).

⁴ *OMYA, Inc.*, 62 FERC ¶ 62,224 (1993). On November 23, 2010, the Commission approved the transfer of the license from Vermont Marble Power, Division of Omya Inc., to Central Vermont Public Service Corporation. *Vermont Marble Power*, 133 FERC ¶ 62,171 (2010). On September 13, 2012, the Commission approved the

the expiration date, GMP has operated the project pursuant to section 16.21 of the Commission's regulations, pending the disposition of its application.⁵

4. On February 17, 2023, the Commission issued a public notice that was published in the *Federal Register*, accepting the application for filing, indicating the application was ready for environmental analysis, and setting April 18, 2023, as the deadline for filing motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions.⁶ On April 12, 2023, the U.S. Department of the Interior (Interior) filed a request that the Commission include a reservation of authority for Interior to prescribe fishways under FPA section 18 in any license issued for the project.⁷ On April 18, 2023, Vermont Agency of Natural Resources (Vermont ANR) filed a timely notice of intervention,⁸ comments and recommendations, and preliminary terms and conditions. No parties oppose relicensing the project.

5. Pursuant to the National Environmental Policy Act of 1969 (NEPA),⁹ Commission staff issued an environmental assessment (EA) on April 24, 2024, analyzing the effects of the proposed project and alternatives to it, and setting a 45-day deadline for comments of

transfer of the license from Central Vermont Public Service Corporation to GMP. *Cent. Vermont Pub. Serv. Corp.*, 140 FERC ¶ 62,191 (2013).

⁵ 18 C.F.R. § 16.21 (2024). See January 10, 2024 Notice of Authorization for Continued Project Operation.

⁶ 88 Fed. Reg. 11,906 (Feb. 24, 2023).

⁷ 16 U.S.C. § 811.

⁸ Under Rule 214(a)(2) of the Commission's Rules of Practice and Procedure, Vermont ANR became a party to the proceeding upon the timely filing of the notice of intervention. 18 C.F.R. § 385.214(a)(2).

⁹ 42 U.S.C. §§ 4321 *et seq.* See also 18 C.F.R. pt. 380 (2024) (Commission's regulations implementing NEPA). The Commission is aware of the November 12, 2024, decision in *Marin Audubon Society v. Federal Aviation Administration*, 121 F.4th 902 (D.C. Cir. 2024), holding that the Council on Environmental Quality (CEQ) regulations implementing NEPA are not judicially enforceable or binding. It is noted that section 380.1 of the Commission's regulations, 18 C.F.R. § 380.1, provides that the Commission will comply with the relevant CEQ regulations to the extent they are not inconsistent with the Commission's statutory requirements. The Commission is continuing to review the *Marin Audubon Society* decision and may take such further action as is appropriate. *Power Authority of the State of New York*, 189 FERC ¶ 61,217, at P 8 n.14 (2024).

June 10, 2024.¹⁰ The Vermont State Historic Preservation Office (SHPO) filed comments on the EA on June 7, 2024.

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

PROJECT DESCRIPTION

A. Project Area

7. The Otter Creek watershed has a drainage area of approximately 936 square miles. Otter Creek is approximately 100 miles long from its headwaters in Dorset, Vermont, to its mouth, located in Lake Champlain in Ferrisburgh, Vermont. The Center Rutland Project is located at river mile (RM) 71 on Otter Creek.¹¹ In addition to the project dam, there are six other dams on Otter Creek that are used for hydropower generation.¹²

B. Project Facilities

8. The existing Center Rutland Project includes a 190-foot-long, 14-foot-high concrete and stone masonry dam that comprises the following sections: (1) a 174-foot-long spillway section with a crest elevation of 504.8 feet National Geodetic Vertical Datum of 1929 (NGVD 29);¹³ and (2) a 16-foot-long non-overflow section. The project also includes a 13-foot-long, 7- to 30-foot-wide forebay; and a 39.58-foot-wide, 18-foot-high concrete and marble masonry intake structure with a 6.7-foot-wide, 6.5-foot-high

¹⁰ Because the 45-day filing deadline fell on a Saturday (i.e., June 8, 2024), the filing deadline was extended until the close of business on Monday, June 10, 2024. 18 C.F.R. § 385.2007(a)(2).

¹¹ River miles are measured herein as the upstream distance from the mouth, located at Lake Champlain in Ferrisburgh, Vermont, to a specific point on the river.

¹² The other six dams are associated with the Otter Creek Project No. 2558 - Proctor Development (RM 64); the Middlebury Lower Project No. 2737 (RM 27); the Otter Creek Project No. 2558 - Beldens Falls Development (RM 23); the Otter Creek Project No. 2558 - Huntington Falls Development (RM 21); the Weybridge Project No. 2731 (RM 20); and the Vergennes Project No. 2674 (RM 8).

¹³ The prior license specified elevations in mean sea level. However, in the license application, GMP indicated that all elevations in are expressed in NGVD 29. Therefore, all elevations described in this order are expressed in NGVD 29.

steel headgate and a 30-foot-wide, 12-foot-high trashrack with 9/16-inch clear bar spacing.

9. The 1993 license authorized the use of 27-inch-high flashboards on top of the spillway and describes an impoundment surface elevation of 507.4 feet when the flashboards are in place. However, GMP states that the flashboards have not been installed since at least 2012, when it acquired the project. Without the flashboards installed, the impoundment surface elevation is 504.8 feet.

10. From the impoundment, water flows through the intake structure to a 6-foot-diameter, 75-foot-long steel penstock that provides water to a 275- kW horizontal Francis turbine-generator unit located in a 40-foot-long, 33-foot-wide stone and marble masonry powerhouse. Water is discharged from the turbine through a draft tube directly into Otter Creek. The project creates an approximately 100-foot-long bypassed reach.

11. The project generator unit connects to a 480-volt/12.47-kilovolt (kV) transformer and an 80-foot-long, 12.47-kV transmission line that interconnects with the local distribution grid.

12. There are no project recreation facilities. A more detailed description of the project is contained in ordering paragraph (B)(2).

C. Project Boundary

13. The current project boundary encloses 11.2 acres, including: (1) approximately 11 acres of land and water in and around the impoundment, and (2) 0.2 acre of land underlying the project structures. Around the impoundment, the current project boundary follows a contour elevation of 507.4 feet, corresponding with the elevation of the top of the flashboards authorized by the prior license, plus 0.25 feet for providing seasonal minimum flows over the spillway to the bypassed reach.

14. GMP is not proposing changes to the project boundary; however, as discussed below, GMP's proposal to no longer use flashboards requires changes to the project boundary to remove land that is no longer needed for project purposes (i.e., land that was formerly but no longer will be inundated on account of flashboard use).

D. Current Project Operation

15. GMP operates the project in a run-of-river mode using a pond level control system, such that outflow from the project approximates inflow to the impoundment at any given point in time. The surface elevation of the impoundment is maintained at 0.25 feet above the spillway crest elevation of 504.8 feet when providing the seasonal minimum flow noted below, and at the spillway crest elevation when minimum flows are not required. From June 1 through October 15, GMP provides a minimum flow of

80 cubic feet per second (cfs) or inflow to the impoundment, whichever is less, over the spillway and into the bypassed reach for the protection of aquatic and aesthetic resources. When refilling the impoundment following a drawdown for maintenance or emergencies, the 1993 license requires a minimum flow release of 154 cfs or 90% of inflow to the impoundment, whichever is less, downstream of the powerhouse.

16. The turbine-generator unit has a minimum and maximum hydraulic capacity of 60 cfs and 190 cfs, respectively. When inflow to the impoundment is less than the minimum hydraulic capacity of the turbine plus the seasonal minimum flow, water is released over the spillway to the bypassed reach. When generating, GMP withdraws 60 to 190 cfs from the impoundment to generate electricity and releases it into Otter Creek. When inflow exceeds the maximum hydraulic capacity plus the seasonal minimum flow, GMP continuously operates the turbine-generator unit and releases excess flow from the spillway. The project's average annual generation is approximately 541 megawatt-hours (MWh). Generation at the project occurs on a year-round basis and is typically highest during the spring season (March through May) when river flow is highest.

E. Proposed Operation and Environmental Measures

17. To protect aquatic habitat, GMP proposes to continue operating the project in a run-of-river mode, such that outflow from the project approximates inflow at any given point in time.

18. To protect and enhance aquatic habitat and aesthetic resources, GMP proposes to continue to provide a minimum flow of 80 cfs or inflow, whichever is less, over the spillway into the bypassed reach from June 1 through October 15; and provide a minimum flow of 40 cfs or inflow, whichever is less, over the spillway into the bypassed reach from October 16 through May 31.

19. GMP proposes to develop an operation compliance monitoring plan within 6 months of any license issued and in consultation with Vermont ANR. The plan would identify the operational data to be monitored for compliance purposes, specify operational protocols under normal and adverse conditions, and specify requirements for consultation and record keeping.

20. To protect the federally endangered northern long-eared bat, GMP proposes to avoid the removal of trees that are equal to or greater than 4 inches in diameter at breast height from April 15 through October 31.

21. To enhance recreation and awareness to the regional history, GMP proposes to install a cultural heritage information kiosk for the Town of Rutland's (Town) non-project pocket park.¹⁴

22. To protect cultural resources, GMP proposes to develop an historic properties management plan (HPMP) in consultation with the Vermont SHPO to protect historic properties that are eligible for or listed on the National Register of Historic Places (National Register).

SUMMARY OF LICENSE REQUIREMENTS

23. This license, which authorizes 275 kW of renewable energy generation capacity, requires the proposed measures noted above except for: (1) the requirement for a 40-cfs seasonal minimum flow; and (2) the tree removal restriction for the protection of northern long-eared bat.¹⁵ The license also requires the staff-recommended measures described below and the conditions in Vermont ANR's water quality certification (certification) (Appendix A). Combined, these measures will protect or enhance aquatic resources, water quality, federally listed species, and cultural resources at the project.

24. To protect aquatic resources in the downstream reach, this license requires GMP to implement an impoundment refill procedure following emergency and maintenance drawdowns, whereby 90% of inflow is passed downstream and 10% of inflow is used to refill the impoundment.

25. To protect northern long-eared bats and tricolored bats, this license requires GMP to avoid the removal or trimming of non-hazardous trees of any diameter at breast height from April 1 through October 31.

26. To evaluate and ensure recreation needs at the project are met over the term of the license, this license requires GMP to develop a recreation monitoring plan.

¹⁴ A pocket park is a small, publicly accessible recreational space, usually in an urban area.

¹⁵ The proposed measure requiring a 40-cfs seasonal minimum flow in the project's bypassed reach conflicts with a mandatory condition in Vermont ANR's water quality certification, which requires a year-round minimum bypassed reach flow of 60 cfs.

WATER QUALITY CERTIFICATION

27. Under section 401(a)(1) of the Clean Water Act (CWA),¹⁶ the Commission may not issue a license authorizing the construction or operation of a hydroelectric project unless the state water quality certifying agency has either issued a 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 must become a condition of any federal license for the project.¹⁷

28. On April 12, 2023, GMP applied to the Vermont ANR for a certification for the Center Rutland Project, which Vermont ANR received on the same day. On March 29, 2024, Vermont ANR issued a certification that includes 11 conditions. Five of the conditions (A and H through K) are general or administrative in nature and are not discussed herein. The remaining conditions require GMP to:

- (1) operate the project in a run-of river mode whereby outflow from the project equals inflow on a near-instantaneous basis and release a minimum flow from the spillway into the bypassed reach of 60 cfs year-round (condition B);¹⁸
- (2) develop a flow management and monitoring plan (condition C);
- (3) begin preparing a plan to provide upstream eel passage at the project within 1 year of installation of upstream eel passage at the Otter Creek Hydroelectric Project, FERC No. 2588 (Otter Creek Project) (condition D);
- (4) implement measures to protect northern long-eared bat (condition E);
- (5) provide public access and use of project land and water, provide access to and maintain the hand carry put-in/fishing access area located downstream of the powerhouse, and establish an agreement with the Town for a pocket park pending appropriate approvals (condition F); and
- (6) dispose of debris in accordance with state laws (condition G).

¹⁶ 33 U.S.C. § 1341(a)(1).

¹⁷ *Id.* § 1341(d).

¹⁸ For purposes of license compliance and based on the use of the term “near-instantaneous” in the condition, we interpret condition B to require that outflow from the project approximates inflow to the project at any given point in time.

29. The 11 conditions of the certification are set forth in Appendix A of this order and incorporated into the license by ordering paragraph (E).

COASTAL ZONE MANAGEMENT ACT

30. Under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA),¹⁹ the Commission cannot issue a license for a project within or affecting a state's coastal zone unless the state 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 six months of its receipt of the applicant's certification.

31. The State of Vermont does not have a Coastal Zone Management Program. Therefore, a coastal zone consistency review is not required.

SECTION 18 FISHWAY PRESCRIPTION

32. Section 18 of the FPA²⁰ provides that the Commission must require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of Commerce or the Secretary of the Interior, as appropriate.

33. On April 12, 2023, Interior filed a letter requesting that the Commission reserve authority to prescribe fishways. Consistent with Commission policy, Article 404 of this license reserves the Commission's authority to require fishways that may be prescribed by Interior for the Center Rutland Project.

THREATENED AND ENDANGERED SPECIES

34. Section 7(a)(2) of the Endangered Species Act of 1973 (ESA)²¹ 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.

35. Based on the U.S. Fish and Wildlife Service's (FWS) Information for Planning and Consultation (IPaC) website, the endangered northern long-eared bat (*Myotis septentrionalis*) and the tricolored bat (*Perimyotis subflavus*), a species proposed for

¹⁹ 16 U.S.C. § 1456(c)(3)(A).

²⁰ 16 U.S.C. § 811.

²¹ 16 U.S.C. § 1536(a).

listing as endangered under the ESA,²² have the potential to occur at the project.²³ There is no proposed or designated critical habitat for either species in the project area.

36. In the EA,²⁴ Commission staff determined that the northern long-eared bat could be affected by project maintenance activities such as tree trimming and periodic tree removal. Staff found that GMP's proposal to avoid the removal of trees that are equal to or greater than 4 inches in diameter at breast height and only from April 15 through October 31 could still disturb northern long-eared bats during their active season.²⁵ Therefore, staff recommended extending the proposed seasonal tree trimming and removal restriction for non-hazardous trees to greater than or equal to 3 inches in diameter at breast height and to the period April 1 through October 31 to cover the entirety of the active season.

37. With the staff-recommended seasonal tree trimming and removal restriction measure in place, staff concluded that relicensing the project is not likely to adversely affect the northern long-eared bat.²⁶ Commission staff sought concurrence on its finding of not likely to adversely affect by using the *Northern Long-eared Bat Rangewide Determination Key* available through IPaC. On May 13, 2024, FWS concurred with staff's determination and confirmed that consultation for the species was complete.²⁷

38. Consistent with Commission staff's recommended seasonal tree trimming and removal restriction, Vermont ANR's certification condition E requires that GMP avoid tree trimming and removal of trees 3 inches in diameter at breast height or greater in the project boundary between April 1 and October 31 to avoid any roost disruption of the

²² 87 Fed. Reg. 56,381 (Sept. 14, 2022). FWS's proposal was based primarily upon the range-wide impacts of white nose syndrome that have caused declines in affected colonies. *Id.* at 56,385.

²³ See Commission staff's August 1, 2024 Memorandum on FWS's Updated List of Threatened, Endangered, Candidate, and Proposed Species.

²⁴ EA at E-3.

²⁵ *Id.* at I-6.

²⁶ *Id.* at E-3.

²⁷ See Commission staff's May 14, 2024 Memorandum on Streamlined Consultation for the Northern Long-Eared Bat Using the Northern Long-eared Bat Rangewide Determination Key.

northern long-eared bat, except when necessary to protect public safety or respond to emergency conditions.

39. Although the tree-cutting restriction included in both the staff recommendation and Vermont ANR's certification condition E would protect the northern long-eared bat, tricolored bats, which, as noted above, are likely to occur in the project area, could still be disturbed. Tricolored bats roost in leaf clusters of woody plants, including those smaller than 3 inches in diameter, making them vulnerable to disturbance during any tree-clearing activities, regardless of tree size.²⁸ Therefore, to adequately protect tricolored bats, the removal of all sizes of non-hazardous trees would need to be avoided during the active period noted above. Relative to the proposal to avoid removal of trees equal to or greater than 4 inches in diameter at breast height or the Vermont ANR requirement to avoid removal of trees equal to or greater than 3 inches in diameter at breast height, there is no additional cost associated with avoiding the removal of non-hazardous trees of any size diameter from April 1 through October 31. Such a measure would ensure that relicensing the project is not likely to jeopardize the continued existence of the tricolored bat.²⁹ Therefore, for the protection of both northern long-eared and tricolored bats, Article 405 of this license requires avoiding the removal or thinning of all non-hazardous trees and woody vegetation from April 1 through October 31. With the inclusion of this license condition, no further action under the ESA is required for the northern long-eared and tricolored bats.³⁰

HISTORICAL AND CULTURAL RESOURCES

A. National Historic Preservation Act

40. Under section 106 of the National Historic Preservation Act (NHPA),³¹ and its implementing regulations,³² federal agencies must consider the effect of any proposed

²⁸ FWS, *Species Status Assessment Report for the Tricolored Bat (Perimyotis subflavus)*, Version 1.1. (Dec. 2021), <https://ecos.fws.gov/ServCat/DownloadFile/221212>.

²⁹ EA at E-4.

³⁰ For species proposed for listing, like the tricolored bat, 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).

³¹ 54 U.S.C. § 306108.

³² 36 C.F.R. pt. 800 (2024).

undertaking on properties listed or eligible for listing in the National Register, defined as historic properties, and afford the Advisory Council on Historic Preservation 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. On December 21, 2018, GMP provided the Vermont SHPO with the notice of intent and pre-application document for the project's relicensing. On February 19, 2019, Commission staff initiated consultation with the Vermont SHPO and designated GMP as its non-federal representative for carrying out informal consultation pursuant to section 106 of the NHPA.³³ GMP consulted with the Vermont SHPO to identify historic properties, determine the eligibility of cultural resources for listing on the National Register, and assess potential adverse effects on historic properties within the project's area of potential effects (APE).

42. As discussed in the EA,³⁴ the APE for the project includes all land enclosed by the project boundary and land or properties outside of the project's boundary where project construction and operation or project-related recreational development or other enhancements may cause changes in the character or use of historic properties, if any historic properties exist. Specifically, the APE includes the proposed project boundary and land around the project impoundment up to a contour elevation of 507.4 feet NGVD 29.³⁵ The APE also includes the entirety of archaeological site VT-RU-266, two

³³ See Commission staff's February 19, 2019 Notice of Intent to File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process.

³⁴ EA at 41.

³⁵ The current project boundary (i.e., the project boundary authorized under the 1993 license for the project) follows a contour elevation of 507.4 feet NGVD 29 around the project's impoundment. The contour elevation of 507.4 feet corresponds to the elevation of the top of the flashboards authorized under the 1993 license, plus 0.25 feet for providing seasonal minimum flows over the spillway to the bypassed reach. However, GMP has been operating the project without the flashboards since 2012, potentially exposing land that was formerly inundated when the flashboards were installed. GMP is proposing to continue operating the project without the flashboards. Because there is still the possibility that archaeological resources occur on the land exposed by the lowering of the reservoir and because those resources could be adversely affected by the continued exposure of previously inundated archaeological sites, or project-related activities, such as recreation, the APE includes the land between elevations 505.05 feet NGVD 29 and 507.4 feet NGVD 29. EA at 41 and 42.

existing informal tailwater access trails, and the site of the proposed cultural heritage kiosk.³⁶

43. Historic properties within the APE include the Center Rutland Hydroelectric Station Historic District (Historic District). Contributing resources to the Historic District include the project dam, powerhouse and generating equipment, penstock, marble retaining wall, intake structure, marble pumphouse, former pumphouse, transformer yard, stream gaging station, the Delaware and Hudson Railroad bridge, the former Route 4 bridge abutments, Clement Mill ruins, and the Clarendon and Pittsford Railroad bridge.³⁷ Additionally, there are archaeologically sensitive areas within the APE for the project, as well as a National Register-eligible archaeological site (VT-RU-0266).

44. In the EA,³⁸ Commission staff concluded that relicensing the project as proposed could have an adverse effect on the project dam. Adverse effects could occur: (1) from the installation of upstream eel passage facilities at the dam required by Vermont ANR's certification condition D; (2) in the event any repairs are needed to maintain the structure and function of the contributing resources; or (3) in the event project operation causes structural damage to historic properties.³⁹

45. Commission staff issued a draft Programmatic Agreement (PA) for the project on April 24, 2024, that included stipulations for developing an HPMP to ensure that project-related adverse effects on historic properties or previously undiscovered archaeological resources would be adequately addressed over the term of a subsequent license. On June 7, 2024, the Vermont SHPO filed comments requesting clarification on the APE,

³⁶ The cultural heritage kiosk would not be included in the project boundary; however, installation of the kiosk would require ground-disturbing activities that could adversely affect cultural resources, so staff recommended that the site of the proposed kiosk, where ground disturbance would occur, be included in the APE.

³⁷ The Delaware and Hudson Railroad bridge and Clarendon and Pittsford Railroad bridge are not project facilities and are not owned by GMP. The Delaware and Hudson Railroad bridge crosses perpendicularly over Otter Creek, approximately 15 feet above the project dam, and the Clarendon and Pittsford Railroad bridge is located approximately 500 feet upstream of the project dam. Both bridges are located within the project boundary.

³⁸ EA at 42-43 and D-3.

³⁹ *Id.*

specifically whether the non-project pocket park was included in the APE.⁴⁰ On August 15, 2024, staff issued a final PA. In the final PA, staff clarified that the non-project pocket park was not included in the APE. The Vermont SHPO signed the PA on September 27, 2024. GMP concurred on September 16, 2024. The PA requires the licensee to prepare an HPMP for the project and, upon Commission approval, implement the HPMP for the term of the subsequent license.⁴¹ Executing the PA demonstrates the Commission's compliance with section 106 of the NHPA. Article 409 requires GMP to implement the PA and to file its HPMP for Commission approval within one year of license issuance.

B. Tribal Consultation

46. On December 21, 2018, GMP provided the notice of intent and pre-application document for the project's relicensing to the federally recognized St. Regis Mohawk Tribe and the Stockbridge-Munsee Tribe.⁴² At the request of the Vermont SHPO, on July 24, 2019, GMP sent a separate consultation letter to the Stockbridge-Munsee Tribe.⁴³ On July 25, 2019, the Stockbridge-Munsee Tribe responded that there are no anticipated concerns related to cultural resources because no ground disturbance was proposed.

47. On September 19, 2022, and September 29, 2022, respectively, Commission staff sent letters to the St. Regis Mohawk Tribe and the Stockbridge-Munsee Tribe (Tribes) and invited them to consult on the project. On April 24, 2024, Commission staff sent the draft PA to the Tribes and requested comments. On August 15, 2024, Commission staff sent the final PA to the Tribes and invited them to become concurring parties to the PA. The Tribes did not respond to the initial consultation letter or the final PA and did not file any comments in the record of the proceeding.

⁴⁰ On July 22, 2024, Commission staff met with representatives from the Vermont SHPO and GMP to discuss the APE. *See* Commission staff's July 25, 2024 Technical Meeting Summary.

⁴¹ *See* Commission staff's September 30, 2024 transmittal of the executed PA.

⁴² GMP also provided the documents to the following state-recognized Tribes in Vermont: Elnu Tribe of Abenaki, Abenaki Nation of Missisquoi, Nulhegan Band of Coosuk Abenaki-Nation, and Koasek of the Koas of the Abenaki Nation.

⁴³ EA at D-3.

ENVIRONMENTAL JUSTICE

48. In conducting NEPA reviews of proposed hydropower projects, the Commission follows 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 communities with environmental justice concerns.⁴⁴ 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.”⁴⁵ 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. The term “communities with environmental justice concerns” includes communities that have been historically marginalized and overburdened by pollution, including minority populations, low-income populations, or indigenous peoples.⁴⁶

49. Commission staff used *Promising Practices for EJ Methodologies in NEPA Reviews (Promising Practices)*,⁴⁷ which provides methodologies for conducting environmental justice analyses throughout the NEPA process for this project. Additionally, consistent with U.S. Environmental Protection Agency (EPA) recommendations, Commission staff used EPA’s Environmental Justice Screening and Mapping Tool (EJScreen) as an initial screening tool to better understand locations that require further review or additional information regarding minority and/or low-income populations; potential environmental quality issues; environmental and demographic indicators; and other important factors.⁴⁸

⁴⁴ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994); Exec. Order No. 14,096, 88 Fed. Reg. 25251 (Apr. 21, 2023).

⁴⁵ Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021).

⁴⁶ 18 CFR § 380.2(f).

⁴⁷ 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.

⁴⁸ EPA, *Purposes and Uses of EJScreen* (Jan. 9, 2024), <https://www.epa.gov/ejscreen/purposes-and-uses-ejscreen> (“Screening is a useful first step in understanding or highlighting locations that may be candidates for further review.”).

50. Consistent with the Council on Environmental Quality's (CEQ)⁴⁹ and the EPA's⁵⁰ guidance and recommendations, the Commission's methodology for assessing environmental justice impacts considers: (1) whether communities with environmental justice concerns (e.g., minority or low-income populations)⁵¹ exist in the project area; (2) whether impacts on communities with environmental justice concerns are disproportionate and adverse and also whether impacts would be significant; 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.⁵² 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.⁵³

51. 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

⁴⁹ CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act* 4 (Dec. 1997) (CEQ's *Environmental Justice Guidance*), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>. CEQ offers recommendations on how federal agencies can provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices. There were multiple opportunities for public involvement during the Commission's environmental review processes. See, e.g., June 6, 2022 Notice Soliciting Scoping Comments; February 17, 2023 Notice of Application Accepted for Filing; April 28, 2023 Notice of Intent to Prepare Environmental Assessment; and April 24, 2024 Notice of Availability of Environmental Assessment.

⁵⁰ See generally *Promising Practices*.

⁵¹ 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. CEQ's *Environmental Justice Guidance* at 25.

⁵² See *Promising Practices* at 21-25.

⁵³ Here, Commission staff selected Rutland County as the reference community to ensure that affected communities with environmental justice concerns are properly identified. See EA at 46.

Bureau.⁵⁴ Using *Promising Practices*' low-income threshold criteria method, low-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.

52. To identify potential communities with environmental justice concerns during preparation of the EA, Commission staff used 2022 U.S. Census American Community Survey data⁵⁵ for the race, ethnicity, and poverty data at the block group level.⁵⁶

53. Once Commission staff collected the block group level data, as discussed in further detail below, staff conducted an impacts analysis for the identified communities with environmental justice concerns and evaluated health or environmental hazards; the natural physical environment; and, associated social, economic, and cultural factors to determine whether impacts were disproportionate and adverse on communities with environmental justice concerns and also whether those impacts were significant.⁵⁷ Commission staff assessed whether impacts on a community with environmental justice concerns were disproportionate and adverse based on whether those impacts were predominately borne by that community, consistent with EPA's recommendations in *Promising Practices*.⁵⁸

⁵⁴ CEQ's *Environmental Justice Guidance* at 26.

⁵⁵ U.S. Census Bureau, American Community Survey 2022 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](https://data.census.gov/cedsci/table?q=B17017;File#B03002); File #B03002 Hispanic or Latino Origin By Race, <https://data.census.gov/cedsci/table?q=b03002>.

⁵⁶ For this project, Commission staff determined the appropriate unit of geographic analysis for assessing project impacts on communities with environmental justice concerns is a 1-mile radius around the project boundary. This distance is sufficient considering the limited scope of the project proposal and the concentration of project-related effects within the project boundary.

⁵⁷ 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.

⁵⁸ There are various approaches to determining whether an action will cause a disproportionate adverse impact. 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.

54. There were multiple opportunities for public involvement during the Commission's environmental review process as described above in the Background section.⁵⁹ No entity provided comments or recommendations regarding the effects of the project on communities with environmental justice concerns.

55. In the EA, Commission staff identified five communities with environmental justice concerns within a 1-mile radius of the project: three census block groups exceeded the defined meaningfully greater threshold for low income (Census Tract 962600, Block Group 1; Census Tract 963200, Block Group 4; and Census Tract 963300, Block Group 4); and two census block groups exceeded both the low income and minority threshold (Census Tract 963100, Block Group 2; and Census Tract 963200, Block Group 3).⁶⁰

56. Operating the project in a run-of-river mode would result in stable impoundment elevations that would protect fish spawning habitat and mussel beds from becoming dewatered, and limit project-related erosion along the impoundment shoreline. These measures help preserve natural resources that communities with environmental justice concerns may rely on for recreation or subsistence fishing. Consistent with Vermont ANR's certification condition B, implementing a year-round bypass flow of 60 cfs, including during the winter when no minimum flow is currently required, would enhance aquatic habitat, sustain the hydraulic connection of the tailrace and deep pool, and improve visual and sound aesthetics at the project during the off-peak recreation season. GMP's proposal to install a cultural heritage information kiosk would enhance the recreational experience and increase awareness of the regional and project history at Otter Creek but has the potential to adversely affect cultural resources as a result of soil disturbance and vegetation management.⁶¹

57. The EA concluded that because of the limited scope of the project and the environmental protection and enhancement measures for aquatic and cultural resources, relicensing the project would not result in disproportionate and adverse impacts on the identified environmental justice populations.⁶² Therefore, the project as licensed herein

⁵⁹ See *supra* PP 3-6.

⁶⁰ See EA at 47. Commission staff used 2022 U.S. Census American Community Survey data for the race, ethnicity, and poverty data at the state, county, and block group level. *Id.*

⁶¹ EA at 47.

⁶² *Id.* at 45-47.

will not result in disproportionate and adverse impacts on the identified communities with environmental justice concerns.

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

58. Section 10(j)(1) of the FPA⁶³ 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,⁶⁴ to “adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)” affected by the project.

59. No section 10(j) recommendations were filed.

SECTION 10(a)(1) OF THE FPA

60. Section 10(a)(1) of the FPA⁶⁵ 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. Minimum Bypassed Reach Flow Releases

61. The prior license required GMP to release a minimum flow of 80 cfs or inflow, whichever is less, over the spillway and into the bypassed reach from June 1 through October 15. The rest of the year, flow spilled into the bypassed reach only when inflow to the project was less than 60 cfs or greater than 190 cfs, the project’s minimum and maximum hydraulic capacity, respectively.

62. GMP proposes to continue to provide a minimum flow of 80 cfs or inflow, whichever is less, over the spillway and into the bypassed reach from June 1 through October 15. GMP also proposes to release a minimum flow of 40 cfs or inflow, whichever is less, over the spillway and into the bypassed reach from October 16 through May 31. Vermont ANR’s certification condition B specifies that GMP release a year-

⁶³ 16 U.S.C. § 803(j)(1).

⁶⁴ *Id.* §§ 661 *et seq.*

⁶⁵ 16 U.S.C. § 803(a)(1).

round minimum flow of 60 cfs, or inflow if less, from the spillway into the bypassed reach.

63. In the EA,⁶⁶ staff explained that the bypassed reach is 100 feet long and includes a 60-foot-long bedrock falls with virtually no aquatic habitat value, and a 40-foot-long and 3- to 20-foot-deep pool at the downstream end of the bedrock falls. The deep pool is backwatered by, and hydraulically connected to, the tailrace outflow at all flows 40 cfs and greater. The bypassed reach is fully visible from the southern shoreline of Otter Creek downstream of the dam, and minimally visible from the U.S. Route 4 (Elm Street) bridge, further downstream of the project.

64. In the EA,⁶⁷ staff concluded that due to ice cover during the winter and low recreational use during the non-summer months, GMP's proposal for a 40-cfs minimum bypassed reach flow and Vermont ANR's certification condition B for a higher 60-cfs minimum bypassed reach flow would only marginally improve fish habitat and aesthetics from October 16 through May 31, with very minimal difference in benefits between the two flows.

65. GMP's proposal to maintain the current minimum flow of 80 cfs (or inflow if less) in the bypassed reach from June 1 through October 15 would continue to benefit aquatic habitat by keeping pools and chutes connected and providing adequate fish cover and feeding areas in the bypassed reach.⁶⁸ Moreover, 80 cfs would continue to benefit recreation and aesthetic resources during the summer months by ensuring that chutes in the bypassed reach would be well covered with white water and providing an optimum veil of water over the spillway.⁶⁹ However, the EA concluded that Vermont ANR's required minimum flow of 60 cfs would reduce these benefits to aquatic, aesthetic, and recreation resources from June 1 through October 15 compared to the current conditions.⁷⁰

66. With respect to the effects that the minimum flow alternatives would have on project generation, the EA concluded that GMP's proposed 80-cfs/40-cfs seasonal

⁶⁶ EA at 17.

⁶⁷ *Id.* at 18 and 35.

⁶⁸ *Id.* at 18.

⁶⁹ *Id.* at 35.

⁷⁰ *Id.* at 18, 35, and I-4.

minimum bypassed reach flow and Vermont ANR's required 60-cfs year-round minimum flow would similarly reduce average annual generation by around 4 to 5 MWh.⁷¹

67. In considering the benefits and costs of the two flow alternatives as summarized above, in the EA, staff concluded, pursuant to sections 4(e) and 10(a) of the FPA, that the most appropriate balance among the use of flow for project generation, fishery resources, aesthetics, and recreation would be provided by GMP's minimum flow release proposal, which staff recommended over Vermont ANR's certification condition B.

68. Because (1) the staff-recommended flow of 80 cfs from June 1 through October 15 would not conflict with Vermont ANR certification condition B's requirement for a minimum flow of 60 cfs for the same period, (2) there would be no incremental cost to continue releasing a minimum flow of 80 cfs (or inflow if less) during the period relative to current conditions,⁷² and (3) continuing to release the minimum flow of 80 cfs would continue the benefits summarized above for aquatic, recreation, and aesthetic resources, Article 402 requires the staff-recommended 80-cfs (or inflow if less) minimum bypassed reach flow from June 1 through October 15.

69. As noted above, a 60-cfs minimum flow as required by Vermont ANR certification condition B for the period October 16 through May 31 would provide minimal to no incremental benefits relative to the 40-cfs minimum flow recommended by staff. Whereas the average annual generation loss under staff's recommended 40-cfs minimum flow for the period would be 4.1 MWh,⁷³ the average annual generation loss would be 7.6 MWh under the 60-cfs minimum flow required by Vermont ANR's condition B.⁷⁴ Because there would be minimal to no incremental benefits in going from the proposed 40-cfs to the required 60-cfs minimum flow, the additional generation loss of the 60-cfs flow is not justified. However, because Vermont ANR's certification stipulates a 60-cfs minimum flow from October 16 through May 31 and the condition is mandatory, it is included in the license in Appendix A, rather than the staff-recommended 40-cfs minimum flow for the same period.

⁷¹ *Id.* at H-4.

⁷² *Id.* at H-1 and H-4.

⁷³ *Id.* at H-1 and H-4.

⁷⁴ This calculation was not included in the EA but was calculated for this order using the same methodology as the generation losses reported in the EA for the other flow alternatives.

B. Impoundment Surface Elevation.

70. The prior license authorized the licensee to install flashboards on the dam and maintain a normal impoundment elevation of 507.4 feet, corresponding with the elevation of the top of the flashboards. However, GMP no longer proposes to use the flashboards, and this subsequent license does not authorize their use. As a result, the normal high-water mark of the impoundment would be maintained at an elevation of 505.05 feet (i.e., 0.25 feet above the dam spillway crest elevation of 504.8 feet). Accordingly, Article 402 requires the licensee to target an impoundment surface elevation of 505.05 feet, during normal operating conditions.⁷⁵

C. Operation Compliance Monitoring

71. In the EA,⁷⁶ staff analyzed several measures either proposed by GMP or identified by staff, that would have beneficial effects on aquatic resources, both in the impoundment and downstream of the project dam. These measures include operating in a run-of-river mode, releasing minimum flows to the bypassed reach, developing an impoundment refill procedure, and developing an operation compliance monitoring plan. Vermont ANR's certification conditions B and C cover most of these measures consistent with staff's recommendations; however, condition C (Flow Management and Monitoring Plan) does not include certain staff-recommended components and also does not specify a procedure for refilling the impoundment following planned or emergency drawdowns.

72. In the EA,⁷⁷ staff recommended that the plan include the measures required by certification condition C, but add the following components: (1) a detailed description of how GMP will maintain, monitor, and document compliance with the operational requirements of this license; (2) a description of the gages and other measuring devices that would be used to monitor compliance with license requirements; (3) procedures for maintaining and calibrating monitoring equipment; (4) standard operating procedures to be implemented outside of normal operating conditions, such as scheduled and unscheduled facility shutdowns; and (5) a schedule for installing monitoring equipment needed to document compliance with the operational requirements of the license. In addition, staff recommended that, following emergency and maintenance drawdowns, GMP implement a refill procedure whereby 90% of inflow would be released downstream of the dam and 10% of the inflow would be used to refill the impoundment,

⁷⁵ For compliance purposes, normal operating conditions are defined as non-flooding conditions where the project has the capability to hold the impoundment surface elevation at or near 505.05 feet.

⁷⁶ EA at 16-20.

⁷⁷ *Id.* at I-4.

concluding that this requirement would provide a benefit to aquatic resource protection in the impoundment and downstream of the project dam at reasonable cost.

73. Article 403 requires an operation compliance monitoring plan that is consistent with the flow management and monitoring plan required by certification conditions B and C and includes these additional staff recommended provisions.

D. Upstream Eel Passage

74. Although American eel are not present in the project area, they are present in Lake Champlain, into which Otter Creek flows. Vermont ANR's certification condition D specifies that GMP begin preparing a plan to provide upstream eel passage at the project within 1 year of the installation of upstream eel passage at the Otter Creek Project, located at RM 64, 7 miles downstream of the Center Rutland Project. Condition D states that the plan could include a provision for using either a trap-and-truck approach or an eel ramp as possible methods for providing upstream eel passage at the project.

75. In the EA,⁷⁸ staff concluded that if American eel are present in the project area in the future, then upstream passage for juvenile American eel at the project could be beneficial by allowing American eel to efficiently move upstream past the project. Staff also concluded that due to the conditional aspect of condition D, and the fact that the plan contemplates two different methods for providing upstream eel passage, staff could not weigh the benefits versus the costs of the measure and, therefore, could not recommend it under 10(a) of the FPA. Nevertheless, this license includes the upstream eel passage plan requirement in Vermont ANR's certification condition D, as mandatory under the CWA (Appendix A).

E. Recreation

76. There are no recreation facilities required at the Center Rutland Project; however, GMP allows public use and access of project land and water for fishing, swimming, and hand-carry boating along the shoreline and downstream of the project. There are two informal tailwater access trails at the project: (1) an approximately 5-foot-wide and 38-foot-long dirt trail on the northern shoreline that leads from the informal parking area down to the shoreline below the powerhouse; and (2) an approximately 3-foot-wide and 155-foot-long dirt footpath on the southern shoreline that connects a gravel parking area along Simons Avenue to Otter Creek below the dam. In addition,⁷⁹ the Town is developing a non-project pocket park approximately 285 feet downstream of the dam, outside of the project boundary, that would include two parking areas, a hand carry boat

⁷⁸ EA at I-8.

⁷⁹ EA at 31- 33.

put-in, walking trails, beach access, observation area, picnic area, and historic and informational signage.⁸⁰ GMP proposes to install an informational kiosk featuring cultural heritage information, including details on the history of the falls and surrounding area, on the south bank of Otter Creek, next to the parking area of the Town's pocket park. GMP proposes to collaborate with the Vermont SHPO, the Abenaki Nation, and the Stockbridge Munsee Tribe to develop a storyboard-style kiosk that provides accurate regional cultural information. Finally, Vermont ANR's certification condition F requires that GMP provide public access and use of project land and water; provide access to, and maintain, the hand carry put-in/fishing access area located downstream of the powerhouse; and establish an agreement with the Town for a pocket park pending appropriate approvals, which is similar to GMP's proposal.

77. As described in the EA,⁸¹ there is documented informal recreational use of the southern shoreline of Otter Creek, at the location of the Town's proposed pocket park, which suggests a need for formal recreational facilities to meet recreational demand in the vicinity of the project. In the EA,⁸² staff concluded that the Town's pocket park would meet this need; therefore, there is no justification to require GMP to develop the pocket park as a project facility. Further, because staff did not recommend that GMP develop the pocket park, and because the land to be transferred is non-project land, there is no basis to require a land transfer, as proposed by GMP and required by Vermont ANR's certification condition F. However, Vermont ANR's certification condition F is included in this license because it is mandatory under section 401 of the CWA.

78. To ensure recreational needs at the project are met throughout the term of any license issued, staff recommended that GMP develop a recreation monitoring plan to evaluate recreational demand and the adequacy of project recreational opportunities to meet recreational demand at the project. The recommended plan would monitor, at a minimum, the following: (1) number of recreational users on project land, (2) types of recreational use observed on project land, (3) duration of time recreational users spend on project land, and (4) adequacy of nearby amenities, and access to meet recreational demand at the project. Staff stated that an effective plan would include a description of the methods used to collect use data and an implementation schedule. Finally, staff concluded that conducting periodic recreational monitoring would ensure that

⁸⁰ In order to accommodate the development of the park, GMP has agreed to transfer ownership of 1.9 acres of its non-project land to the Town. This land is located outside of the project boundary on the south shoreline of Otter Creek, just downstream of the project's dam.

⁸¹ EA at 31 - 33.

⁸² EA at I-6 through I-7.

recreational use data is captured at reasonable and regular intervals, the data clearly describes recreational use at the project, and information is available to determine if recreational needs at the project are being met over the term of a new license. Therefore, Article 407 requires GMP to develop a recreation monitoring plan for the project. In addition, Article 408 of this license requires GMP to notify the Commission if the Town's pocket park is not constructed or ceases operation and reserves the Commission's right to require additional recreational measures at the project in the future.

79. Regarding GMP's proposed cultural heritage informational kiosk, staff concluded that installation of the kiosk would improve the recreational user experience at the project by providing visitors with the historical significance and cultural context of the project area.⁸³ Therefore, Article 406 requires GMP to file documentation showing the completed kiosk, including photographs that reflect the as-built condition.

F. Project Boundary

80. Project boundaries enclose the project works that are to be licensed and should enclose "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."⁸⁴

81. Around the impoundment, the existing project boundary follows a contour elevation of 507.4 feet, corresponding with the elevation of the top of the flashboards authorized by the prior license. Because GMP no longer proposes to use the flashboards and this subsequent license does not authorize their use, the land that was formerly inundated due to flashboard use is no longer needed for project purposes. Therefore, the Exhibit G drawings must be revised to reflect the normal high water mark of the impoundment at 505.05 feet (i.e., 0.25 feet above the dam spillway crest elevation of 504.8 feet when providing the seasonal minimum flow). Article 204 of this license requires GMP to file revised Exhibit G drawings that removes land above the 505.05 feet contour and shows the impoundment boundary drawn along the 505.05-foot contour.

ADMINISTRATIVE PROVISIONS

A. Annual Charges

82. The Commission collects annual charges from licensees for administration of the FPA. Article 201 provides for the collection of these funds for administration of the

⁸³ EA at I-7.

⁸⁴ 18 C.F.R. § 4.41(h)(2) (2024).

FPA. Under the regulations currently in effect,⁸⁵ projects with an authorized installed capacity of less than or equal to 1.5 megawatts, like this project, are not assessed an annual charge.

B. Reservation of Authority to Require Financial Assurance Measures

83. 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 and G Drawings

84. Commission regulations require that licensees file sets of approved drawings in electronic format. Article 203 requires the filing of these drawings.

85. As discussed above, the Exhibit G map filed on May 20, 2022, includes 1.2 acres of land above the 505.05-foot contour that do not serve a project purpose. Therefore, the Exhibit G map does not conform to the Commission's regulations and is not approved. Article 204 requires the licensee to file a revised Exhibit G map that only includes land necessary for operation and maintenance of the project. The revised Exhibit G must meet the requirements of sections 4.39 and 4.41(h) of the Commission's regulations.

D. As-Built Exhibits

86. Where new construction or modifications to the project are involved (e.g., new eel passage facilities), the Commission requires licensees to file revised exhibits of project features as-built. Article 205 requires the licensee to file these as-built exhibits.

E. Modifications of Project Facilities

87. Article 301 requires the licensee to consult with the Commission's Division of Dam Safety and Inspections – New York Regional Engineer on any proposed modifications resulting from environmental requirements that would affect project works, dam safety, or project operation.

⁸⁵ *Id.* § 11.1(b)(1).

F. Commission Approval of Resource Plans, Notification, and Filing of Amendments

88. In Appendix A of this order, there are certification conditions that do not require the licensee to file certain plans or reports with the Commission, or that contemplate future changes to project facilities or operations without the opportunity for prior Commission review. Article 401 requires the licensee to file the plans and reports with the Commission for approval, notify the Commission of planned and unplanned deviations from the license requirements, and file amendment applications prior to making changes to project facilities or operations, as appropriate.

G. Use and Occupancy of Project Lands and Waters

89. 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 such minor activities 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

90. Section 10(a)(2)(A) of the FPA,⁸⁶ 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.⁸⁷ Under section 10(a)(2)(A), Commission staff identified and reviewed 15 comprehensive plans relevant to this project.⁸⁸ No conflicts were found.

APPLICANT'S PLANS AND CAPABILITIES

91. In accordance with section 10(a)(2)(C) of the FPA⁸⁹ and the Commission's regulations, Commission staff evaluated GMP's record as a licensee with respect to the following: (A) need for power; (B) safe management, operation, and maintenance of the

⁸⁶ 16 U.S.C. § 803(a)(2)(A).

⁸⁷ Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19.

⁸⁸ The list of applicable plans can be found in Appendix J of the EA.

⁸⁹ 16 U.S.C. § 803(a)(2)(C).

project; and (C) conservation efforts.⁹⁰ This order accepts staff's findings in each of the following areas.

A. Need for Power

92. To assess the need for power from the project, staff looked at the needs in the operating region in which the project is located, which is the Northeast Power Coordinating Council's (NPCC) New England region of the North American Electric Reliability Corporation (NERC). NERC annually forecasts electrical supply and demand in the nation and the region for a 10-year period. NERC's most recent report indicates the net internal demand in the NPCC's New England region is projected to increase at an annual rate of 3.46% from 2023 through 2033. Therefore, the project's power will continue to help meet the regional need for power.

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

93. Commission staff reviewed GMP's record of management, operation, and maintenance of the Center Rutland Project pursuant to the requirements of 18 C.F.R. Part 12 and the Commission's Engineering Guidelines. Staff concludes that the dam and other project works are safe, and that there is no reason to believe that GMP cannot continue to safely manage, operate, and maintain these facilities under a subsequent license.

C. Conservation Efforts

94. Section 10(a)(2)(C) of the FPA⁹¹ requires the Commission to consider the electricity consumption improvement program of the applicant, including its plans, performance, and capabilities for encouraging or assisting its customers in conserving electricity cost-effectively, and taking into account the published policies, restrictions, and requirements of state regulatory authorities. GMP is a regional electric utility and power producer that delivers the project's energy directly into its distribution system.

95. Our review of publicly available information indicates that GMP promotes energy conservation practices for both residential and commercial/industrial customers and has undertaken several programs, including energy storage programs, to improve efficiency and promote energy conservation. GMP also conserves energy by performing frequent

⁹⁰ Order No. 513 exempts licenses of minor projects, such as the Center Rutland Project, whose licenses waive sections 14 and 15 of the FPA, from the information requirements of 18 C.F.R. § 16.10. *See* 54 Fed. Reg. 23,756 (June 2, 1989) and 55 Fed. Reg. 10,768 (Mar. 23, 1990).

⁹¹ 16 U.S.C. § 803(a)(2)(C).

preventive maintenance on its project equipment and by encouraging its customers to conserve energy. These programs show that GMP is making an effort to conserve electricity and has made a satisfactory good faith effort consistent with section 10(a)(2)(C) of the FPA.

PROJECT ECONOMICS

96. In determining whether to issue a subsequent 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 Corp.*,⁹² 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.

97. In applying this analysis to the Center Rutland Project, Commission staff considered three options: a no-action alternative, GMP's proposal, and the project as licensed herein.⁹³

98. Under the no-action alternative, the project would continue to operate as it does now. The project currently has an installed capacity of 275 kW, a capacity benefit of 195 kW, and generates an average of 542 MWh of electricity annually.⁹⁴ The average annual project cost is about \$159,708. The alternative source of power's annual cost to produce the same amount of energy and provide the same capacity benefit is \$73,695, in 2023 dollars.⁹⁵ To determine whether the proposed project is currently economically

⁹² 72 FERC ¶ 61,027 (1995).

⁹³ Details of Commission staff's economic analysis for the project as licensed herein, and for the other two alternatives, are included in Appendix G of the EA.

⁹⁴ 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.

⁹⁵ The energy portion of the power cost is \$71.42/MWh and is based on natural gas energy prices from the *Annual Energy Outlook 2022* published by the Energy Information Administration in March 2023. The capacity portion of the power cost is based on the annual cost of the hydro-equivalent natural gas-fired combined-cycle capacity, which staff estimates to be about \$179.08/kW-year.

beneficial, the project's total annual cost is subtracted from the alternative source of power's cost. Therefore, the project costs \$86,013 more than the alternative source of power's cost.

99. As proposed by GMP, the levelized annual cost of operating the project is \$160,527. The proposed project would have an installed capacity of 275 kW, a capacity benefit of 195 kW, and generate an average of 538 MWh of energy annually. The alternative source of power's cost to produce the same amount of energy and provide the same capacity benefit is \$73,402, in 2023 dollars. Therefore, the project would cost \$87,125 more than the alternative source of power's cost.

100. As licensed herein with mandatory conditions and Commission staff's measures, the levelized annual cost of operating the project is \$161,325. The proposed project will have an installed capacity of 275 kW, a capacity benefit of 195 kW, and generate an average of 537 MWh of energy annually. The alternative source of power's cost to produce the same amount of energy and provide the same capacity benefit is \$73,330, in 2023 dollars. Therefore, the project will cost \$87,995 more than the alternative source of power's cost.

101. Although our analysis shows that the project as licensed herein will cost more to operate than the likely alternative source of power, it is the applicant who must decide whether to accept this license and any financial risk that entails.

102. 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 fossil fuel-based generating stations and put them back online. Additionally, although Commission staff's analysis does not explicitly account for the effects inflation may have on the future cost of electricity, the fact that hydropower generation is a renewable resource and relatively insensitive to fuel costs and associated inflationary pressures 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, and under what conditions, to issue a license.

COMPREHENSIVE DEVELOPMENT

103. Sections 4(e) and 10(a)(1) of the FPA⁹⁶ 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.

104. 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 and the comments thereon, licensing the Center Rutland Project as described in this order will 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 the license.

105. Based on our independent review and evaluation of the Center Rutland 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 selected, and found to be best adapted to a comprehensive plan for improving or developing Otter Creek.

106. This alternative is selected because: (1) issuing a subsequent license will serve to maintain a beneficial and dependable source of electric energy; (2) the required environmental measures will protect and enhance aquatic resources, water quality, federally listed species, recreation resources, and cultural resources; and (3) the 275 kW of electric capacity comes from a renewable resource that does not contribute to atmospheric pollution.

LICENSE TERM

107. Section 15(e) of the FPA⁹⁷ 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.

⁹⁶ 16 U.S.C. §§ 797(e), 803(a)(1).

⁹⁷ *Id.* § 808(e).

108. On October 19, 2017, the Commission established a 40-year default license term policy for licenses, effective as of October 26, 2017.⁹⁸ The License Term 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 in 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 subsequent license.

109. Because none of the above exceptions apply in this case, a 40-year license for the Center Rutland Project is appropriate.

The Director orders:

(A) This license is issued to Green Mountain Power Corporation (licensee) to operate and maintain the Center Rutland Hydroelectric Project for a period of 40 years, effective the first day of the month in which this order is issued. The 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 those lands, described in the project description and the project boundary discussion of this order.

(2) Project works consisting of: (1) a 190-foot-long, 14-foot-high concrete and stone masonry gravity dam that includes: (a) a 174-foot-long spillway section with a crest elevation of 504.8 feet National Geodetic Vertical Datum of 1929 (NGVD 29); and (b) a 16-foot-long non-overflow section; (2) an impoundment with a surface area of 11 acres at an elevation of 504.8 feet NGVD 29; (3) a 13-foot-long, 7- to 30-foot-wide forebay; (4) a 39.58-foot-wide, 18-foot-high concrete and marble masonry intake structure with a 6.7-foot-wide, 6.5-foot-high steel headgate and a 30-foot-wide, 12-foot-high trashrack with 9/16-inch clear bar spacing; (5) a 6-foot-

⁹⁸ See *Policy Statement on Establishing License Terms for Hydroelectric Projects*, 161 FERC ¶ 61,078, at P 3 (2017) (citing *City of Danville, Virginia*, 58 FERC ¶ 61,318, at 62,020 (1992)).

diameter, 75-foot-long steel penstock; (6) a 40-foot-long, 33-foot-wide stone and marble masonry powerhouse containing one 275-kilowatt horizontal-shaft turbine-generator unit; (7) a 480-volt/12.47-kilovolt (kV) transformer and an 80-foot-long, 12.47-kV transmission line that interconnects with the local distribution grid; and (8) appurtenant facilities

(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.

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

Exhibit A: Pages A-4 through A-18, of the Exhibit A filed on May 20, 2022.

Exhibit F: The following drawings filed on May 20, 2022:

Exhibit F Drawing	FERC Drawing No. P-2445-	Drawing Title
F-1	1001	Site plan
F-2	1002	Plan and Sections of Dam
F-3	1003	Plan View and Sections
F-4	1004	Profile Elevation, Trash Rack Details, Saddle Section

(C) The Exhibits A and F described above are approved and made part of the license. The Exhibit G drawings filed on May 20, 2022, do not conform to Commission regulations and are not approved.

(D) The following sections of the FPA are waived and excluded from the license for this minor project:

Sections 4(b), except the second sentence; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the FPA that are waived here; 10(c), insofar as it relates to depreciation reserves;

10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 16; 19; 20; and 22.

(E) This license is subject to the conditions submitted by the Vermont Agency of Natural Resources under section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341(a)(1), as those conditions are set forth in Appendix A to this order.

(F) This license is also subject to the articles set forth in Form L-12 (Oct. 1975), entitled, “Terms and Conditions of License for Constructed Minor 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 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 275 kilowatts (kW). Under the regulations currently in effect, projects with an authorized installed capacity of less than or equal to 1,500 kW will not be assessed an annual charge.

Article 202. *Reservation of Authority to Require Financial Assurance Measures.* The Commission reserves the right 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.

Article 203. *Exhibit F Drawings.* Within 45 days of the date of issuance of this order, 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-2445-1001 through P-2445-1004) in the margin below the title block of the corresponding approved drawing. The licensee must **label and file the Exhibit F drawings as Critical Energy Infrastructure Information (CEII) material under 18 CFR § 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 Number, Filename Drawing Title, date of this order, and file extension in the following format [P-2445-1001, F-1, Site Plan, MM-DD-YYYY.TIFF]. All digital images of the exhibit drawings must meet the following format specification:

IMAGERY: black and 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: 22" x 34" (minimum), 24" x 36" (maximum)
FILE SIZE: less than 1 megabyte desired

Article 204. Exhibit G Drawings. Within 90 days of the issuance date of this license, the licensee must file, for Commission approval, revised Exhibit G drawings to exclude 1.2 acres of land above the 505.05-foot contour, because the acreage does not serve a project purpose. The Exhibit G drawings must comply with sections 4.39 and 4.41(h) of the Commission's regulations.

Article 205. As-built Exhibits. Within 90 days of completion of construction of the facilities authorized by this license (e.g., new eel passage facilities), the licensee must file, for Commission approval, revised Exhibits A, F, and G, as applicable, to describe and show those project facilities as built.

Article 301. 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 – New York 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. Commission Approval, Reporting, Notification, and Filing of Amendments.

(a) *Requirements to File Plans for Commission Approval*

Certain conditions of Vermont Agency of Natural Resources' (Vermont ANR) Clean Water Act section 401 water quality certification (certification) in Appendix A require the licensee to prepare plans in consultation with other entities for approval, and to implement specific measures without prior Commission approval. The following plans must be submitted to the Commission for approval by the deadlines specified below:

Vermont ANR Certification Condition	Plan Name	Commission Due Date
C	Flow Management and Monitoring Plan	June 30, 2025
D	Plan to develop American Eel Passage	Within 1 year of eel passage installation at the Otter Creek Project No. 2558

With each plan filed with the Commission, the licensee must include documentation that it developed the plan in consultation with Vermont ANR and the U.S. Fish and Wildlife Service (FWS), as appropriate, and provide copies of any comments received, as well as its response to each comment. The licensee must allow a minimum of 30 days for the agencies to comment on the plans before filing the plans with the Commission. The Commission reserves the right to make changes to any plan filed. Upon Commission approval, the plan becomes a requirement of the license, and the licensee must implement the plan, including any changes required by the Commission. Any changes to the above schedule or plans require approval by the Commission before implementing the proposed change.

(b) *Requirement to Notify the Commission of Planned, Temporary Modifications to Mandatory Condition Requirements*

The licensee may deviate from the flow and impoundment management requirements of Vermont ANR's condition B for short periods of time, of up to 3 weeks, without prior Commission approval after concurrence from the conditioning agency. 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 approval from the conditioning agency. For deviations from the mandatory conditions exceeding 3 weeks, the licensee must file an application and receive Commission approval prior to implementation.

(c) *Requirement to Notify the Commission of Unplanned Deviations from Mandatory Condition Requirement(s) Lasting More than 3 Hours or Resulting in Environmental Effects*

If there is any unplanned deviation from the flow and impoundment management requirements of Vermont ANR's condition B that lasts longer than 3 hours *or* results in observed or reported environmental effects such as a fish kill, 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 incident. Each report must describe the incident, including: (1) the cause of the event; (2) the duration and magnitude; (3) any pertinent operational and/or monitoring data; (4) a timeline of the incident and the licensee's response; (5) any environmental effects; (6) documentation that the conditioning agency was notified and any comments received, or, affirmation that no comments were received; and (7) any measures to be implemented to prevent similar incidents in the future.

(d) *Requirement to Notify the Commission of Unplanned Deviations from Mandatory Condition Requirement(s) Lasting 3 Hours or Less with No Environmental Effects*

For unplanned deviations from the flow and impoundment management requirements of Vermont ANR's condition B lasting 3 hours or less that do not result in environment effects, the licensee must file an annual report 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.

(e) *Requirement to File Amendment Applications*

Certain Vermont ANR conditions in Appendix A contemplate unspecified or conditional long-term changes to project operation or facilities for the purpose of mitigating environmental impacts, such as condition D, which specifies the development of a plan to implement American eel passage measures within 1 year of upstream American eel passage having been installed at the Otter Creek Hydroelectric Project (FERC No. 2558). These changes may not be implemented without prior Commission authorization granted after the filing of an application to amend the license. In any amendment request, the licensee must identify related project requirements and request corresponding amendments or extensions of time as needed to maintain consistency among requirements.

Article 402. Project Operation. While operating the project run-of-river in accordance with Vermont Agency of Natural Resources' Clean Water Act section 401 water quality certification condition B (Appendix A), the licensee must target an impoundment surface elevation of 505.05 feet during normal operating conditions.

In addition to the minimum flow requirements specified in condition B of Vermont Agency of Natural Resources' water quality certification condition B (Appendix A), the licensee must also provide, from June 1 through October 15, a minimum flow of 80 cubic feet per second (cfs) or inflow to the project's impoundment, whichever is less, over the project's spillway and into the bypassed reach of Otter Creek for the protection of aquatic and aesthetic resources.

Planned Deviations

The project operation requirements of this article and Condition B of Appendix A may be temporarily modified for short periods, of up to 3 weeks, after mutual agreement among the licensee and the U.S. Fish and Wildlife Service and the Vermont Agency of Natural Resources (collectively, resource agencies). After concurrence from the 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 planned deviation. Each report must include: (1) the reasons for the deviation and how project operations were modified, (2) the duration and magnitude of the deviation, (3) any observed or reported environmental effects, and (4) documentation of consultation with the agencies. For planned deviations exceeding 3 weeks, the licensee must file an application for a temporary amendment of the applicable operational requirements of this license and receive Commission approval prior to implementation.

Unplanned Deviations

The project operation requirements of this article and Condition B of Appendix A may be temporarily modified if required by operating emergencies beyond the control of the licensee (i.e., unplanned deviations). For any unplanned deviation that lasts longer than 3 hours *or* results in observed or reported environmental effects, such as a fish kill, turbidity plume, bank erosion, or downstream flooding, the licensee must file a report as soon as possible, but no later than 14 days after each such incident. The report must include: (1) the cause of the deviation, (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, (6) documentation of any observed or reported environmental effects, and (7) a description of measures implemented to prevent similar deviations in the future.

For unplanned deviations lasting 3 hours or less that do not result in observed or reported environmental effects, the licensee must file an annual report, by March 1, describing each incident that occurred during the prior January 1 through December 31 time period. The report must include for each 3 hours or less deviation: (1) the cause of the deviation, (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 to each deviation, (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.

Article 403. Operation Compliance Monitoring Plan. Within six months of license issuance, the licensee must file, for Commission approval, an operation compliance monitoring plan that is consistent with Article 402 and the requirements of

conditions B and C of Vermont Agency of Natural Resources' (Vermont ANR) water quality certification (Appendix A), with the following additional components: (1) a detailed description of how the licensee will maintain, monitor, and document compliance with the operational requirements of this license; (2) a description of the gages and other measuring devices that would be used to monitor compliance with license requirements; (3) procedures for maintaining and calibrating monitoring equipment; (4) standard operating procedures to be implemented outside of normal operating conditions, such as scheduled and unscheduled facility shutdowns; (5) a schedule for installing monitoring equipment needed to document compliance with the operational requirements of the license; and (6) procedures for refilling the impoundment following emergency and maintenance drawdowns whereby 90% of inflow is passed downstream and 10% of inflow is used to refill the impoundment.

The licensee must prepare the plan after consultation with Vermont ANR. 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 Vermont ANR, and specific descriptions of how Vermont ANR's comments are accommodated by the plan. The licensee must allow a minimum of 30 days for Vermont ANR 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. The licensee must not begin implementing the plan until the Commission notifies the licensee that the plan is approved. Upon Commission approval, the licensee must implement the plan, including any changes required by the Commission.

Article 404. Reservation of Authority to Prescribe Fishways. 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 405. Protection of Northern Long-Eared and Tricolored Bats. To protect northern long-eared bats and tricolored bats, the licensee must avoid removing trees on project lands from April 1 through October 31. Tree removal includes cutting, harvesting, destroying, trimming, or any other form of manipulation of non-hazardous trees, saplings, snags, or woody vegetation. Tree removal is not prohibited if it is needed to ensure public or project safety. If emergency tree removal is necessary, the licensee must notify the Vermont Agency of Natural Resources and the U.S. Fish and Wildlife Service as soon as practical after conducting the trimming or removal.

Article 406. Informational Kiosk. Within one year of license issuance, the licensee must design, construct, and install a cultural heritage information kiosk for the Town of Rutland (Town), to be located at the Town's non-project pocket park, located

downstream of the project's dam. The licensee must develop the kiosk in coordination with the Town, the Vermont Division of Historic Preservation, the federally recognized St. Regis Mohawk Tribe and Stockbridge Munsee Tribe, and the following state-recognized Tribes in Vermont: Elnu Tribe of Abenaki, Abenaki Nation of Missisquoi, Nulhegan Band of Coosuk Abenaki-Nation, and Koasek of the Koas of the Abenaki Nation. Within 90 days of completion installation, the licensee must file documentation showing the completed kiosk, including photographs that reflect the as-built condition and a description of how they took stakeholder comments into account during development.

Article 407. Recreation Monitoring Plan. Within one year of license issuance, the licensee shall file, for Commission approval, a recreation monitoring plan that describes how the licensee will evaluate recreational use and demand at the project. The plan must include, at a minimum:

- (1) A description of how recreation at the project will be monitored, including the proposed methods that will be used to collect data.
- (2) A description of the data to be collected, including, at a minimum: the locations within the project boundary where recreational users are accessing the project, the number of recreational users on project land, the types of recreational use observed on project land, and the duration of time recreational users spend on project land.
- (3) A discussion of how the licensee will use the results of the survey to assess the adequacy of project recreational access to meet recreational demand.
- (4) An implementation schedule that includes provisions for conducting an initial monitoring survey within five years of the completion of the Town of Rutland's non-project pocket park and determining the frequency of ongoing monitoring throughout the license term.
- (5) A provision to consult with the Town of Rutland and other interested stakeholders on the results of each monitoring survey.
- (6) A provision to file a report with the Commission, within six months of each monitoring survey, that provides a summary of the results of the survey, the data collected, a summary of consultation with the Town of Rutland, and an analysis of the adequacy of project recreational opportunities to meet recreational demand at the project.

The licensee must prepare the plan after consultation with the Town of Rutland. 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 Town of Rutland, and specific descriptions of how the Town of Rutland's comments are accommodated by the plan. The licensee must allow a minimum of 30 days for the Town of Rutland 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. Upon Commission approval, the licensee shall implement the plan including any changes required by the Commission.

Article 408. Future Recreation. The licensee must notify the Commission if the Town of Rutland's pocket park is not constructed or ceases operation. Authority is reserved to the Commission to require the licensee to implement additional recreation measures if in the public interest.

Article 409. Programmatic Agreement and Historic Properties Management Plan. The licensee must implement the "Programmatic Agreement Among the Federal Energy Regulatory Commission and the Vermont State Historic Preservation Office for Managing Historic Properties that May be Affected by Issuing a Subsequent License to Green Mountain Power Corporation for the Continued Operation of the Center Rutland Hydroelectric Project in Rutland County, Vermont (FERC No. 2445-028)," executed on September 30, 2024, and including, but not limited to, the historic properties management plan (HPMP) for the project. Pursuant to the requirements of this Programmatic Agreement (PA), the licensee must file, for Commission approval, an HPMP within one year of issuance of this order. The Commission reserves the authority to require changes to the HPMP at any time during the term of the license. If the PA is terminated prior to Commission approval of the HPMP, the licensee must obtain approval from the Commission and the Vermont State Historic Preservation Officer, before engaging in any ground-disturbing activities or taking any other action that may affect any historic properties within the project's area of potential effects.

Article 410. 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 type 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 that, to the satisfaction of the Commission's authorized representative, 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-kilovolts 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 copy of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed. 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 5 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 and 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.

(G) 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.

(H) 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. § 825I, and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2022). 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 constitutes acceptance of this order.

for
Terry L. Turpin
Director
Office of Energy Projects

Form L-12
(October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

**TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED
MINOR 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. 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 be 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 7. 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 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 the 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 15. 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 16. 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 17. 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 18. 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.

APPENDIX A

Water Quality Certificate Conditions Issued by the Vermont Agency of Natural Resources Filed March 29, 2024

CERTIFICATION CONDITIONS

- A. Compliance with Conditions.** The Applicant shall operate and maintain this Project consistent with the findings and conditions of this certification. The Applicant shall not make any changes to the Project or its operations that would have a significant or material effect on the findings, conclusions, or conditions of this Certification without approval of the Department.

See finding 133 for a statement of necessity. 10 V.S.A. § 1258 & Vt. Code R. 12 030 026 § 29A-101.

- B. Flow Management.** The Project shall be operated in instantaneous run-of-river mode. Instantaneous run-of-river mode means no utilization of impoundment storage and that outflow from the facility is equal to inflow to the impoundment on a near instantaneous basis except for short term, unavoidable deviations.

The Applicant shall provide a conservation flow of 60 cfs, or inflow if less, to the bypassed reach year-round. The conservation flow shall be provided via spillage over the dam, unless otherwise described in the flow management and monitoring plan or approved by the Department. When the Project is not operating, all flow shall be spilled at the dam.

See findings 141, 144, and 146 for a statement of necessity. 10 V.S.A. § 1258 & Vt. Code R. 12 030 026 § 29A-304 & § 29A-306 (b)(3)(B) & § 306 (c)(3)(B)(i).

- C. Flow Management and Monitoring Plan.** The Applicant shall develop, within 180 days of the effective date of the FERC license, a flow management and monitoring plan detailing how the Project will operate in instantaneous run-of-river mode and comply with the conservation flow requirements. The plan will also include a method for continuous monitoring and reporting of flow releases (e.g. conservation flow, spillage, and turbine discharge) at the Project, impoundment levels, and inflow. The plan shall include provisions for the flow data to be available on a near real-time basis to allow for records to be furnished upon request.

The plan will include procedures for reporting deviations from prescribed operating conditions to the Department. Reports shall be made within 15 days after a deviation and will include, if possible, the cause, severity, and duration of the deviation, observed or reported adverse environmental impacts from the incident, pertinent data, and measures to be taken to avoid recurrences.

The plan shall be subject to Department approval. The Department reserves the right to review and approve any material changes made to the plan.

See finding 133 for a statement of necessity. 10 V.S.A. § 1258 & Vt. Code R. 12 030 026 § 29A-304 & § 29A-306(b).

- D. American Eel Passage.** Within 1 year of upstream American eel passage having been installed at the Otter Creek Hydroelectric Project (FERC No. 2558), the Applicant shall initiate plan development for American eel passage. Before developing the plan, the Applicant shall consult with the Vermont Agency of Natural Resources and the U.S. Fish and Wildlife Service. The plan shall be reviewed and approved by the Vermont Agency of Natural Resources and the U.S. Fish and Wildlife Service before implementation. In addition to the method of passage, the plan shall include an implementation schedule. The plan can include, but is not limited to, a trap and truck program or eel ramp installation, or other appropriate measures.

See finding 154 for a statement of necessity. 10 V.S.A. § 1258 & Vt. Code R. 12 030 026 § 29A-306(b)(3)(A).

- E. Northern Long-eared Bat Protection.** The Applicant shall avoid tree trimming and removal of trees 3- inch diameter breast height or greater in the project boundary between April 1st and October 31st to avoid any roost disruption of the Northern long-eared bat, except when necessary to protect public safety or respond to emergency conditions. In case of a public safety issue or emergency where tree trimming or removal are required during the seasonal protective period, the Applicant will consult with the Department as soon as practical after conducting the trimming or removal.

See finding 158 for a statement of necessity. 10 V.S.A. § 5403.

- F. Recreation.** The Applicant shall continue to: (1) provide public access and use of Project lands and waters; (2) provide access to and maintain the hand carry put-in/fishing access area located downstream of the powerhouse; and (3) establish an agreement with the Town of Rutland for a pocket park pending appropriate approvals.

See finding 162 for a statement of necessity. 10 V.S.A. § 1258 & Vt. Code R. 12 030 026 § 29A- 303(d-f).

- G. Debris Disposal.** Debris associated with Project operations shall be disposed of in accordance with the Standards and applicable state laws and regulations.

See findings 164 for a statement of necessity. 10 V.S.A. § 1258 & Vt. Code R. 12 030 026 § 29A-303(1).

- H. Maintenance and Repair Work.** The Applicant shall consult with the Department prior to conducting Project maintenance or repair work that necessitates a deviation from the conditions that assure compliance with water quality requirements (e.g., water level or flow management). Such maintenance and repair work shall be subject to review and approval by the Department.

See findings 149 and 151 for a statement of necessity. 10 V.S.A § 1258 & Vt. Code R. 12 0330 026 § 29A-304(d) and § 29A-306(b).

- I. Compliance Inspection by Department.** The Applicant shall allow the Department to inspect the Project area at any time to monitor compliance with certification conditions.

See findings 2 and 133 for a statement of necessity. 10 V.S.A § 1258 & Vt. Code R. 12 0330 026 § 29A-104(a).

- J. Posting of Certification.** A copy of the certification shall be prominently posted within the Project powerhouse.

See findings 2 and 133 for a statement of necessity. 10 V.S.A § 1258 & Vt. Code R. 12 0330 026 § 29A-104(a).

- K. Modification of Certification.** The conditions of this certification may be altered or amended by the Department to assure compliance with the Vermont Water Quality Standards and to respond to any changes in classification of management objectives for the waters affected by the Project, when authorized by law, and, if necessary, after notice and opportunity for hearing.

See findings 2 and 133 for a statement of necessity. 10 V.S.A § 1258 & Vt. Code R. 12 0330 026 § 29A-104(a).