

126 FERC ¶ 62,144  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Central Vermont Public Service Corporation

Project No. 11475-000

ORDER ON OFFER OF SETTLEMENT  
AND ISSUING ORIGINAL LICENSE

February 25, 2009

1. On April 25, 1994, Central Vermont Public Service Corporation (Central Vermont) filed an application for an original license under Part I of the Federal Power Act (FPA),<sup>1</sup> to continue operation and maintenance of its unlicensed 1.9-megawatt (MW) Carver Falls Hydroelectric Project No. 11475 located on the Poultney River in Washington County, New York, and Rutland County, Vermont.<sup>2</sup> The project would not occupy federal lands. For the reasons discussed below, I am issuing an original license for the project.

**BACKGROUND**

2. On October 10, 1995, a public notice accepting the license application was issued, setting December 6, 1995, as the deadline for filing comments and motions to intervene. Motions to intervene were timely filed by the U.S. Department of the Interior (Interior), U.S. Environmental Protection Agency (EPA), New York State Department of Environmental Conservation (New York DEC), Vermont Agency of Natural Resources (Vermont ANR), Vermont Natural Resources Council and the Lower Poultney River Committee (jointly, Vermont NRC), New York Rivers United (New York Rivers) and American Rivers, Inc. (American Rivers).<sup>3</sup>

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<sup>1</sup> 16 U.S.C. §§ 787(e) and 808 (2006).

<sup>2</sup> The project is required to be licensed pursuant to section 23(b)(1) of the FPA, 16 U.S.C. § 817(1) (2006), because the project is located on part of the Poultney River found to be a navigable waterway of the United States. *Central Vermont Public Service Corp.*, 44 FERC ¶ 62,329 (1988), *reh'g denied*, 54 FERC ¶ 61,068 (1991). The project began generating power in 1894. The Commission found the project to be subject to the Commission's mandatory licensing jurisdiction in the cited orders.

<sup>3</sup> The motions were timely and unopposed, and were therefore automatically granted under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure. 18

(continued)

3. On March 18, 1996, a public notice was issued indicating the application was ready for environmental analysis, and soliciting comments, recommendations, terms and conditions, and prescriptions. The filing deadline was May 17, 1996. In response, timely comments and recommended terms and conditions were filed by Interior, New York DEC, and Vermont ANR. Central Vermont filed reply comments on July 1, 1996.

4. Commission staff issued a draft Environmental Assessment (draft EA) on September 30, 1996. New York DEC, Vermont ANR, Vermont NRC, the Nature Conservancy, and Central Vermont filed comments on the draft EA. The staff considered these comments in preparing a final Environmental Assessment (final EA) issued on March 13, 1997. All motions to intervene and comments have been fully considered in determining whether, and under what conditions, to issue this license.

5. On December 12, 1996, Central Vermont filed an Offer of Settlement (Settlement) that addresses aquatic, aesthetic, and recreation resources.<sup>4</sup> The Settlement is described below.

## **PROJECT DESCRIPTION AND OPERATION**

### **A. Project Description**

6. The existing Carver Falls Project includes a 514-foot-long concrete and stone masonry dam, consisting of a 110-foot-long northern spillway topped with 6-foot-high flashboards, and a 150-foot-long southern spillway topped with 1.5-foot-high flashboards that impounds a 10-acre reservoir connected to a 300-foot-long, 7-foot-diameter penstock that bifurcates into two 150-foot-long, 3-foot and 4-foot-diameter penstocks with surge tanks connected to the powerhouse. The powerhouse contains a 1.1-MW and 0.80-MW generating unit with a total installed capacity of 1.9 MW that discharges water directly into the Poultney River. Project power is transmitted through a 275-foot-long, 2.4-kilovolt transmission line connected to the regional grid. A more detailed project description is contained in ordering paragraph (B)(2).

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C.F.R. § 385.214(c)(1)(2008).

<sup>4</sup> In addition to Central Vermont, the Settlement was signed by New York DEC and New York Rivers. Other participants in the negotiations included Vermont NRC, the Poultney River Committee, the National Wildlife Federation-Vermont Chapter, and Vermont ANR. In a letter filed on December 13, 1996, Vermont NRC indicated that while it does not oppose the Settlement, it will not be a signatory.

7. The Carver Falls Project dam is located at the top of the 80-foot-drop Carver Falls, with one abutment on the Vermont shore of the river and the other abutment on the New York side of the river. The powerhouse, several hundred feet downstream of the falls, is on the New York side of the river. Recreation facilities at the project are located on the New York side of the river and radiate out from a parking area located near the southern end of the dam. On the upstream side of the parking area, an approximately 600-foot-long trail runs east through a meadow to an informal canoe launch on the impoundment. On the downstream side of the parking area is a fence and gate leading to the powerhouse service road and a trail that runs north to two overlooks to the dam and falls. One is a small viewing platform (overlook) located on top of the penstock, and the second viewpoint is located nearby on a steep promontory. A half-mile-long trail runs southwest from the powerhouse access road to the river approximately 1,000 feet downstream from the dam; this is used as an informal downstream portage trail. Vehicular access beyond the parking area is currently restricted to Central Vermont service vehicles.

#### **B. Project Operation**

8. The project currently operates in a run-of-river mode when flows to the project's impoundment meet or exceed the powerhouse's maximum hydraulic capacity of 254 cubic feet per second (cfs). During reduced summer inflows, the project operates in a daily peaking mode, with impoundment drawdowns averaging 2 feet daily. During extremely low-flow periods, daily drawdowns may reach 9 feet. Dam leakage at the normal full reservoir elevation of 233.3 feet United States Geological Survey datum (USGS) provides a flow of approximately 9.5 cfs to the 450-foot-long reach of the Poultney River bypassed by the project. The project's current estimated total annual generation is about 7,250 megawatthours (MWh).

#### **C. Proposed Operation**

9. Central Vermont proposes to operate the project in an instantaneous run-of-river mode, remove the 1.5-foot-high flashboards on the southern spillway by October 15 annually, and replace the flashboards in mid to late April to minimize any water quality impacts downstream and in the impoundment.

#### **D. Project Boundary**

10. The exhibit G drawing is a site location map that does not have a project boundary line enclosing the principal project works or the existing recreation facilities. The project boundary is discussed further below.

#### **E. Proposed Measures**

11. In addition to the above proposed project operation, Central Vermont proposes to: (1) manage vegetation at the parking area to improve views of the impoundment and

dam; (2) improve the existing canoe launch, and its associated trail, on the impoundment by providing vehicle access; (3) improve the lower canoe portage trail by providing vehicle access from the parking area to a vehicle turn-around point, improving the remainder of the trail to the Poultney River downstream from the powerhouse, and constructing steps to the river at the canoe put-in area; (4) install picnic tables along the existing trail to the penstock overlook and make improvements to the overlook; (5) provide additional signage at the parking area, penstock viewing area, powerhouse, and upstream and downstream portage trails; and (6) install trail registers at the existing parking area to monitor amount and type of use. Central Vermont also proposes several environmental measures pursuant to the Settlement as discussed below.

## **SETTLEMENT**

12. The Settlement is the product of negotiations begun after appeals were filed by the Vermont ANR and the Vermont NRC on the water quality certification issued by the New York DEC under the Clean Water Act in April 1995 (*see* the “Water Quality Certification” section below).

13. In addition to the five enhancement provisions described below, the Settlement includes general provisions for support of a 30-year license term and general agreements and disclaimers, a statement about compliance with the law, and a list of federal, state, and interested entities that should receive written notice of the Settlement.<sup>5</sup>

### **A. Walleye Spawning**

14. Central Vermont would provide a continuous flow to the bypassed reach of 50 cfs, or inflow, if less, from April 1 through May 15 of each year to protect walleye spawning in the bypassed reach.

### **B. Penstock Removal**

15. To improve site aesthetics, Central Vermont would remove the site's two abandoned, above-ground penstocks and concrete cradles. The stone cradles would remain.

### **C. Public Access**

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<sup>5</sup> The Settlement notes that New York DEC would modify the water quality certification to make it consistent with the provisions of the Settlement. In a letter dated December 13, 1996, (filed October 29, 2008), New York DEC modified the certification to incorporate the terms and conditions of the Settlement.

16. Central Vermont would provide improved parking and viewing access opportunities for the general public at the falls.

#### **D. Aesthetic Releases**

17. Central Vermont would release a flow over the southern spillway of 2.5 inches,<sup>6</sup> or inflow, if less, for aesthetic purposes on Memorial Day, July Fourth, Labor Day, Columbus Day, and every Sunday during the months of July and August. These flows would be released during daylight hours commencing at 9:00 a.m.

#### **E. Carver Falls Advisory Council**

18. The Settlement would establish a Carver Falls Advisory Council, chaired by the New York DEC, to represent various interests in the project. At a minimum, signatories to the Settlement would be invited to serve on the Advisory Council. The Council would meet at least annually to make recommendations to the New York DEC and Central Vermont regarding management of the Carver Falls site and hydropower project operations. Each member would have one vote, with the Advisory Council's decisions based on majority vote. Central Vermont would contribute up to \$200 annually to defray the costs of the Advisory Council, including travel expenses. Central Vermont's obligation is subject to an overall \$200 annual cap, regardless of the number of meetings held.

### **WATER QUALITY CERTIFICATION**

19. Under section 401(a)(1) of the Clean Water Act (CWA),<sup>7</sup> the Commission may not issue a license authorizing the construction or operation of a hydroelectric project unless the state water quality certifying agency either has issued water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA provides that the certification shall become a condition of any federal license that authorizes construction or operation of the project.<sup>8</sup>

20. On April 22, 1994, Central Vermont applied to the New York DEC for certification for the Carver Falls Project. On April 21, 1995, the New York DEC issued certification for the Carver Falls Project. As noted above, New York DEC modified the water quality

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<sup>6</sup> Central Vermont estimates the flow to be about 45 cfs.

<sup>7</sup> 33 U.S.C. § 1341(a)(1) (2006).

<sup>8</sup> 33 U.S.C. § 1341(d) (2006).

certification to make it consistent with the provisions of the Settlement.<sup>9</sup> The New York DEC certification conditions, as modified, are set forth in Appendix A of this order and incorporated into the license (see ordering paragraph D).

21. On December 5, 1995, Vermont ANR filed a motion to intervene, asserting that Central Vermont must obtain certification from it, because the project would result in a discharge into Vermont waters from a dam spillway located on the Vermont side of the Poultney River. The Director of the Office of Hydropower Licensing subsequently issued a letter directing Central Vermont to request certification from Vermont ANR.<sup>10</sup> The Director's decision was upheld in a December 22, 1998, Commission order.<sup>11</sup>

22. Following the Commission's decision, Central Vermont applied to Vermont ANR for certification in a letter dated April 7, 1999. Central Vermont withdrew and refiled its request for certification with Vermont ANR each year between 1999 and 2007, with the most recent request dated December 7, 2007. Finally, on December 5, 2008, Vermont ANR, through its Vermont Department of Environmental Conservation, issued certification for the Carver Falls Project.<sup>12</sup> The Vermont ANR certification conditions are set forth in Appendix B of this order and incorporated into the license (see ordering paragraph D).

23. The certifications include conditions establishing run-of-river operations, seasonal minimum flow releases for the bypassed reach;<sup>13</sup> seasonal aesthetic flow releases; flashboard replacement; flow management during impoundment refill; the removal of abandoned penstocks and concrete cradles; improved public access; an advisory council; a restoration fund; and developing plans for: flow management, impoundment and flow monitoring, debris disposal, and recreation. Article 401 requires the licensee to file the

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<sup>9</sup> The provisions of the Settlement are included at the end of Appendix A as modified certification conditions.

<sup>10</sup> Letter from Carol L. Sampson, Director, OHL, to Bruce M. Peacock, Manager of Production Engineering, Central Vermont (dated February 26, 1998).

<sup>11</sup> 85 FERC ¶ 61,410 (1998).

<sup>12</sup> The water quality certification was filed with the Commission on February 5, 2009.

<sup>13</sup> Article 402 requires project operation and minimum flows consistent with the certification conditions, but allows for temporary modified project operation for emergency conditions beyond the control of the licensee.

plans required by the certification conditions for Commission approval, and document that measures required by the certification conditions have been completed.

### **COASTAL ZONE MANAGEMENT ACT**

24. Under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA),<sup>14</sup> the Commission cannot issue a license for a project within or affecting a state's coastal zone unless the state CZMA 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 180 days of its receipt of the applicant's certification. Vermont does not have a CZMA program.<sup>15</sup> Regarding New York, the project is not located in the New York state-designated coastal zone management area and is not subject to the consistency process.<sup>16</sup> Therefore, no consistency certification is required

### **SECTION 18 FISHWAY PRESCRIPTIONS**

25. Section 18 of the FPA,<sup>17</sup> provides that the Commission shall require the construction, operation, and maintenance by a licensee of such fishways as may be prescribed by the Secretaries of Commerce or the Interior, as appropriate. By letter filed May 14, 1996, the Secretary of the Interior requested that the Commission reserve authority to prescribe fishways. Consistent with Commission policy, Article 403 of this license reserves the Commission's authority to require fishways that may be prescribed by Interior for the Carver Falls Project.

### **THREATENED AND ENDANGERED SPECIES**

26. Section 7(a)(2) of the Endangered Species Act of 1973 (ESA)<sup>18</sup> 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.

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<sup>14</sup> 16 U.S.C. § 1456(3)(A) (2006).

<sup>15</sup> See <http://coastalmanagement.noaa.gov/mystate/welcome.html>

<sup>16</sup> See February 26, 1996, telephone memo between representatives of Stone and Webster and the New York DEC Coastal Resources Section, filed February 2, 2009.

<sup>17</sup> 16 U.S.C. § 811 (2006).

<sup>18</sup> 16 U.S.C. § 1536(a) (2006).

27. In a letter filed June 17, 2002, the U.S. Fish and Wildlife Service (FWS) noted that the federally listed endangered Indiana bat (*Myotis sodalis*) is likely to occur at the Carver Falls Project. In a biological assessment (BA) issued to the FWS on November 13, 2008, Commission staff determined that, with its recommended measures, relicensing the project is not likely to adversely affect the Indiana bat. The BA recommended that, during routine or recreation-based vegetation management at the project, Central Vermont refrain from tree removal activities from April 15 through September 15, which is the roosting season of the Indiana bat in the project vicinity. If tree removal must occur between April 15 and September 15, the BA recommended that Central Vermont conduct surveys prior to tree removal to determine if potential roost trees for Indiana bat are present and document the findings with the Commission and FWS. If roost trees are present, the BA recommended that Central Vermont consult with FWS and the Commission prior to tree removal to determine an appropriate course of action.

28. By letter filed December 29, 2008, FWS agreed that a time-of-year restriction for tree removal will avoid the potential take of Indiana bats that might be present in roost trees during this time period, but recommended expanding the seasonal cutting restriction to April 1 through October 31 to ensure that there is no likelihood of take during the Indiana bat non-hibernating season. In the event that potential roost trees must be removed between April 1 and October 31, FWS agreed that Central Vermont should first survey the area to determine whether potential roost trees are present, and noted that results should be provided both to the New England Field Office of FWS and the Vermont Department of Fish and Wildlife (Vermont Fish and Wildlife). Further, FWS requested that surveys and site-specific consultation be concluded prior to any tree removal during the non-hibernating season. With these measures, FWS concurred with the BA that the project is not likely to adversely affect the Indiana bat, and further consultation with FWS under section 7 of ESA is not required. Article 405 requires Central Vermont to avoid tree removal during April 1 through October 31 and requires an Indiana bat protection plan, including surveys and consultation with FWS, Vermont Fish and Wildlife, and New York DEC, to be filed, for Commission approval, prior to any tree removal that must take place during the non-hibernating season.

## **NATIONAL HISTORIC PRESERVATION ACT**

29. Under section 106 of the National Historic Preservation Act (NHPA),<sup>19</sup> and its implementing regulations,<sup>20</sup> federal agencies must take into account the effect of any

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<sup>19</sup> 16 U.S.C. § 470 *et seq.* (2006).

<sup>20</sup> 36 C.F.R. Part 800 (2008).

proposed 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 State Historic Preservation Officer (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

30. To satisfy these responsibilities, the Commission executed a Programmatic Agreement (PA) with the Advisory Council on Historic Preservation and the New York and Vermont SHPOs and invited Central Vermont to concur with the stipulations of the PA. Central Vermont concurred. The PA, executed on August 8, 1997, requires the licensee to prepare and implement a cultural resources management plan (CRMP) for the term of any license issued for this project, which would include completion, if necessary, of identification of historic properties at the project. This agreement also includes stipulations regarding the interim treatment of historic properties, dispute resolution, and amendment and termination of the PA. Thus, although the agreement was signed in 1997, the post-licensing development of the CRMP, in consultation with the parties, and other stipulations will ensure that any new discoveries or cultural resource concerns that have developed since 1997 will be addressed through implementation of the PA. Execution of the PA demonstrates the Commission's compliance with section 106 of the NHPA. Article 406 requires the licensee to implement the PA and to file its CRMP with the Commission within one year of license issuance.

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

### **A. Recommendations Within the Scope of Section 10(j) of the FPA**

31. Section 10(j)(1) of the FPA<sup>21</sup> requires the Commission, when issuing a license, to include conditions based on recommendations by federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act,<sup>22</sup> to "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)" affected by the project.

32. In response to the March 18, 1996 public notice that the project was ready for environmental analysis; Interior, New York DEC, and Vermont ANR filed a total of 21

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<sup>21</sup> 16 U.S.C. §803(j) (1) (2006).

<sup>22</sup> 16 U.S.C. §§ 661 *et seq.* (2006).

different recommendations.<sup>23</sup> In its letter filed May 17, 1996, New York DEC stated that its terms and conditions would be superseded by the terms and conditions of any settlement offer resulting from negotiations on the 401 certification. Therefore, I consider New York DEC's terms and conditions filed on May 17, 1996, to be superseded by the 401 certification conditions as amended by the December 12, 1996 Settlement. Of the remaining 16 recommendations filed by Interior and Vermont ANR, nine recommendations were determined to be outside the scope of section 10(j) and are discussed in the next section.<sup>24</sup> This license includes conditions consistent with all seven recommendations that are within the scope of section 10(j). These include recommendations to: (1) operate the project run-of-river (condition 2, appendix A and condition B, appendix B); (2) release an 18.5-cfs minimum flow into the bypassed reach from May 16 to March 31 and a 50-cfs minimum flow into the bypassed reach from April 1 to May 15 (conditions 3 and 13, appendix A; and condition B, appendix B);<sup>25</sup> (3) reduce downstream flows no greater than 10 percent following flashboard reinstallation (condition C, appendix B);<sup>26</sup> (4) remove the 1.5-foot-high flashboards on or before September 15 annually (Article 404); (5) prepare an operation compliance monitoring plan to meet flow and reservoir management requirements (condition 4, appendix A and conditions D and E, appendix B); (6) prepare an erosion and sediment control plan and install erosion control measures, as necessary, for recreation facilities (condition 7, appendix A and conditions L and N, appendix B); and (7) prepare a debris disposal plan (condition H, appendix B).

33. The environmental measures required by this license including run-of-river operation, releasing minimum flows in the bypassed reach, removing the 1.5-foot-high flashboards annually while maintaining downstream flows, and implementing erosion

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<sup>23</sup> Interior filed its recommendations on May 14, 1996; and New York DEC and Vermont ANR filed their recommendations on May 17, 1996.

<sup>24</sup> The EA listed 30 separate recommendations with 17 recommendations considered to be outside the scope of section 10(j). For purposes of brevity, our discussion combines similar recommendations and condenses other recommendations that had been split into multiple components in the EA analysis, where appropriate, and recognizes that New York DEC's recommendations have been superseded.

<sup>25</sup> This recommendation combines recommendations for a year-round flow of 18.5 cfs and a seasonal recommendation for 50 cfs.

<sup>26</sup> The Vermont ANR certification requires releasing 90 percent of inflow below the project.

and sediment control measures would directly benefit water quality and aquatic habitat at the project and downstream.

**B. Recommendations not Within the Scope of Section 10(j) and Considered Under Section 10(a)(1) of the FPA**

34. Interior and Vermont ANR made nine recommendations that are not specific measures to protect, mitigate damages to, or enhance fish and wildlife. Consequently, we do not consider these recommendations under section 10(j) of the FPA. Instead, we consider these recommendations under the broad public-interest standard of FPA section 10(a)(1).<sup>27</sup>

35. We have adopted three of the nine recommendations: (1) remove two abandoned penstocks and concrete cradles (condition 14, appendix A and condition K, appendix B) to enhance aesthetics; (2) provide public access to the project for recreation (condition J, appendix B); and (3) consult with Vermont ANR on signage and final designs for recreation enhancements (Article 401).

36. In the final EA, staff did not recommend adopting six of the nine recommendations that were considered outside the scope of section 10(j): (1) spill 80 cfs during daylight hours and 57 cfs at night over the dam for aesthetics from April 1 through October 30; (2) develop alternatives to the 6-foot-high flashboards; (3) include monitoring provisions, with five year updates, in the recreation plan; (4) install timber flashboards to replace the existing plywood flashboards on the New York section of the spillway; (5) allow the Vermont ANR to inspect the project area any time to monitor compliance with the certification conditions; and (6) allow the Vermont ANR to request the Commission to reopen the license for the purpose of implementing project modifications that would ensure compliance with Vermont water quality standards.

**Aesthetic Flows**

37. In the EA, staff recommended that Central Vermont release an aesthetics flow during daylight hours over the southern spillway of 2.5 inches (or inflow, if less) on

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<sup>27</sup> 16 U.S.C. § 803(a)(1) (2006). Section 10(a)(1) requires that any project for which the Commission issues a license shall 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.

Memorial Day, Independence Day, Labor Day, Columbus Day and every Sunday during the months of July and August to enhance viewing of the falls. Vermont ANR originally recommended that the project provide 80 cfs during daylight hours and 57 cfs at night over the dam for aesthetics from April 1 through October 30. However, Vermont ANR included in its 401 certification a condition for aesthetics flow releases consistent with the staff recommendation in the EA and the New York DEC's certification condition 16 thus superseding its original recommendation. The conditions for the New York and Vermont certifications are included in appendices A and B, respectively, and will become requirements of the license by ordering paragraph D.

### **Flashboard Replacement**

38. Vermont ANR originally recommended that Central Vermont investigate alternatives to the 6-foot-high flashboards on the Vermont section of spillway to prevent future large-scale drawdowns. Vermont ANR stated that the drawdowns required for the periodic replacement of the 6-foot-high flashboards violated water quality standards by remobilizing and transporting impoundment sediments downstream. If Central Vermont did not identify a feasible alternative, Vermont ANR recommended that methods such as cofferdamming be used during periodic flashboard replacement to avoid the need for the large drawdowns. In the EA, staff concluded that alternative flashboard designs<sup>28</sup> were not warranted and that continued use of the 6-foot-high plywood flashboards would not have an adverse impact on water quality and would continue to provide flood control benefits in the project area. However, Vermont certification condition G requires replacement of the 6-foot-high flashboards on the north (Vermont) spillway with a new system consisting of a lower 4-foot steel section and an upper 2-foot section of untreated lumber or an alternate design to be approved by the Vermont ANR and as such is included as a condition of this license by ordering paragraph D.

39. Vermont ANR also recommended that the 1.5-foot-high flashboards on the New York side of the spillway be replaced with timber flashboards, unless the system is redesigned to prevent the loss of the flashboards during high water. In the EA, staff found that the use of marine grade plywood for the existing flashboards was supported by a prior Commission decision<sup>29</sup> and there was no site-specific information that use of the current materials resulted in any negative environmental impacts to the project area. I agree with staffs findings and will not require Central Vermont to replace the existing 1.5-foot-high plywood flashboards with timber planks.

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<sup>28</sup> Central Vermont evaluated increasing the permanent crest of the spillway and the use of a rubber dam. EA pp. 27 and 28.

<sup>29</sup> 75 FERC ¶ 62,107 (1996).

### **Recreation Plan**

40. Vermont ANR recommended that Central Vermont develop a recreation master plan including monitoring provisions, five-year updates, and enhancement measures. In the EA, staff did not recommend monitoring and the five-year-update provision because recreational use at the project is monitored through section 18 C.F.R § 8.11 of the Commission's regulations, which requires the licensee to collect and file recreational use information every six years, and part of Central Vermont's recreation proposal is to install trail registers to gather recreational use data at the project for future evaluation of the adequacy of the facilities. If this information indicates a need for additional recreational facilities, the need can be addressed through the recreation plan required under Vermont ANR condition L, discussed below. The EA recommended that Central Vermont prepare a final recreation plan that includes erosion control measures, Central Vermont's proposed improvements to the parking area and upstream and downstream canoe portage trails and facilities, as described in figure 15 of the license application, and improvements to the overlook located on top of the active penstock at the project, as described in Central Vermont's March 6, 1996 additional information filing.

41. Condition 12 of New York DEC's certification (Appendix A) requires Central Vermont to provide cartop boat access to the impoundment, parking near the southern end of the dam to accommodate boater's parked cars, and a canoe portage route to a point downstream of the powerhouse, as proposed in the application. New York DEC's condition 15 requires that Central Vermont provide improved parking and viewing access opportunities for the general public. Vermont ANR's condition L (Appendix B) requires Central Vermont to develop and implement a final recreation plan, approved by the Vermont ANR and updated at up to ten-year intervals, that includes a provision to allow but not encourage through additional improvements or signage access to the viewpoint located on a promontory and measures for erosion control. New York DEC condition 12 and Vermont ANR condition L are included as conditions of this license by ordering paragraph D, and Article 401 specifies that the recreation plan must include the measures proposed by Central Vermont.

### **Access to Project**

42. Vermont ANR recommended that Central Vermont allow its representatives to inspect the project area any time to monitor compliance with the certification conditions. In the EA, staff did not recommend this measure because at that time staff believed that water quality certification rested solely with the New York DEC. Determining compliance with the terms and conditions in a license is the Commission's responsibility, and this recommendation would require Central Vermont to demonstrate operational compliance to entities other than the Commission. The Commission already conducts periodic safety and environmental compliance inspections as part of its administration of issued licenses. However, allowing the agencies reasonable access to the project in the performance of their official duties, making records available to the agencies during such

inspections, and notifying the agencies of all unusual occurrences that affect fish and wildlife resources would help ensure that these entities remain informed about the construction and operation of fish protection measures at the project. Agencies could then provide Central Vermont with timely feedback, which should help Central Vermont implement fish protection measures contained in the license. For the above reasons, and because Vermont ANR subsequently issued its certification including in it condition O requiring Central Vermont to allow access of Vermont ANR personnel for inspection purposes, condition O is included in this license under ordering paragraph D.

### **Reopener Provision**

43. Vermont ANR recommended that the Commission include a reopener in the license for the purpose of implementing project modifications that would ensure compliance with Vermont water quality standards. Standard L-form Article 15 attached to the license provides for similar provisions should additional protection or environmental measures be necessary. This same standard article would provide a means by which Vermont ANR or other fish and wildlife agencies could pursue additional project modifications in the future. The reopener provision was also included as condition R of the Vermont ANR certification. As such, it becomes a mandatory provision of this license by ordering paragraph D.

## **OTHER ISSUES**

### **A. Lake Champlain and Tributaries Restoration Fund**

44. Vermont ANR certification condition M requires Central Vermont to contribute \$250,000 to a fund to be known as the Lake Champlain and Tributaries Restoration Fund (Fund). The Fund would be created by the State of Vermont and administered by an independent non-profit community foundation (the Fund trustee) chosen by Central Vermont and the Vermont ANR. Purposes of the Fund would include: (1) to protect, restore, and enhance ecosystem integrity and ecological connectivity within the Lake Champlain ecosystem; (2) to protect, restore, and enhance lake sturgeon and their habitats; (3) to restore a self-sustaining landlocked Atlantic salmon population in Lake Champlain through habitat restoration and fish monitoring programs; and (4) to protect riparian zones along Lake Champlain tributaries through purchases of land easements.

45. Condition M does not identify specific enhancement projects that the fund would be used for and eligible uses may or may not address project-affected resources. This is inconsistent with the Commission's policy that a relationship must be established between a proposed measure and project effects or purposes, with specific measures (*e.g.*,

installing riprap to prevent erosion) preferred over general measures.<sup>30</sup> Further, staff concluded in the EA that its recommended measures, including operating the project in a run-of-river mode, developing a flashboard removal and replacement plan to minimize the effects of reservoir drawdowns on aquatic habitat, providing minimum flows in the bypassed reach for aquatic resources including walleye spawning, and developing and implementing a trashrack debris disposal plan to protect downstream water quality would protect, mitigate, or enhance aquatic resources in the Poultney River. Nevertheless, condition M of the Vermont certification is incorporated into this license by ordering paragraph D.

## **B. Adequacy of Environmental Analysis**

46. Vermont NRC raised concerns regarding preparation of a comprehensive plan for the Poultney River Basin; sufficient consideration of alternatives to the applicant's proposed project operation; the need for a comprehensive evaluation of recreational opportunities within the river basin and conditioning any license on enhanced recreational opportunities; adequacy of minimum flows and need for a Vermont water quality certification; preparation of a comprehensive environmental impact statement for the project; and the need for an adjudicatory hearing.<sup>31</sup> Based on Central Vermont's receipt of a Vermont water quality certification, the record compiled following the filing of Vermont NRC's intervention motion, including Vermont NRC's comments on the draft EA, and the relevant analyses in the final EA, these concerns appear to have been addressed.

## **ADMINISTRATIVE PROVISIONS**

### **A. Annual Charges**

47. The Commission collects annual charges from licensees for administration of the FPA. Article 201 provides for the collection of funds for administration of the FPA and use and occupancy of U.S. lands, where appropriate.

### **B. Exhibit F Drawings**

48. The Commission requires licensees to file sets of approved project drawings on microfilm and in electronic file format. Exhibit F drawings, sheet 2, 3, and 4 filed with the license application show the dam, powerhouse, and penstocks. Ordering paragraph C

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<sup>30</sup> See *Settlements in Hydropower Licensing Proceedings under Part I of the Federal Power Act*, 116 FERC ¶ 61,270 at P 2-12 (2006).

<sup>31</sup> See Vermont NRC's filings of December 6, 1995, and December 13, 1996.

approves exhibit F drawings sheet 2, 3, and 4, and Article 202 requires filing of these drawings on microfilm and in electronic file format.

49. The project also includes two 44-foot-high surge tanks connected to two penstocks. The two surge tanks are not shown in the exhibit F drawings. Therefore, additional exhibit F drawings must be filed to show and label both project surge tanks. Article 203 requires the filing of the additional exhibit F drawings. Further, exhibit F, sheet 1 shows the project site plan that includes a project boundary line enclosing project features. The project boundary is required to be shown on an exhibit G drawing instead of an exhibit F drawing. Further discussion of the project boundary and exhibit G drawing requirements are discussed below.

### **C. Project Boundary and Exhibit G Drawings**

50. As noted above, exhibit G drawings are required to show a project boundary enclosing all project works and other features that are to be licensed.<sup>32</sup> The exhibit G drawing filed with the license application is a site location map with a note to see exhibit F sheet 1 for the project boundary. Exhibit F sheet 1 shows a project boundary line enclosing the dam, reservoir, penstock, and powerhouse, but does not show the transmission line or proposed recreation facilities. An exhibit G drawing must be filed that encloses all project works and lands necessary to operate and maintain the project including the primary transmission line and the licensee's proposed recreation facilities including the parking area, upstream and downstream canoe portage facilities, overlooks, and trails to the overlooks. Further, the exhibit G drawing must be stamped by a Registered Land Surveyor, show three known reference points, and provide the project boundary data in a geo-referenced electronic format.<sup>33</sup> The exhibit G drawing, therefore, filed with the license application is not approved and is not made part of the license (see ordering paragraph C). Article 204 requires the filing of an exhibit G drawing showing the project boundary.

### **D. Amortization Reserves**

51. The Commission requires that, for an original license issued for privately owned major projects with an installed generating capacity of more than 1.5 MW, the licensees set up and maintain an amortization reserve account upon license issuance. Article 205 requires the account.

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<sup>32</sup> 18 C.F.R. § 4.41(h)(2) (2008).

<sup>33</sup> 18 C.F.R. §§ 4.39 and 4.41 (2008).

### **E. Headwater Benefits**

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

### **F. Review of Final Plans and Specifications**

53. This license authorizes construction-related actions, including replacing flashboards and removing two abandoned steel penstocks and concrete cradles. Article 301 requires the licensee to provide D2SI-NYRO, for approval, final contract drawings and specifications, together with a supporting design report consistent with the Commission's regulations, a Quality Control and Inspection Program, and a Soil Erosion and Sediment Control Plan. Article 302 requires the licensee to provide the Commission's Division of Dam Safety and Inspection New York Regional Office (D2SI-NYRO) with cofferdam construction drawings at least 30 days prior to starting construction of the cofferdams. Article 303 requires the licensee to file for Commission approval, within 90 days of completing construction, revised exhibits describing and showing the facilities as built.

### **G. Use and Occupancy of Project Lands and Waters**

54. Requiring a licensee to obtain prior Commission approval for every use or occupancy of the project would be unduly burdensome. Therefore, Article 407 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.

### **H. Consultation for Resource Plans**

55. Appendices A and B contain certain certification conditions that require the development of plans, including plans for: flow management and project operation; monitoring impoundment levels and minimum flows; debris disposal; recreation; final design and implementation schedule for flashboard replacement; and approval of project changes, if needed. These conditions require the licensee to obtain approval from the certifying agency but do not provide for Commission approval of the plans. Therefore, Article 401(A) requires the licensee to file the plans with the Commission for approval, file documentation of completion or notification in 401(B), and file amendment applications in case of project modifications in 401(C).

## STATE AND FEDERAL COMPREHENSIVE PLANS

56. Section 10(a)(2)(A) of the FPA<sup>34</sup> 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.<sup>35</sup> Under section 10(a)(2)(A), staff identified and reviewed 17 comprehensive plans that are relevant to this project.<sup>36</sup> No conflicts were found.

## CONSERVATION EFFORTS

57. In accordance with sections 10(a)(2)(C) of the FPA,<sup>37</sup> Commission staff evaluated Central Vermont's electricity consumption improvement program, including its plans, performance, and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of state regulatory authorities. Central Vermont is actively involved in promoting cost-effective conservation programs for its residential and business customers.<sup>38</sup> These programs show that Central Vermont is making an effort to conserve electricity.

## PROJECT SAFETY

58. Staff reviewed Central Vermont's management, operation, and maintenance of the Carver Falls Project pursuant to the requirements of 18 CFR Part 12 of the Commission's regulations and the Commission's Engineering Guidelines. I conclude that the dam and other project works are safe, and find that there is no reason to believe that Central Vermont cannot continue to safely manage, operate, and maintain these facilities under an original license.

## NEED FOR POWER

59. To assess the need for power, staff looked at the needs in the operating region in which the project is located which is the Northeast Power Coordinating Council (NPCC)

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<sup>34</sup> 16 U.S.C. § 803(a)(2)(A) (2006).

<sup>35</sup> Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (2008).

<sup>36</sup> The list of applicable plans can be found in section X of the EA.

<sup>37</sup> 16 U.S.C. § 803(a)(2)(C) (2006).

<sup>38</sup> See the customer service link at <http://www.cvps.com>

region of the North American Electric Reliability Council. The peak summer demand for the NPCC area is projected to grow at an average annual compound rate of 1.2 percent over the 10-year planning period from 2008 through 2017. I conclude that the project's power, low cost, potential displacement of nonrenewable fossil-fired generation, and contribution to the region's diversified generation mix may help meet the need for power in this region.

## PROJECT ECONOMICS

60. In determining whether to issue a new license for an existing hydroelectric project, the Commission considers a number of public interest factors, including the economic benefits of project power. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.*,<sup>39</sup> the Commission uses current costs to compare the costs of the project and likely alternative 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.

61. In applying this analysis to the Carver Falls Project, staff considered two licensing options: Central Vermont's proposal, as modified by the Settlement; and the project as licensed herein including staff recommendations and the certification conditions. As proposed by Central Vermont, the annual cost of operating the Carver Falls Project would be \$238,200 or \$36.25/MWh. The proposed project would generate an estimated average of 6,571 MWh of energy annually. When we multiply our estimate of average annual generation by the alternative power cost of \$55.67/MWh,<sup>40</sup> we get a total value of the project's power of about \$365,800 in 2008 dollars. To determine whether the proposed project is currently economically beneficial, we subtract the project's cost from the value of the project's power. Therefore, in the first year of operation, the project would cost \$127,600 or \$19.42/MWh, less than the likely alternative cost of power.

62. As licensed herein with the mandatory certification conditions, and staff recommended measures,<sup>41</sup> the levelized annual cost of operating the project would be

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<sup>39</sup> 72 FERC ¶ 61,027 (1995).

<sup>40</sup> The alternative power cost of \$55.67 per MWh is based on information obtained from the Energy Information Administration fuel cost data.

<sup>41</sup> The additional staff-recommended measures include filing additional exhibit F drawings; a project boundary drawing; an Indiana bat protection plan, if needed; and

(continued)

about \$269,000 or \$40.94/MWh. Based on the same alternative power cost and estimated average annual generation of 6,571 MWh, project power would cost \$96,800 or \$14.73/MWh less than the likely cost of alternative power.

63. In considering public interest factors, the Commission takes into account that hydroelectric projects, like the Carver Falls Project, offer unique operational benefits to the electric utility system (ancillary service benefits). These benefits include their capability to provide an almost instantaneous load-following response to dampen voltage and frequency instability on the transmission system, system-power-factor-correction through condensing operations, and a source of power available to help in quickly putting fossil-fuel based generating stations back on line following a major utility system or regional blackout.

### **COMPREHENSIVE DEVELOPMENT**

64. Sections 4(e) and 10(a)(1) of the FPA<sup>42</sup> require the Commission to give equal consideration to 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 shall 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.

65. The EA for the project contains background information, analysis of effects, and support for related license articles. I conclude, based on the record of this proceeding, including the EA and the comments thereon, that licensing the Carver Falls Project as described in this order would not constitute a major federal action significantly affecting the quality of the human environment. The project will be safe if operated and maintained in accordance with the requirements of this license.

66. Based on my independent review and evaluation of the project, recommendations from the resource agencies and other stakeholders, Settlement, certification conditions, and the no-action alternative, as documented in the EA, I have selected the proposed Carver Falls Project, with certification conditions, and the staff-recommended measures, and find that it is best adapted to a comprehensive plan for improving or developing the Poultney River.

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implementing the PA.

<sup>42</sup> 16 U.S.C. §§ 797(e) and 803(a)(1) (2006).

67. I selected this alternative because: (1) issuing an original license will serve to maintain a beneficial, dependable, and an inexpensive source of electric energy; (2) the required environmental measures will protect and enhance fish and wildlife resources, water quality, recreational resources including aesthetics, and historic properties; and (3) the 1.9 MW of electric energy generated from a renewable resource may offset the use of fossil-fueled, steam-electric generating plants, thereby conserving non-renewable resources and reducing atmospheric pollution.

### LICENSE TERM

68. Section 6 of the FPA<sup>43</sup> provides that original licenses for hydropower projects shall be issued for a term not exceeding 50 years. The Commission's general policy is to establish 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive measures.<sup>44</sup> This license authorizes no new capacity, and only a minor amount of new environmental measures. Consequently, a 30-year license term for the Carver Falls Project is appropriate.<sup>45</sup>

#### The Director orders:

(A) This license is issued to Central Vermont Public Service Corporation (licensee) to operate and maintain the Carver Falls Hydroelectric Project, for a period of 30 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 FPA, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

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

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<sup>43</sup> 16 U.S.C. § 799 (2006).

<sup>44</sup> See *Consumers Power Company*, 68 FERC ¶ 61,077 at 61,383-84 (1994).

<sup>45</sup> Under the general provisions of the Settlement, the signatories agree to support a 30-year license term.

(2) Project works consisting of: (1) the 514-foot-long concrete and stone masonry Carver Falls dam consisting of (i) a 110-foot-long northern spillway equipped with 6-foot-high flashboards, (ii) a 150-foot-long southern spillway equipped with 1.5-foot-high flashboards, (iii) a 10-foot-long stoplog sluiceway, and (iv) a 6-foot-long boom gate; (2) a 10-acre reservoir with a normal surface elevation of 233.3 feet datum USGS; (3) a 10-foot by 13-foot intake structure equipped with trashracks and a Chapman valve; (4) a 200-foot-long, 7-foot-diameter penstock bifurcating into two 150-foot-long, 3-foot and 4-foot-diameter penstocks; (5) two 44-foot-high, 4-foot and 6-foot-diameter surge tanks; (6) a powerhouse containing a 1.1-MW and 0.8-MW turbine generating units with a total installed capacity of 1.9-MW; (7) a 275-foot-long, 2.4-kV transmission line; and (8) appurtenant facilities.

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-1 through A-29 of exhibit A filed on April 25, 1994.

Exhibit F: The following sections of exhibit F sheets 2 through 4 filed on April 25, 1994:

<u>Exhibit F Drawings</u>	<u>FERC No. 11475-</u>	<u>Description</u>
Sheet 2	2	Powerhouse Plan and Sections
Sheet 3	3	Profile and Sections
Sheet 4	4	Dam Plan

(C) The exhibits A and F, as described above,<sup>46</sup> are approved and made part of this license. The project location drawing (labeled as exhibit F, sheet 1) filed on April 25, 1994, does not show or label a project boundary line enclosing all project works and lands necessary to operate and maintain the project including the primary transmission line and the project recreation sites, including the parking area, upstream and downstream canoe portage facilities, overlooks, and trails to the overlooks. Further, the project location drawing is not stamped by a Registered Land Surveyor, show three known

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<sup>46</sup> See the requirement for filing additional exhibit F drawings required by Article 204 below.

reference points, and provide the project boundary data in a geo-referenced electronic format. Therefore, the exhibit G drawing is not approved.

(D) This license incorporates and is subject to the conditions issued by the New York State Department of Environmental Conservation on April 21, 1995, and modified on December 13, 1996, and the Vermont Agency of Natural Resources issued on December 5, 2008, under section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1431(a)(1) (2000), as those conditions are set forth in Appendices A and B to this order, respectively.

(E) This license is also subject to articles set forth in Form L-3 (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States (*see* 54 FPC 1799 *et seq.*)," and the following additional articles.

Article 201. Administrative Annual Charges. The licensee shall pay annual charges to the United States, effective the first day of the month in which this 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 1.9 megawatts.

Article 202. Exhibit F Drawings. Within 45 days of license issuance, the licensee shall file the approved exhibit F drawing on aperture cards.

(a) Three sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Project-Drawing Number (i.e., P-11475-1 through P-11475-4) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (i.e., F-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card. Exhibit F drawings must be identified as (CEII) material under 18 CFR §388.113(c).

Two of the sets of aperture cards shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections New York Regional Office.

(b) The licensee shall file two separate sets of exhibit drawings in electronic raster format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections New York Regional Office. Exhibit F drawings must be identified as (CEII) material under 18 CFR

§388.113(c). Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this license, and file extension in the following format [P-11475-1, F-1, Description, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

IMAGERY - black & white raster file  
FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4  
RESOLUTION – 300 dpi desired, (200 dpi min)  
DRAWING SIZE FORMAT – 24” X 36” (min), 28” X 40” (max)  
FILE SIZE – less than 1 MB desired

Article 203. Exhibit F Surge Tank Drawing. Within 45 days of license issuance, the licensee shall file, for Commission approval, additional exhibit F drawings that show and label the two project surge tanks. The exhibit F drawing shall comply with sections 4.39 and 4.41 of the Commission’s regulations, 18 C.F.R. §§ 4.39 and 4.41 (2008).

Article 204. Exhibit G Drawing. Within 90 days of license issuance, the licensee shall file, for Commission approval, an exhibit G drawing enclosing within the project boundary all principal project works necessary for operation and maintenance of the project including the primary transmission line and project recreation sites, including the recreation facilities required by New York DEC condition 12, Vermont ANR condition L, and Article 401. The exhibit G drawing shall comply with sections 4.39 and 4.41 of the Commission’s regulations, 18 C.F.R. §§ 4.39 and 4.41 (2008).

Article 205. Amortization Reserve. Pursuant to section 10(d) of the Federal Power Act, after the first 20 years of operation of the project under license, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One-half of the project’s surplus earnings, if any, accumulated after the first 20 years of operations under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year after the first 20 years of operation under the license, the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts established in the project amortization reserved account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the annual weighted costs of long-term debt, preferred stock, and common equity, as defined below. The annual weighted cost for each component of the reasonable rate of return is the

product of its capital ratio and cost rate. The annual capital ratio for each component of the rate of return shall be calculated based on an average of 13 monthly balances of amounts properly includable in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for long-term debt and preferred stock shall be their respective weighted average costs for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 206. *Headwater Benefits.* If the licensee's project was directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this license. The benefits will be assessed in accordance with Part 11, Subpart B, of the Commission's regulations.

Article 301. *Contract Plans and Specifications.* At least 60 days prior to start of construction, the licensee shall submit one copy of its plans and specifications and supporting design document to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer, and two copies to the Commission (one of these shall be a courtesy copy to the Director, D2SI). The submittal must also include as part of preconstruction requirements: a Quality Control and Inspection Program, Temporary Construction Emergency Action Plan, and Soil Erosion and Sediment Control Plan. The licensee may not begin construction until the D2SI – New York Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

Article 302. *Cofferdam Construction Drawings.* Before starting construction, the licensee shall review and approve the design of contractor-designed cofferdams and deep excavations and shall make sure construction of the cofferdams and deep excavations are consistent with the approved design. At least 30 days before starting construction of the cofferdam, the licensee shall submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer, and two copies to the Commission (one of these shall be a courtesy copy to the Director, D2SI), of the approved cofferdam construction drawings and specifications and the letters of approval.

Article 303. *As-built Drawings.* Within 90 days of completion of all construction activities authorized by this license, the licensee shall file for Commission approval, revised exhibits A, F, and G, as applicable, to describe and

show those project facilities as built. A courtesy copy shall be filed with the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer, the Director, D2SI, and the Director, Division of Hydropower Administration and Compliance.

Article 401. *Commission Approval, Reporting, and Filing of Amendments.*

(A) Requirement to File Plans for Commission Approval.

Various conditions of this license found in the Vermont Agency of Natural Resources (Vermont ANR) and the New State York Department of Environmental Conservation (New York DEC) water quality certification conditions (Appendices A and B, respectively) require the licensee to prepare plans for approval by the Vermont ANR and New York DEC for submittal to the Commission and to implement specific measures without prior Commission approval. Each plan shall be submitted to the Commission for approval. The plans are listed below.

Vermont ANR Condition No.	New York DEC Condition No.	License Requirement	Due Date
D		Reservoir and Flow Management and Operation Plan	Within 6 months of the license issuance date
E	3	Reservoir and Flow Management Monitoring Plan	Within 6 months of the license issuance date
G		Flashboard Final Design and Implementation Schedule	Within 60 days of the license issuance date
H		Debris Disposal Plan	Within 120 days of the license issuance date
I		Maintenance and Repair Work Authorization, if needed	Within 30 days after Vermont ANR approval
L	12	Recreation Plan	Within 6 months of the license issuance date

Vermont ANR Condition No.	New York DEC Condition No.	License Requirement	Due Date
N	7	Erosion Control Measures, as needed	Within 30 days after Vermont ANR and New York DEC approval

The recreation plan required by Vermont ANR condition L and New York DEC condition 12 shall also include the proposed signage, trail registers, and overlook improvements described in Figure 15 of the license application and Central Vermont's March 6, 1996 additional information response.

The licensee shall submit to the Commission documentation of its consultation with the Vermont ANR, New York DEC, and U.S. Fish and Wildlife Service (FWS); copies of comments and recommendations made in connection with the plans and measures identified above; and a description of how the plans and measures accommodate the comments and recommendations. The licensee shall include letters from the Vermont ANR, New York DEC, and FWS, as appropriate, approving the plans. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information. The Commission reserves the right to make changes to any plan submitted. Upon Commission approval, the plan becomes a requirement of the license, and the licensee shall implement the plan or changes in project operations or facilities, including any changes required by the Commission.

(B) Requirement to Notify Commission.

The licensee shall also file with the Commission notification of the following activity.

Vermont ANR Condition No.	New York DEC Condition No.	License Requirement	Due Date
J		Restrict Public Access in Emergencies Notification, if needed	Within 14 days of occurrence

(C) Requirement to File Amendment Application.

A condition in the water quality certification of Vermont ANR allows for modification to project facilities for the purpose of mitigating environmental impacts. These changes may not be implemented without prior Commission authorization granted after the filing of an application to amend the license. The condition is listed below.

Vermont ANR Condition No.	New York DEC Condition No.	Project Modification	Due Date
Q		Approval of Project Changes, if needed	Within 30 days after Vermont ANR approval

Article 402. Deviation from Run-of-river Operation and Minimum Flow Requirements. The licensee shall operate the project in a run-of-river mode and release minimum flows as required by condition B of the Vermont water quality certification (appendix B) and conditions 2 and 3 of the New York water quality certification (appendix A) for the protection of aquatic habitat and water quality in the Poultney River. Run-of-river operation and minimum flow releases may be temporarily modified if required by operating emergencies beyond the control of the licensee, or for short periods upon agreement among the licensee, the Vermont Agency of Natural Resources (Vermont ANR), the New York State Department of Environmental Conservation (New York DEC), and the U.S. Fish and Wildlife Service (FWS). If run-of-river operation or any minimum flow is so modified, the licensee shall notify the Commission, the Vermont ANR, New York DEC, and the FWS as soon as possible, but no but no later than 10 days, after each such incident.

Article 403. 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 404. Flashboard Removal and Replacement. The licensee shall remove the 1.5-foot-high flashboards from the southern spillway section of the dam on or before September 15, annually, to minimize any water quality impacts downstream and in the reservoir. The licensee may reinstall the flashboards in mid to late April. The licensee shall notify the Commission that the flashboards have been removed and reinstalled no later than 10 days after their removal or installation.

Article 405. Tree Removal Restrictions and Indiana Bat Protection Plan. The licensee shall avoid removing trees (of 10-inch-diameter-breast-height or larger) during April 1 through October 31 of each year. If tree removal must occur between April 1 and October 31, for the purpose of access to project recreation sites or facilities or routine vegetation management, the licensee must file with the Commission, for approval, a plan to protect the federally listed endangered Indiana bat (*Myotis sodalis*). The plan shall be filed at least 30 days prior to the anticipated date of tree removal and include, but not be limited to, the following:

1. the results of a survey by a professional wildlife biologist of all areas to be disturbed by tree removals, including documentation of all potential Indiana bat roosting trees within the areas;
2. documentation of consultation with the U.S. Fish and Wildlife Service, the Vermont Department of Fish and Wildlife, and the New York State Department of Environmental Conservation concerning whether additional surveys for Indiana bat presence are required and any additional comments and recommendations; and
3. an implementation schedule for the tree removal and specific descriptions of how the agencies' comments and recommendations are accommodated by the plan.

The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No tree-removing activities shall begin at the project until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 406. *Programmatic Agreement and Cultural Resources Management Plan.* The licensee shall implement the "Programmatic Agreement Among the Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, and the New York and Vermont Historic Preservation Officers (New York and Vermont SHPOs) for Managing Historic Properties that May be Affected by a License Issuing to Central Vermont Public Service Corporation, for the Carver Falls Hydroelectric Project in New York and Vermont (FERC No. 11475-000)," executed on August 8, 1997, and including but not limited to the cultural resources management plan (CRMP). Pursuant to the requirements of this Programmatic Agreement, the licensee shall file, for Commission approval, a CRMP within one year of the issuance date of this order. The Commission reserves the authority to require changes to the CRMP at any time during the term of the license. If the Programmatic Agreement is terminated prior to Commission approval of the CRMP, the licensee shall obtain approvals from or make modifications required by the Commission and the New York and Vermont SHPOs 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 407. *Use and Occupancy.* (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval.

The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the 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 shall 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 water 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 shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the 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 shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project

overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed. If no conveyance is made during the prior calendar year, the licensee shall so inform the Commission in writing no later than January 31 of each 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 Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from 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 submit a letter to the Director, Office of Energy Projects, 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 Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

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

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

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

(3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project 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 shall 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 shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

(F) The licensee shall 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.

(G) This order is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in section 313(a) of the FPA. 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, except as specifically ordered by the Commission. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

J. Mark Robinson  
Director  
Office of Energy Projects

**Form L-3**  
(October, 1975)

**FEDERAL ENERGY REGULATORY COMMISSION  
TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED  
MAJOR PROJECT AFFECTING NAVIGABLE  
WATERS OF THE UNITED STATES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Article 12.** The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and 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 Secretary of the Army may prescribe in the interest of navigation, and 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 Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

**Article 13.** On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail

to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

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

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

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

**Article 17.** The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable

modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

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

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

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

**Article 21.** Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

**Article 22.** Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of

passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

**Article 23.** The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

**Article 24.** The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

**Article 25.** The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

**Article 26.** 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 27.** 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 28.** 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****NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION  
WATER QUALITY CERTIFICATION CONDITIONS  
ISSUED APRIL 21, 1995, AND CERTIFICATION CONDITIONS  
MODIFIED ON DECEMBER 13, 1996****A. OVERSIGHT AND ADMINISTRATION**

1. Inspections: The project, including relevant records, is subject to inspection at reasonable hours and intervals, upon reasonable notice to the certificate holder, by an authorized representative of the Department to determine whether the applicant is complying with this certification. A copy of this certification, including all referenced maps, drawings, and special conditions, must be available for inspection by the Department during such inspections at the project.

**B. OPERATING CONDITIONS**

2. Run of River Operation: The certificate holder shall ensure that the project is operated in a strict run of river mode of operation. Project operation shall be based on an active storage volume of zero cubic feet at all times. Therefore the instantaneous sum of all discharges and releases from the impoundment will equal the instantaneous inflow into the impoundment. This condition may be temporarily modified by civil or operating emergencies beyond the control of the certificate holder, or upon mutual consent of the Department and the certificate holder.

In implementing run of river operation, the certificate holder shall not permit the elevation of the project impoundment to drop below one inch (0.08333 feet) above the top of the flashboards when flashboards are in place, or to drop below 0.0833 ft. above the crest of the dam when flashboards are out, pursuant to Condition 3 (below).

3. Minimum flows to Bypassed Reaches: The Certificate holder shall provide a continuous release to the bypassed reach. The minimum quantity to be released to the bypassed reach shall be 18.5 cfs, or inflow when that is less. The applicant has ascertained (see page E 2-19 of the application) that a one inch spill over the 115 long spillway section of the dam will result in no less than 18.5 cfs in the bypassed reach. Therefore calibrated pond level sensors must be used to control turbine operation to ensure that the impoundment never falls below an elevation one inch above the top of the flashboards when flashboards are in place or one inch above dam crest when flashboards are out. This will ensure that the minimum instantaneous flow of 18.5 cfs is maintained.

4. Flow Monitoring: The certificate holder shall submit a flow monitoring plan for Department approval within three (3) months of acceptance of the FERC License. This flow monitoring plan will provide for the installation and maintenance of a U.S. Geological Survey (USGS) gaging station, unless justification for an alternative gaging system is provided. The flow monitoring plan shall include all gages and/or equipment for the purpose of:

- a. determining project flows through the bypass/diversion reach, and;
- b. determining project headpond and tailwater elevation.

The Licensee shall keep accurate and sufficient records of the foregoing flow data to the satisfaction of the Department and shall provide such data in a format and Interval as the Department may request.

### **C. PROJECT MAINTENANCE AND CONSTRUCTION**

5. Maintenance Dredging: The certificate holder shall curtail generation and install stoplogs or otherwise shut off flow through the turbine(s) prior to commencing any maintenance dredging activities in the intake/forebay area.

6. Sediment Analysis and Disposal: The certificate holder must sample any sediments to be disturbed or removed from the project waters and test them for contaminants. Sampling and testing shall be accomplished according to a protocol submitted to and approved by the Department beforehand. Prior to dredging or other excavation, the certificate holder must secure Department approval for all disposal locations for any sediments to be removed from the project waters.

7. Erosion and Sediment Control: Prior to commencing activities which could adversely affect water quality, the certificate holder must receive Department approval of an Erosion and Sediment Control Plan. This plan must be submitted at least 90 days before the intended date for commencing work. At minimum, the certificate holder must accomplish the following objectives:

- a. Isolate in-stream work from the flow of water and prevent discolored (turbid) discharges and sediments from entering the waters of the river due to excavation, dewatering and construction activities.
- b. Exclude heavy construction equipment from below the mean high water line until the work area is protected by an approved structure and dewatered.
- c. Stabilize any disturbed banks by grading to an appropriate slope, followed by armoring or vegetating as appropriate, to prevent erosion and sedimentation into the

waterbody.

d. Minimize soil disturbance, provide appropriate grading and temporary and permanent revegetation of stockpiles and other disturbed areas to minimize erosion/sedimentation potential.

e. Protect all waters from contamination by deleterious materials such as wet concrete, gasoline, solvents, epoxy resins or other materials used in construction, maintenance and operation of the project.

f. Install effective erosion control measures on the downslope of all disturbed areas and maintain them in a fully functional condition. These erosion control measures are to be installed before commencing any other activities involving soil disturbance.

g. Ensure complete removal of all dredged and excavated material, debris or excess materials from construction, from the bed and banks of all water areas to an approved upland disposal site.

h. Ensure that all temporary fill and other materials placed in the waters of the river are completely removed, immediately upon completion of construction, unless otherwise directed by the Department.

8. Placement of cofferdams, construction of temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the river: The design of all such structures must be approved by the Department prior to installation. These designs will be developed in accordance with Condition 7 (above).

9. Maintenance of River Flow: During all periods of construction, the certificate holder shall maintain adequate flows immediately downstream of work sites to ensure that the water quality standards established for the water body are met. This does not relieve the certificate holder from condition 6 (requiring run of river operation) or condition 7 specifying the minimum flow to the bypassed reach.

10. Turbidity Monitoring: The certificate holder will monitor the waters of the river at a point immediately upstream of project activities and at a point no more than 100 feet downstream from any discharge point or other potential source of turbidity. The certificate holder specifically agrees that if, at any time, turbidity measurements from the downstream locations exceed the measurements from the locations upstream of the work areas, all related construction on the project will cease until the source of the turbidity is discovered and the situation is corrected.

11. Notifications: The Department contact specified in this certificate must be notified in writing at least two weeks prior to commencing any work performed under the

authority of this certificate.

#### **D. PUBLIC ACCESS**

12. Recreational Access: The certificate holder will provide cartop boat access to the impoundment as proposed in the Application, with parking as shown in Figure 15 of the Application, for no less than 5 cars. The certificate holder shall also provide a canoe portage route to a point downstream of the Powerhouse as shown on figure 15 and described in section E 2.6.3 of the application. These construction activities are subject to all the pertinent conditions listed under part C of this certification.

#### **MODIFIED CERTIFICATION CONDITIONS<sup>47</sup>**

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

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

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

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

17. Carver Falls Advisory Council: In order to keep abreast of changing conditions that may affect the Carver Falls site, an Advisory Council to be representative of the various interests in Carver Falls will be formed. The NYSDEC will chair the Advisory Council. At a minimum, the signatories to the Settlement will be invited to serve on the Advisory Council. The Advisory Council will make recommendations for consideration by the NYSDEC and CVPSC regarding management of the Carver Falls site and hydropower project operations. Each member will have one vote, with Advisory Council decisions to

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<sup>47</sup> Commission staff added numbers to the modified certification conditions for clarity when referencing the conditions through-out the license and license articles.

be based on majority vote. The Advisory Council will meet at least once a year. CVPSC will defray the costs of the Carver Falls Advisory Council meetings, including travel expenses. CVPSC's obligation is subject to an overall \$200.00 annual cap, regardless of the number of meetings held.

## 18. General Provisions

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

## APPENDIX B

### VERMONT AGENCY OF NATURAL RESOURCES WATER QUALITY CERTIFICATION CONDITIONS ISSUED DECEMBER 5, 2008

- A. **Compliance with Conditions.** The applicant shall operate and maintain this project consistent with the findings and conditions of this certification, where those findings and conditions relate to protection of water quality and support of designated and existing uses under Vermont Water Quality Standards and other appropriate requirements of state law.
- B. **Flow Management.** Except as allowed in Condition C below, the facility shall be operated in a true run-of-the-river mode where instantaneous flows below the tailrace shall equal instantaneous inflow to the impoundment at all times. When the facility is not operating, all flows shall be spilled at the dam. Bypass flows shall be maintained in accordance with the following table.

Period	Bypassed Flow Release (cfs)
May 16 - March 31	18.5
April 1 – May 15	50
<p>The bypass flow release is the value listed above or instantaneous inflow, if less.</p> <p>Bypass conservation flows, except for uncontrolled leakage, shall be released as full crest spillage over the south spillway section. Except during the aesthetic flow release periods noted below, any portion of the flow that would exceed 1.0 inch of spillage may be routed through a gate. The full crest spillage requirement does not apply during the period November through March.</p> <p>Aesthetics flow releases consisting of no less than 2.5 inches of spillage (or inflow, if less) over the south spillway shall be provided on Memorial Day, Independence Day, Labor Day, Columbus Day and every Sunday during the months of July and August. The flow release shall commence at 9:00 a.m. and continue through the daylight hours.</p>	

- C. **Flow Management during Impoundment Refill.** During refilling of the project impoundment after flashboard replacement, an approved dam maintenance operation or an emergency drawdown, the applicant shall release at least 90

percent of instantaneous inflow below the project. While the impoundment is being refilled, bypass flow requirements shall be met at all times.

- D. **Flow Management Plan.** The applicant shall develop and file with the Department a flow management plan detailing how the project will be operated to comply with the conservation flow and impoundment fluctuation limitations described above. The plan shall include information on how the project will be managed to control lag times and avoid related noncompliance with the conservation flow requirements. The plan shall be subject to Department review and approval. The Department reserves the right of review and approval of any material changes made to the plan.
- E. **Monitoring Plan for Impoundment and Flow Management.** The applicant shall develop a plan for continuous monitoring and reporting of flow releases at the project (spillage and turbine discharge), impoundment levels, flashboard status and inflows. The plan shall include procedures for reporting deviations from prescribed operating conditions to the Department, explaining the reasons for those deviations and indicating measures to be taken to avoid recurrences. The applicant shall maintain continuous records of flows and impoundment levels and provide such records on a regular basis as per specifications of the Department. The plan shall include a provision for the inclusion of contemporaneous records from the U.S. Geological Survey gage (Poultney River below Fair Haven, Vermont, Gage No. 04280000) located below the project powerhouse. The applicant shall fund the gage in order to facilitate compliance monitoring and to furnish data for quality control purposes. The plan shall be developed in consultation with the Department and the U.S. Fish and Wildlife Service. The plan shall be subject to Department review and approval. The Department reserves the right of review and approval of any material changes made to the plan.
- F. **Turbine Rating Curves.** The applicant shall provide the Department with a copy of the turbine rating curves, accurately depicting the flow/production relationship, for the record within one year of the issuance of the license.
- G. **Flashboards.** The applicant shall replace the 6-foot plywood flashboards on the north spillway with a new system consisting of a lower 4.0-foot steel section and an upper 2.0-foot section of untreated lumber, or an alternate design approved by the Department and meeting the objective of reducing the incidence of large scale impoundment drawdowns. The final design and implementation schedule shall be filed with the Department within 60 days of the issuance of the license, and shall be subject to Department review and approval. The modified system shall be in place within two years of license issuance.

- H. **Debris Disposal Plan.** The applicant shall develop a plan for proper disposal of debris associated with project operation, including trashrack debris. The plan shall be developed in consultation with the Department and shall be subject to Department review and approval. The Department reserves the right of review and approval of any material changes made to the plan at any time.
- I. **Maintenance and Repair Work.** Any proposals for project maintenance or repair work, including drawdowns below the fixed dam crest to facilitate repair/maintenance work, shall be filed with the Department for prior review and approval, if said work may have a material adverse effect on water quality or cause less-than-full support of an existing use or a beneficial value or use of State waters.
- J. **Public Access.** The applicant shall allow public access to the project lands for utilization of public resources, subject to reasonable safety and liability limitations. Such access shall be prominently and permanently posted so that its availability is made known to the public. Any proposed limitations of access to State waters to be imposed by the applicant shall first be subject to written approval by the Department. In cases where an immediate threat to public safety exists, access may be restricted without prior approval; the applicant shall so notify the Department and shall file a request for approval, if the restriction is to be permanent or long term, within 14 days of the restriction of access.
- K. **Abandoned Penstocks.** The applicant shall remove the concrete cradles and the section of abandoned steel penstocks between the last stone cradle and the river embankment following full consultation with the Vermont Division for Historic Preservation and within two years of the issuance of the license.
- L. **Recreational Facilities.** Recreational facilities shall be constructed and maintained consistent with a recreation plan approved by the Department. The plan shall include a provision to allow but not encourage access to the promontory. The plan shall be filed with the Department within one year of license issuance and shall include an implementation schedule. Where appropriate, the recreation plan shall include details on erosion control. The plan shall be updated at intervals not exceeding ten years or a written statement provided that indicates the basis for there being no need to upgrade the facilities or otherwise modify the plan. Modifications to the recreation plan shall also be subject to Department approval over the term of the license.
- M. **Restoration Fund.** The applicant shall contribute \$250,000 to a fund (Fund) to be known as the Lake Champlain and Tributaries Restoration Fund, which shall be created by the State of Vermont and administered by an independent non-profit community foundation (the Fund Trustee) chosen by the applicant and the Vermont Agency of Natural Resources. The Fund, which shall include the

contribution and associated earnings as well as outside monies contributed by others and associated earnings, is to only be used for eligible projects, the purpose of which are to:

- a) Protect, restore and enhance the ecosystem integrity and ecological connectivity of the community of aquatic life in the Lake Champlain ecosystem and its tributaries.
- b) Protect, restore and enhance lake sturgeon and their habitats in the Lake Champlain basin and its tributaries.
- c) Restore a self-sustaining land-locked Atlantic salmon population in Lake Champlain through habitat restoration and fish monitoring programs.
- d) Protect the riparian zones along Lake Champlain tributaries for the benefit of the ecological and recreational resources, through the purchase of land or easements.

The Fund shall not be used for projects located outside of the Lake Champlain basin, or on New York tributaries of Lake Champlain. The applicant shall make a nonrefundable contribution in the amount of \$250,000 within 30 days of the completion of the following two events: (a) issuance of this certification or if this certification is the subject of an appeal, upon the completion of the appeal process provided that the certification contains conditions that are materially similar to this original certification and (b) issuance of a FERC license that contains conditions of this certification, or a certification issued on appeal with materially similar conditions, or if the FERC license is the subject of an appeal, upon the completion of the appeal process provided that the FERC license contains conditions that are materially similar to the final certification.

The Fund Trustee shall make investment decisions, and shall disburse monies from the Fund from time to time, in whole or in part, based upon recommendations made by representatives of the CVPS, the ANR, the U.S. Fish and Wildlife Service, the Vermont Natural Resources Council and Trout Unlimited who shall serve as the Fund Advisors. The Fund Advisors shall make decisions based upon vote of a majority of the Fund Advisors (not simply a quorum thereof). Any party may permanently withdraw as a Fund Advisor upon written notice to the other Fund Advisors. The Fund Advisors may solicit proposals from nonprofit organizations, educational institutions, units of government, and officially appointed commissions, boards or other entities within the state of Vermont for projects which address any of the above purposes. The Fund Advisors may target a specified portion of the funds to specific protection, mitigation, or enhancement objectives or to specific areas which are encompassed within the purposes and geographic scope defined above.

The Fund Trustee shall only disburse monies from the Fund when matching funds are contributed to a project by Parties or entities other than CVPS, at a ratio of no less than \$1 of outside monies for every \$2 drawn from CVPS ' s contribution and Fund earnings thereon.

- N. **Erosion Control.** Upon a written request by the Department, the applicant shall design and implement erosion control measures as necessary to address erosion occurring as a result of use of the project lands for recreation. Any work that exceeds minor maintenance shall be subject to prior approval by the Department and FERC.
- O. **Compliance Inspection by Department.** The applicant shall allow the Department to inspect the project area at any time to monitor compliance with certification conditions.
- P. **Posting of Certification.** A copy of this certification shall be prominently posted within the project powerhouse.
- Q. **Approval of Project Changes.** Any change to the project that would have a significant or material effect on the findings, conclusions or conditions of this certification, including project operation, must be submitted to the Department for prior review and written approval where appropriate and authorized by law and only as related to the change proposed.
- R. **Reopening of License.** The Department may request, at anytime, that FERC reopen the license to consider modifications to the license as necessary to assure compliance with Vermont Water Quality Standards.
- S. **Continuing Jurisdiction.** The Department reserves the right to add and alter the terms and conditions of this certification, when authorized by law and as appropriate to carry out its responsibilities with respect to water quality during the life of the project.

Document Content(s)

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